

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT

Suffolk County Civil Action No. **02-04551-**

T1 (Consolidated with C.A. 02-1296)

(Originally entered in Middlesex County as

C.A. No. 02-626)

GREGORY FORD, *et al.*,

Plaintiffs,

v.

BERNARD CARDINAL LAW, *et al.*,

Defendants.

PLAINTIFFS' MEMORANDUM OF LAW IN
SUPPORT OF MOTION IN LIMINE TO
ADMIT EVIDENCE OF PAUL R.
SHANLEY'S SEXUAL MOLESTATION
OF OTHERS

INTRODUCTION

Plaintiffs Gregory Ford ("Greg"), Paula Ford, and Rodney Ford (the "Plaintiffs") seek to admit evidence at trial of Paul R. Shanley's ("Father Shanley") sexual molestation of others. The Court should grant the Plaintiffs' motion because Father Shanley's similar sexual molestation of others, under the guise of being a priest and abusing their trust, shows Father Shanley's pattern of conduct in relation to children, like Greg, whom he molested. The central issue before the Court is whether the proffered evidence is logically probative as to whether Father Shanley sexually molested Greg. Based on the schematic and temporal nexus between the proffered evidence and Father Shanley's sexual molestation of Greg, admitting the evidence not

only makes it not improbable that Father Shanley molested Greg, but also serves to corroborate Greg's memories, which the Defendants have challenged in this action.

RELEVANT FACTS

A. Father Shanley's Sexual Molestation of Gregory¹

Father Shanley sexually molested Greg when he was a parishioner at St. Jean's Parish in Newton, Massachusetts ("St. Jean's"), a church in which Father Shanley worked as a priest. See *"Plaintiff Gregory Ford's Objections And Answers To Bernard Cardinal Law's Interrogatories,"* dated September 24, 2002 ("Ford Interrogatory"), No. 9 (attached as Exhibit "1" hereto); Deposition of Gregory Ford ("Ford Depo."), October 8, 2002, pp. 25-26 (attached as Exhibit "2" hereto). Father Shanley sexually molested Greg from the approximate ages of six to eleven or twelve (approximately 1983-1989). See Ford Interrogatory No. 9; Ford Depo., October 8, 2002, pp. 25-26. Father Shanley sexually molested Greg in the bathroom and Father Shanley's bedroom, which were in the Rectory at St. Jean's, during the time Greg attended CCD class. See Ford Interrogatory No. 9; Ford Depo., October 8, 2002, pp. 28-30.

Generally, the molestation consisted of Father Shanley (1) fondling Greg's genitals, (2) forcing Greg to perform oral sex on Father Shanley, and (3) penetrating Greg's anus with something (which could have been his finger). See Ford Interrogatory No. 9; Ford Depo., May 21, 2003, p. 22. In particular, with regard to the forced oral sex,

¹ The following represents a summary of Father Shanley's sexual molestation of Greg as it relates to the Plaintiffs' argument herein. The summary is not meant to be exclusive.

Father Shanley usually would face Greg, expose his penis, place his hands on Greg's shoulders, and put his penis in Greg's mouth. See Ford Interrogatory No. 9; Ford Depo., October 8, 2002, pp. 33-34; Ford Depo., May 21, 2003, pp. 43-45. In addition, during oral sex, Father Shanley would stretch out his hands in a way that caused Greg to think of "the Lord's hands on the cross." See Ford Interrogatory No. 9. On other occasions, Father Shanley would have Greg take his pants and underwear off, tell him to turn around and bend over. See Ford Interrogatory No. 9; Ford Depo., October 8, 2002, pp. 32-33; Ford Depo., May 23, 2003, pp. 22, 28, and 36. Then, Father Shanley would take his pants and underwear off and anally penetrated Greg with something that caused Greg pain, which he believes could have been Father Shanley's finger, although he is not sure. See Ford Interrogatory No. 9; Ford Depo., October 8, 2002, pp. 32-33; Ford Depo., May 23, 2003, pp. 22, 28, and 36. Father Shanley sometimes would play card games with Greg to get Greg to take his clothes off and, thereafter, Father Shanley would sexually molest Greg. See Ford Interrogatory No. 9; Ford Depo., October 8, 2002, pp. 33-34. During the molestation, Father Shanley would threaten Greg not to tell anyone about the molestation by telling him that no one would ever believe him and, if he did tell anyone, his parents could get hurt. See Ford Interrogatory No. 7; Ford Depo., October 8, 2002, pp. 69-70.

B. Father Shanley's Prior Sexual Molestation of Others

1. Paul W. Busa²

Father Shanley sexually molested Mr. Busa when he was a parishioner at St. Jean's. See *"Plaintiff Paul W. Busa's Supplement To Answers And Objections To Bernard Cardinal Law's Interrogatories,"* dated March 4, 2003 ("Busa Interrogatory"), No. 9 (attached as Exhibit "3" hereto); Deposition of Paul W. Busa ("Busa Depo."), dated November 15, 2002, pp. 179-81 (attached as Exhibit "4" hereto). Father Shanley sexually molested Mr. Busa from the approximate ages of six to eleven or twelve (approximately 1983-1989). See Busa Interrogatory No. 9; Busa Depo., November 15, 2002, pp. 179-81; Busa Depo., April 3, 2003, p. 214. Father Shanley sexually molested Mr. Busa in the bathroom and in a "confessional room," which were in the Rectory at St. Jean's, as well as in the parish itself, during the time Mr. Busa attended CCD class. See Busa Interrogatory No. 9; Busa Depo., November 15, 2002, pp. 164-165; Busa Depo., April 3, 2003, pp. 223-27.

Generally, the molestation consisted of (1) voyeurism, (2) forced reciprocal oral sex, (3) Father Shanley fondling Mr. Busa's genitals, and (4) Father Shanley penetrating Mr. Busa's anus with his finger. See Busa Interrogatory No. 9; Busa Depo., November 15, 2002, pp. 179-83; Busa Depo., April 3, 2003, pp. 214-19. In particular, Father Shanley would take Mr. Busa into the bathroom and take his pants down, stand over him, and

² The following represents a summary of Father Shanley's sexual misconduct with Paul W. Busa, as it relates to the Plaintiffs' argument herein. The summary is not meant to be exclusive.

watch him urinate. See Busa Interrogatory No. 9. When Mr. Busa was done urinating, Father Shanley would not let him pull his pants up, but instead Father Shanley would look at him while he was exposed. See Busa Interrogatory No. 9. On certain occasions, Father Shanley would lead Mr. Busa into a dark bathroom, stand while wearing his robe in the doorway (with light behind him on in the hall) and spread his arms to look like “Jesus.” See Busa Interrogatory No. 9. In addition, Father Shanley would sexually molest Mr. Busa by getting him alone to perform “special duties” (sitting in the pews with Father Shanley) and by playing cards with Mr. Busa to get him to take his clothes off. See Busa Interrogatory No. 9; Busa Depo., November 15, 2002, pp. 188-89; Busa Depo, April 3, 2003, pp. 225-27 and 300-01. During the molestation incidents, Father Shanley would threaten Mr. Busa not to tell anyone about the molestation by telling him that no one would ever believe him. See Busa Interrogatory No. 7.

2. Anthony Driscoll³

Father Shanley sexually molested Mr. Driscoll when he was a parishioner at St. Jean’s. See Deposition of Anthony Driscoll, dated October 24, 2002 (“Driscoll Depo.”), pp. 65-77 (attached as Exhibit “5” hereto); see generally, Affidavit of Anthony Driscoll, dated July 21, 2003 (“Driscoll Aff.”) (attached as Exhibit “6”). Father Shanley sexually molested Mr. Driscoll prior to the approximate age of thirteen (approximately before 1989). See Driscoll Depo. p. 65-77. Father Shanley sexually molested Mr. Driscoll in a

³ The following represents a summary of Father Shanley’s sexual misconduct of Anthony Driscoll, as it relates to the Plaintiffs’ argument herein. The summary is not meant to be exclusive.

confessional and in the bathroom, which both were in the Rectory at St. Jean's, as well as in the parish itself, during the time Mr. Driscoll attended CCD class. See Driscoll Depo., pp. 65-67 and 70-77; Driscoll Aff. ¶¶ 2-3.

Generally, the molestation consisted of Father Shanley (1) forcing Mr. Driscoll to touch his penis, (2) penetrating Mr. Driscoll's anus with something, which Mr. Driscoll believes could have been his finger, although Mr. Driscoll does not know for sure, and (3) forcing Mr. Driscoll to perform oral sex on him. See Driscoll Depo., pp. 65-67 and 70-77; Driscoll Aff. ¶¶ 2-4. In particular, Father Shanley asked Mr. Driscoll to help him place bibles in the pews at the parish, and, while doing so, sit down next to Mr. Driscoll and force him to touch his penis. See Driscoll Depo., pp. 65-67. In addition, Father Shanley forced Mr. Driscoll to put his hands on a coffee table and bend over and, thereafter, anally penetrated Mr. Driscoll. See Driscoll Depo. pp. 70-74. Furthermore, Mr. Driscoll recalls being in the main hall at St. Jean's with Father Shanley's and Father Shanley placing his hands on Mr. Driscoll's shoulders, bending over, and kissing him on the mouth. See Driscoll Aff. ¶ 3. Mr. Driscoll also remembers being forced to perform oral sex on Father Shanley, during confession and in the bathroom, to the point of ejaculation. See Driscoll Depo. pp. 76-77; Driscoll Aff. ¶ 2.

3. [REDACTED]⁴

Father Shanley sexually molested [REDACTED] when he was a parishioner at St. Jean's. See Affidavit of [REDACTED], dated July 17, 2003 ("[REDACTED]"), ¶¶ 2-10 (attached as Exhibit "7"). Father Shanley sexually molested [REDACTED] between the approximate years 1983 to 1987 (when [REDACTED] was between the approximate ages of seven and ten). See [REDACTED] ¶¶ 6-10. Father Shanley sexually molested [REDACTED] in his office in the Rectory at St. Jean's, during the time [REDACTED] attended CCD class. See [REDACTED] ¶¶ 6-10.

Generally, the molestation consisted of Father Shanley (1) rubbing his hands over [REDACTED] body, (2) forcing [REDACTED] to perform oral sex on Father Shanley, and (3) penetrating [REDACTED] anus with his finger. See [REDACTED] ¶¶ 7-8. In particular, with regard to the forced oral sex, Father Shanley usually invited [REDACTED] to play a game with Father Shanley, where [REDACTED] would have to "taste" him. See [REDACTED] ¶ 7. Father Shanley usually would tell [REDACTED] that he was "special" and "chosen" for the acts of molestation and [REDACTED] recalls feeling that it would be "the worst thing in the world to tell anyone" about the molestation because he was afraid for his safety and the safety of his family. See [REDACTED] ¶ 9. [REDACTED]

⁴ The following represents a summary of Father Shanley's sexual misconduct with [REDACTED], as it relates to the Plaintiffs' argument herein. The summary is not meant to be exclusive. [REDACTED] wishes to keep his name out of the public domain for various personal reasons. His name has been provided to defense counsel and has been provided to the Court in unredacted form. The public filing of the memorandum has been redacted.

██████████ attended CCD class with Greg and Messrs. Busa and Driscoll. See ██████████
¶ 4. ██████████ has never spoken with Greg or Messrs. Busa and Driscoll about the
molestation or since leaving St. Jean's in the 1980s for that matter. See ██████████ ¶ 17.
██████████ is not familiar with the details of how they were molested by Father
Shanley. See ██████████ ¶ 17. ██████████ never has met or spoken with ██████████
██████████ See ██████████ ¶ 16.

4. ██████████⁵

Father Shanley sexually molested ██████████ when he was a parishioner at St.
Jean's. See Affidavit of ██████████ dated July 15, 2003 ("██████████"), ¶¶ 2-13
(attached as Exhibit "8"). Father Shanley sexually molested ██████████ from the
approximate ages of ten or eleven through fourteen or fifteen (approximately 1980 to
1984). See ██████████ ¶¶ 3-6. Father Shanley sexually molested ██████████ in the
bathroom, in the Rectory, and in his bedroom at St. Jean's, during the time ██████████
attended CCD class and on one occasion after a Christmas Bazaar at St. Jean's. See
██████████ ¶¶ 6-13.

Generally, the molestation consisted of Father Shanley (1) fondling ██████████
genitals, (2) forcing ██████████ to masturbate and perform oral sex on him, (3) forcing

⁵ The following represents a summary of Father Shanley's sexual misconduct with ██████████, as it relates to the Plaintiffs' argument herein. The summary is not meant to be exclusive. ██████████ wishes to keep his name out of the public domain for various personal reasons. His name has been provided to defense counsel and has been provided to the Court in unredacted form. The public filing of the memorandum has been redacted.

██████ to allow Father Shanley to perform oral sex on him (on one occasion only), and (4) penetrating ██████ anus with his finger. See ██████ ¶¶ 10-13. In particular, while Father Shanley instructed ██████ to perform oral sex on him, he penetrated ██████'s anus with his finger, which occurred first when ██████ was approximately eleven years old and various times thereafter. See ██████ ¶¶ 10-13. During the molestation incidents, Father Shanley would tell ██████ that he was a "worker of God" and that the molestation was sanctioned by God. See ██████ ¶ 10. Father Shanley also threatened ██████ not to report the molestation to anyone and, if he did, Father Shanley would tell ██████ grandfather that the molestation was ██████ fault. See ██████ ¶¶ 14-15. ██████ has never met Greg or Messrs. Busa, Driscoll, and ██████ and has not read any detailed accounts of media reports about Father Shanley molesting them. See ██████ ¶¶ 27-28.

5. John Kelly⁶

Father Shanley sexually molested John Kelly while counseling Mr. Kelly. See generally, Affidavit of John Kelly, dated July 16, 2003 ("Kelly Aff.") (attached as Exhibit "9"). Mr. Kelly was introduced to Father Shanley by his maternal grandmother, who provided significant financial support to Father Shanley and most of the funding for Father Shanley's cabin in Maine, known as "Terrible Mountain." See Kelly Aff. ¶ 3. Mr. Kelly first met Father Shanley at his grandmother's house, where Father Shanley often

⁶ The following represents a summary of Father Shanley's sexual misconduct with John Kelly as it relates to the Plaintiffs' argument herein. The summary is not meant to be exclusive.

held Mass. See Kelly Aff. ¶ 4. Father Shanley sexually molested Mr. Kelly around the approximate age of 14 (approximately 1968). See Kelly Aff. ¶¶ 2-20. Father Shanley sexually molested Mr. Kelly in his apartment in Boston. See Kelly Aff. ¶¶ 10-20. Generally, the molestation consisted of Father Shanley (1) massaging Mr. Kelly's body while he was naked, (2) masturbating and performing oral sex on Mr. Kelly, (3) forcing Mr. Kelly to perform oral sex on him; and (4) penetrating Mr. Kelly's anus with his finger. See Kelly Aff. ¶¶ 7-20. Mr. Kelly's parents sent Mr. Kelly to see Father Shanley after Mr. Kelly became depressed and his academic grades fell. See Kelly Aff. ¶ 6. Years later (mid 1970s), Mr. Kelly recalls seeing Father Shanley at his brother's wedding and feeling threatened by a comment Father Shanley made to Mr. Kelly's wedding date. See Kelly Aff. ¶ 21. Mr. Kelly does not know Greg or the details of his molestation by Father Shanley. See Kelly Aff. ¶ 22.

6. John Doe (██████████)⁷

Father Shanley sexually molested John Doe when he was a parishioner at St. Patrick Parish in Stoneham, Massachusetts ("St. Patrick's"), a church in which Father Shanley worked as a priest. See generally, Affidavit of John Doe, dated July 17, 2003 ("Doe Aff.") (attached as Exhibit "10"). Father Shanley sexually molested Mr. Doe around the approximate ages of seven or eight to ten (approximately 1963 to 1966). See

⁷ The following represents a summary of Father Shanley's sexual misconduct with ██████████, as it relates to the Plaintiffs' argument herein. The summary is not meant to be exclusive. ██████████ wishes to keep his name out of the public domain for various personal reasons. His name has been provided to defense counsel and has been provided to the Court in unredacted form. The public filing of the memorandum has been redacted.

Doe Aff. ¶¶ 1-10. Father Shanley sexually molested Mr. Doe in a confessional and another room, which were in the Rectory, in St. Patrick's itself, and in the basement at the Rectory, during the time Mr. Doe attended class at St. Patrick's Catholic School. See Doe Aff. ¶¶ 2-9. Father Shanley also sexually molested Mr. Doe at summer camp (Camp Fatima and Camp Cedarcrest). See Doe Aff. ¶ 10.

Generally, the molestation consisted of Father Shanley (1) fondling and touching Mr. Doe's genitals and buttocks, (2) forcing Mr. Doe to touch Father Shanley's penis and masturbate Father Shanley, (3) forcing Mr. Doe to perform oral sex on Father Shanley; and (4) masturbating Mr. Doe. See Doe Aff. ¶¶ 6-10. In particular, when Mr. Doe was in the second grade, Father Shanley would remove him from class to prepare for his First Communion. See Doe Aff. ¶ 5. During discussions about First Communion, Father Shanley would require Mr. Doe to sit on his lap and Father Shanley would fondle Mr. Doe's genitals. See Doe Aff. ¶¶ 6-7. When Mr. Doe was in the third grade, Father Shanley would request Mr. Doe to leave class for penance and have him meet Father Shanley in the confessional. See Doe Aff. ¶ 8. While in the confessional, Father Shanley would fondle Mr. Doe's genitals and force Mr. Doe to masturbate him. See Doe Aff. ¶8. When Mr. Doe was in the fourth grade, Father Shanley would invite Mr. Doe into the basement in the Rectory, after Mr. Doe was selected to leave class and get milk from the Rectory for the whole class, and force Mr. Doe to masturbate him. See Doe Aff. ¶ 9. When Mr. Doe was at summer camp (during the third, fourth, and fifth grade),

Father Shanley would fondle Mr. Doe's genitals while drying him after a shower and, in the fifth grade, force Mr. Doe to perform oral sex on Father Shanley and engage in mutual masturbation. See Doe Aff. ¶ 10.

Father Shanley told Mr. Doe that what was happening to him was because Mr. Doe did not have a father and that Father Shanley had to teach him about "the birds and the bees." See Doe Aff. ¶ 9. In addition, Father Shanley told Mr. Doe that if he told his mother, she would never believe him and that what was happening then was between Mr. Doe and God. See Doe Aff. ¶ 10. Mr. Doe does not know Greg or Messrs. Busa and Driscoll, or any other Father Shanley victim or the details of their molestation. See Doe Aff. ¶ 11.

7. John Doe ([REDACTED])⁸

The Plaintiffs expect the evidence will show that Father Shanley sexually molested Mr. Doe while counseling Mr. Doe. Father Shanley started sexually molesting Mr. Doe at the approximate age of fifteen (approximately 1974). Father Shanley sexually molested Mr. Doe in his apartment and other venues in or around Boston, including St. Jean's. In particular, the molestation consisted of (1) mutual masturbation, (2) Father Shanley forcing Mr. Doe to perform oral sex on him, and (3) Father Shanley penetrating Mr. Doe's anus with his finger. In addition, Father Shanley initiated the

⁸ The following represents a summary of Father Shanley's sexual misconduct with [REDACTED], as it relates to the Plaintiffs' argument herein. The summary is not meant to be exclusive. [REDACTED] wishes to keep his name out of the public domain for various personal reasons. His name has been provided to defense counsel and has been provided to the Court in unredacted form. The public filing of the memorandum has been redacted.

molestation by playing strip poker with Mr. Doe during his first counseling session. Furthermore, Father Shanley warned Mr. Doe not to tell anyone what happened between them.

8. Joseph S. Ridge⁹

Father Shanley sexually molested Mr. Ridge after befriending him outside of St. Patrick's school. See generally, Affidavit of Joseph S. Ridge, dated July 18, 2003 ("Ridge Aff.") (attached as Exhibit "11"). Father Shanley sexually molested Mr. Ridge from the approximate ages of nine to ten (approximately 1972 and 1973). See Ridge Aff. ¶¶ 1-9. Father Shanley sexually molested Mr. Ridge in the confessional and in his office at St. Patrick's, as well as other places in or around Boston. See Ridge Aff. ¶¶ 4-9. Generally, the molestation consisted of Father Shanley (1) fondling Mr. Ridge's genitals, (2) forcing Mr. Ridge to perform oral sex on him, (3) masturbating Mr. Ridge, and (4) penetrating Mr. Ridge's anus with his penis. See Ridge Aff. ¶¶ 4-9. In particular, Father Shanley initiated the molestation by breaking up a fight (in which Mr. Ridge was involved) in the school yard at St. Patrick's and eventually leading Mr. Ridge into a confessional and forcing Mr. Ridge to perform oral sex on Father Shanley while he proselytized about Jesus and male bodies, among other things. See Ridge Aff. ¶ 4. In addition, Father Shanley would put "a religious spin" on the sexual molestation and made Mr. Ridge believe that their acts were natural and not wrong. See Ridge Aff. ¶¶ 6-7. Father

⁹ The following represents a summary of Father Shanley's sexual misconduct with Joseph S. Ridge, as it relates to the Plaintiffs' argument herein. The summary is not meant to be exclusive.

Shanley also played cards with Mr. Ridge as a precursor to sexual molestation. See Ridge Aff. ¶ 9. Furthermore, Father Shanley told Mr. Ridge that what they were doing together “was a secret.” See Ridge Aff. ¶ 7.

9. Thomas Peter Devlin, Jr.¹⁰

Father Shanley sexually molested Mr. Devlin when he was a parishioner at St. Patrick’s. See generally, Affidavit of Thomas Peter Devlin, Jr., dated July 16, 2003 (“Devlin Aff.”) (attached as Exhibit “12”). Father Shanley sexually molested Mr. Devlin around the approximate age of 12 or 13 (approximately 1960 or 1961). See Devlin Aff. ¶¶ 1-9. Father Shanley sexually molested Mr. Devlin in his office, which was in the Rectory at St. Patrick’s, during the time Mr. Devlin attended class at St. Patrick’s Elementary School. See Devlin Aff. ¶¶ 4-9.

Generally, the molestation consisted of Father Shanley touching Mr. Devlin’s genitals and forcing Mr. Devlin to engaged in other sexual conduct. See Devlin Aff. ¶ 9. In particular, when Mr. Devlin entered the Rectory office to speak with Father Shanley, Father Shanley told Mr. Devlin that (1) he was a psychologist, (2) he had been at Mr. Devlin’s home looking for pornography, and (3) knew that Mr. Devlin was a “known bisexual” and the head of a sex ring. See Devlin Aff. ¶¶ 5-6. At the time, Mr. Devlin had no idea what a bisexual was. See Devlin Aff. ¶ 6. Father Shanley then asked Mr. Devlin how often he “played with” himself and, after Mr. Devlin asked what that

¹⁰ The following represents a summary of Father Shanley’s sexual misconduct with Thomas Peter Devlin, Jr., as it relates to the Plaintiffs’ argument herein. The summary is not meant to be exclusive.

meant, Father Shanley asked him if he wanted to learn. See Devlin Aff. ¶ 6. Father Shanley told Mr. Devlin to pull down his pants to see if Mr. Devlin had an erection as a result of their discussion and whether Mr. Devlin wanted to confess his sins. See Devlin Aff. ¶¶ 7-9. Father Shanley then had Mr. Devlin kneel before him for absolution and put his hands on Mr. Devlin's shoulders, stood behind him, and stuck his erect penis in Mr. Devlin's back. See Devlin Aff. ¶ 9. Father Shanley put his hands on Mr. Devlin, rubbed the inner part of his knee, and then touched Mr. Devlin's genitals. See Devlin Aff. ¶ 9.

Father Shanley told Mr. Devlin that if he ever told anyone about what had happened, Father Shanley would make sure that Mr. Devlin's father's reputation and medical practice were ruined (Mr. Devlin's father was a well-known physician in Stoneham at the time). See Devlin Aff. ¶¶ 1 and 10. Mr. Devlin has not read or heard any detailed accounts about the molestation suffered by either Greg or Messrs. Busa and Driscoll. See Devlin Aff. ¶ 20.

10. John Doe (██████████)¹¹

Father Shanley sexually molested ██████████ when he was a parishioner at St. Patrick's. See generally, Affidavit of ██████████, dated July 19, 2003 ("██████████")

¹¹ The following represents a summary of Father Shanley's sexual misconduct with ██████████, as it relates to the Plaintiffs' argument herein. The summary is not meant to be exclusive. ██████████ wishes to keep his name out of the public domain for various personal reasons. His name has been provided to defense counsel and has been provided to the Court in unredacted form. The public filing of the memorandum has been redacted.

(attached as Exhibit "13"). Father Shanley sexually molested [REDACTED] from the approximate ages of eleven to eighteen (approximately 1963 to 1970), during a trip and counseling sessions with Father Shanley. See [REDACTED] ¶¶ 1-15. Father Shanley sexually molested [REDACTED] in Father Shanley's cabin in Milton, at his house in Roxbury, and various other places in or around Boston. See [REDACTED] ¶¶ 6-15. Generally, the molestation consisted of Father Shanley (1) fondling [REDACTED] genitals, (2) forcing [REDACTED] to masturbate him, (3) masturbating [REDACTED], (4) forcing [REDACTED] to engage in reciprocal oral sex, and (5) penetrating [REDACTED] anus with his finger and penis. See [REDACTED] ¶¶ 6-15. [REDACTED] has not talked with Greg or Messrs. Busa, Driscoll, [REDACTED], and [REDACTED] or read any detailed media reports about their abuse. See [REDACTED] ¶¶ 19 and 20.

11. John Doe ([REDACTED])¹²

Father Shanley sexually molested Mr. Doe during the approximate years of 1974 through 1979 (Mr. Doe was the approximate age of fourteen through eighteen or nineteen at the time). See generally, Affidavit of John Doe, dated July 20, 2003 ("Doe Aff.") (attached as Exhibit "14" hereto). Father Shanley sexually molested Mr. Doe in a church in Boston and in various other places in or around Boston. See Doe Aff. ¶¶ 6-19.

In particular, Father Shanley would force Mr. Doe to play spin the bottle with a group

¹² The following represents a summary of Father Shanley's sexual misconduct with [REDACTED], as it relates to the Plaintiffs' argument herein. The summary is not meant to be exclusive. [REDACTED] wishes to keep his name out of the public domain for various personal reasons. His name has been provided to defense counsel and has been provided to the Court in unredacted form. The public filing of the memorandum has been redacted.

of older men and one other person his own age, which would lead to sexual molestation. See Doe Aff. ¶ 16. In addition, Father Shanley would penetrate Mr. Doe's anus with his finger. See Doe Aff. ¶ 18.

12. John Doe ([REDACTED])¹³

The Plaintiffs expect the evidence will show that Father Shanley sexually molested Mr. Doe during the approximate years of 1965 and 1966 (Mr. Doe was the approximate age of fifteen and sixteen at the time). Mr. Doe was introduced to Father Shanley at St. Patrick's by Mr. Doe's parents, who wanted him to become involved in youth activities. When Mr. Doe met with Father Shanley in the Rectory at St. Patrick's, Father Shanley took off Mr. Doe's clothing, fondled his genitals and inserted his finger into Mr. Doe's anus. Father Shanley told Mr. Doe that "God" wanted him to let Father Shanley into his life. Father Shanley sexually molested Mr. Doe in similar ways, including inserting his finger in Mr. Doe's anus and, in turn, inserting his penis in Mr. Doe's anus, in the Rectory and in other places in or around Boston. On at least one occasion, while he was abusing Mr. Doe, Father Shanley said "God will not acknowledge those who do not let him into their life, and will condemn those who speak out against him."

¹³ The following represents a summary of Father Shanley's sexual misconduct with [REDACTED], as it relates to the Plaintiffs' argument herein. The summary is not meant to be exclusive. [REDACTED] wishes to keep his name out of the public domain for various personal reasons. His name has been provided to defense counsel and has been provided to the Court in unredacted form. The public filing of the memorandum has been redacted.

13. Other Father Shanley Victims

The Plaintiffs are aware of many of Father Shanley victims, including, without limitation: (1) Andrew Magni, (2) Frank Glynn, (3) Daniel Quinn, (4) Richard J. Guppy, (5) Bryan Schultz, (6) [REDACTED],¹⁴ (7) John Doe ([REDACTED]),¹⁵ (8) John Doe ([REDACTED]),¹⁶ (9) Kevin R. Hannaford, (10) William Sousa, and (11) John Doe ([REDACTED]).¹⁷ The Affidavits¹⁸ from these individuals are attached as Exhibit “15” hereto. Many will testify at trial and the Plaintiffs append their affidavits hereto for the Court’s consideration.

DISCUSSION

I. RELEVANT EVIDENTIARY STANDARDS

In Massachusetts, all relevant evidence is admissible unless subject to an exclusionary rule. See Lentz v. Metropolitan Property and Cas. Ins. Co., 437 Mass. 23, 26 (2002); Poirier v. Plymouth, 374 Mass. 206, 210 (1978). Evidence is relevant if it

¹⁴ [REDACTED] wishes to keep his name out of the public domain for various personal reasons. His name has been provided to defense counsel and has been provided to the Court in unredacted form. The public filing of the memorandum has been redacted.

¹⁵ [REDACTED] wishes to keep his name out of the public domain for various personal reasons. His name has been provided to defense counsel and has been provided to the Court in unredacted form. The public filing of the memorandum has been redacted.

¹⁶ [REDACTED] wishes to keep his name out of the public domain for various personal reasons. His name has been provided to defense counsel and has been provided to the Court in unredacted form. The public filing of the memorandum has been redacted.

¹⁷ [REDACTED] wishes to keep his name out of the public domain for various personal reasons. His name has been provided to defense counsel and has been provided to the Court in unredacted form. The public filing of the memorandum has been redacted.

¹⁸ The Affidavits presented herein represents summaries of Father Shanley’s sexual molestation of the respective affiants, as each relates to the Plaintiffs’ argument herein. The summaries are not meant to be exclusive.

renders the desired inference more probable than it would be without evidence, see e.g., Santos v. Chrysler Corp., 430 Mass. 198, 211 (1999); Poirier, 374 Mass. at 210; Tilton v. Union Oil Co. of California, 56 Mass. App. Ct. 901, 902(2002), or if it “tends to establish or at least shed light” on an issue. See e.g., Kobico, Inc. v. Pipe, 44 Mass. App. Ct. 103, 109 (1997) (quoting Adoption of Carla, 416 Mass. 510, 513 (1993)); Foreign Car Center, Inc. v. Salem Suede, Inc., 40 Mass. App. Ct. 15, 16 (1996). Relevance is a broad concept, see Foreign Car Center, Inc., 40 Mass. App. Ct. at 16, and need not bear directly on ultimate fact in a case; but rather, is sufficient if it constitutes a link in a chain of proof. See Liarikos v. Mello, 418 Mass. 669, 672 (1994).

II. EVIDENCE THAT FATHER SHANLEY SEXUALLY MOLESTED OTHERS IS ADMISSIBLE BECAUSE (1) IT FORMS THE REQUISITE “TEMPORAL AND SCHEMATIC NEXUS” WITH THE SEXUAL MOLESTATION ALLEGED BY GREG AND (2) ITS PROBATIVE VALUE OUTWEIGHS ANY UNFAIR PREJUDICE CAUSED BY ITS ADMISSION

1. Temporal and Schematic Nexus

Massachusetts case law clearly allows the admission of prior sexual molestation evidence, when not too remote in time:

1. to prove an accused’s inclination to commit the acts alleged by the victim and to show the probable existence of the same passion or emotion at the relevant time; or
2. to corroborate the victim’s testimony by tending to show the disposition of the parties and, therefore, rendering it not improbable that the acts alleged might have occurred; or

3. to show a common course of conduct if each alleged wrongful act is part of an on-going course of conduct or where it supports an inference that the accused had a pattern of conduct to commit the acts alleged.

See Commonwealth v. Hanlon, 44 Mass. App. Ct. 810, 817-18 (1998) (citing Commonwealth v. Feijoo, 419 Mass. 486 (1995); Commonwealth v. King, 387 Mass. 464 (1982); Commonwealth v. Piccerillo, 256 Mass. 487 (1926); Commonwealth v. Maimoni, 41 Mass. App. Ct. 321, 327 (1996)); Commonwealth v. Calcagno, 31 Mass. App. Ct. 25, 26-27 (1991).¹⁹

With regard to prior sexual molestation of persons other than the victim, such evidence is admissible if connected “in time, place, or other relevant circumstances” to the particular acts alleged by the victim. See Hanlon, 44 Mass. App. Ct. at 818 (citations omitted); see also, Commonwealth v. Barrett, 418 Mass. 788, 794 (1994) (describing general standards and citing King, supra and Commonwealth v. Gallison, 383 Mass. 659 (1981)). Although there is no bright-line test for remoteness, see e.g., Commonwealth v. Jackson, 417 Mass. 830, 841 (1994); Commonwealth v. Helfant, 398 Mass. 214, 228 n. 13

¹⁹ It is a staple of Massachusetts jurisprudence that evidence of prior bad acts against third parties is not admissible to show an actor’s “propensity” to commit a charged crime. See e.g. Hanlon, 44 Mass. App. Ct. at 817. The following exception to that general rule, however, also is a staple of Massachusetts jurisprudence: prior bad acts evidence is admissible “if relevant for other purposes . . . [such as] to show, for example, common plan, pattern of conduct, intent, or motive.” See Hanlon, 44 Mass. App. Ct. at 817 (and citations therein). In other words, the evidence is admissible to show an actor’s common pattern of conduct, which may explain an actor’s “modus operandi.” See Commonwealth v. Fleury-Ehrhart, 20 Mass. App. Ct. 429, 431 (1985); see also, Commonwealth v. Frank, 51 Mass. App. Ct. 19, 23-24 (2001) (evidence that defendant sexually molested minor admissible to show common scheme, motive, sexual desire for victim, and to furnish corroboration of the material proof); Commonwealth v. Penta, 32 Mass. App. Ct. 36, 48 (1992) (evidence of prior bad act admitted to reflect defendant’s predisposition to commit crime); Cambridge Trust Co. v. Commercial Union Ins. Co., 32 Mass. App. Ct. 561, 564 (1992) (evidence of prior bad acts admissible to show common scheme).

(1986); Calcagno, 31 Mass. App. Ct. at 27, molestation of other persons must form a “temporal and schematic nexus” that renders the evidence admissible to show a course of conduct regarding the victims. See Hanlon, 44 Mass. App. Ct. at 818 (citing Barrett, supra). When prior sexual molestation evidence represents “one instance in a continuing course of related events” or where the conduct is “unusual and particularly similar” to the acts alleged by the victim, the allowable remoteness to those acts is greater. See Helfant, 398 Mass. at 228 n. 13. Often times, the end result is that evidence of sexual molestation of others is admissible as circumstantial evidence to prove the actor’s identity. See Jackson, 417 Mass. at 836; Commonwealth v. Montanino, 409 Mass 500, 505 (1991) (describing permitted uses of bad act evidence as proof of “common scheme, pattern of operation, absence of accident or mistake, identity, intent, or motive.”) (emphasis added).

For instance, in Hanlon, the Court (Mathers, J.) granted the Commonwealth’s motion in limine and admitted evidence of four young men who had claimed to have been sexually assaulted by the defendant over a nine (9) year period following²⁰ the charged assault of the victim. See 44 Mass. App. Ct. at 816.²¹ In doing so, Justice

²⁰ In Hanlon, the Court dealt with “subsequent” bad act evidence. The principles underlying subsequent and prior bad act evidence are the same. See Commonwealth v. Source One Associates, Inc., 436 Mass. 118, 128 (2002).

²¹ Although Hanlon and other cases cited herein are appeals of evidentiary rulings in criminal cases, the principles therein apply equally in a civil setting. See Source One Associates, Inc., 436 Mass. at 128-29 (explaining that standards created in criminal context (where Commonwealth is more constrained in introducing evidence) are analogous and relevant in a civil setting); see also Hubin v. Shira, 563 P.2d 1079, 1083-84 (1977) (“If the admission of such evidence is perfectly proper in a criminal case (where the

Mathers explained that:

The evidence proffered by the Commonwealth . . . makes out a unique and insidious scheme over a nine year period to isolate and anally rape five male children, all alt[a]r boys of the defendant priest, by feigning concern for the welfare of their testicles and getting into bed with them.

See id. Specifically, the evidence proffered by the Commonwealth showed that (1) each boy had a similar relationship with the defendant, (2) the assaults occurred in the same locations, (3) the manner in which the priest approach the boys was similar, and (4) the testimony of each boy corroborated the pattern of conduct described by the victim. See id. at 819. Based on that proffer, the Appeals Court rejected the defendant's argument that the sexual molestation of others evidence was too remote in time and inadmissible.

See Hanlon, 44 Mass. App. Ct. at 819-20. In doing so, the Appeals Court reasoned:

In this case, there was evidence that the defendant was abusing altar boys from his own parish almost continuously over a decade. Each young man testified to assaults which followed a distinct and similar pattern. Although the last witness claimed to have been abused in 1990 and 1991, nine years after the last charged act, this testimony was not too remote, giving the continuing nature of the pattern. and the striking similarity of each incident to the charged acts. Contrast *Commonwealth v. Yetz*, 37 Mass. App. Ct. at 971, 643 N.E.2d 1062 (evidence excluded where it was both temporally remote and unrelated to the charged conduct).²² Here, as in

defendant's liberty is at stake), so much more is the appropriateness of such evidence existent in a civil case.").

²² In *Yetz*, the Appeals Court held that evidence of a sexual relationship with the victim's aunt was not admissible because, most significantly, "the form of the conduct was not alike." See 37 Mass. App. Ct. at 971 (emphasis added). Furthermore, the aunt admitted that her sexual relationship with the defendant was "desired and consensual[.]" whereas the victim testified that the sexual contact with the defendant was "forced and unwanted" See id. As a result, the Appeals Court declined to find the requisite "temporal and schematic nexus" between the bad acts and other bad acts to admit the latter. See id. The facts underlying *Yetz* are polar opposites to the facts presented herein by the Plaintiffs and, as a result, *Yetz* is not controlling.

Helfant, supra, the evidence of uncharged assaults, even when separated by six (Caleb Devlin and Charles Hollis) or nine (Douglas Zack) years, is admissible because it demonstrates the ongoing nature of the defendant's behavior.

See id. at 820 (citation omitted) (emphasis added).

The reasoning and result in Hanlon is entirely consistent with Supreme Judicial Court ("SJC") jurisprudence allowing the admission of prior sexual molestation evidence. See generally, Helfant, supra; Commonwealth v. King, 387 Mass. 464 (1982) (evidence that defendant performed oral sex on one child admissible with respect to allegations brought by another child to show common pattern or course of conduct). For example, in King, the SJC dealt with the question of whether the Court (Sullivan, J.) properly admitted prior sexual molestation of others evidence to show the actor's "state of mind, intention and pattern of conduct during the time of the alleged crimes . . ." and not the actor's propensity to commit the crime charged. See 387 Mass. at 469.²³ After describing the general rules concerning admitting bad act evidence and its exceptions, the SJC held that the trial judge had not abused his discretion because:

Here, both children lived in the same house with the defendant, the sexual acts took place during the same time period, the victims were of similar age (both under ten, and the form of sexual conduct (oral sex and use of the dog) was similar. These factors make this evidence distinguishable from the unconnected acts we excluded in Welcome, supra.²⁴ The evidence

²³ Any unfair prejudice was outweighed by the probative value of the evidence with an appropriate limiting instruction to the jury. See King, 387 Mass. at 469.

²⁴ In Welcome, the SJC found error in admitting evidence of a distinct act "unconnected" with the charged act because the evidence was (1) not relevant to prove that the defendant committed the charged act and (2) highly prejudicial. See 348 Mass. 68, 70-71 (1964). The Welcome decision lacks the detailed factual

here showed a common pattern or course of conduct toward the two children, and was sufficiently related in time and location to be logically probative. . . . The evidence corroborated the victim's testimony and rendered it not improbable that the acts charged might have occurred. . . .

King, 387 Mass. at 472 (footnote added) (citations omitted) (emphasis added).

Similarly, in Helfant, where the defendant was convicted of rape and of drugging a person (a female patient) for unlawful sexual intercourse, the SJC addressed whether the Court (Dolan, J.) erred in admitting testimony from other female patients that the defendant had sexually assaulted. See 398 Mass. at 215-16 and 224. In relying on its decision and reasoning in King, the SJC held that trial judge did not err in admitting the evidence because the other acts were “remarkably similar” to the charged acts; namely, that the defendant “came to the homes of young women with whom he had a doctor-patient relationship, injected them with Valium, and then sexually molested them while they were physically and mentally unable to express resistance.” See Helfant, 398 Mass. at 227. Based on the “distinctive pattern of conduct[,]” the SJC found the evidence “relevant and material to the disputed issue of the defendant’s intent” in drugging the women. See id. The fact that the other acts occurred some “three years apart” was not too remote based on the similarity of the evidence. See id. at 228.

and legal analysis of the SJC’s later decisions concerning the admissibility of prior sexual molestation evidence and, as a result, is not analogous to the matter before the Court.

Much like the prior sexual molestation evidence underlying the Appeals Court's decision in Hanlon and the SJC's decisions in Helfant and King, the prior sexual molestation evidence proffered by the Plaintiffs is highly probative of Father Shanley's identity and *modus operandi* because it shows a distinct and continuing pattern of conduct over a twenty-five year period to prey on young boys. Specifically, as shown by the prior sexual molestation evidence proffered by the Plaintiffs above, Father Shanley clearly had the following course of conduct or *modus operandi*:

1. He sexually molested young parishioners of parishes in which he worked as a priest. See supra (Greg, Busa, Driscoll, [REDACTED], [REDACTED], Doe ([REDACTED]), Devlin, Doe ([REDACTED]), and Doe ([REDACTED])).
2. He would chose his victims from CCD classes in the parishes in which he worked or right from Catholic elementary or grammar school. See supra (Greg, Busa, Driscoll, [REDACTED], [REDACTED], Doe ([REDACTED]), Devlin, and Doe ([REDACTED])).
3. He sexually molested his victims under the guise of being a parish priest and during confession or when teaching them either about First Communion. See supra (Greg, Busa, Driscoll, [REDACTED], [REDACTED], Doe ([REDACTED]), Ridge, and Devlin).
4. He sexually molested his victims in the parish or in the rectory in which he worked. See supra (Greg, Busa, Driscoll, [REDACTED], [REDACTED], Doe ([REDACTED]), Ridge, Devlin, and Doe ([REDACTED])).
5. He penetrated his victims' anuses with his finger. See supra (Greg, Busa, Driscoll, [REDACTED], [REDACTED], J. Kelly, Doe ([REDACTED]), Doe ([REDACTED]), Doe ([REDACTED]), and Doe ([REDACTED])).
6. He played cards or other games with his victim's to initiate sexual molestation. See supra (Greg, Busa, [REDACTED], and Doe ([REDACTED]), Ridge, and Doe ([REDACTED])).

7. He established a religious tone or meaning to the sexual molestation of his victims. See supra (Greg, Busa, [REDACTED], [REDACTED], Ridge, and Doe ([REDACTED])).
8. He threatened or intimidated his victims so they would not tell anyone about the molestation. See supra (Greg, Busa, [REDACTED], [REDACTED], Doe ([REDACTED]), Doe ([REDACTED]), Devlin, and Doe ([REDACTED])).
9. He forced his victims to perform oral sex on him. See supra (Greg, Busa, Driscoll, [REDACTED], [REDACTED], J. Kelly, Doe ([REDACTED]), Doe ([REDACTED]), Ridge, and Doe ([REDACTED])).

The above prior sexual molestation of others evidence²⁵ shows that Greg's molestation was part of a continuing and remarkably similar pattern of conduct. Specifically, just as he did with Greg, Father Shanley: (1) played cards or games with others to initiate the sexual molestation, (2) digitally penetrated the anuses of others with his finger, (3) forced others to perform oral sex on him, (4) inserted religious undertones into the molestation, (5) chose other victims from in or around the parishes in which he worked, and (6) threatened others not to tell anyone about the molestation. In addition, the evidence will show that Father Shanley used his position as a priest within the Archdiocese of Boston to chose and prey upon Catholic children who were taught to trust and to obey priests. Furthermore, the evidence will show that Father Shanley cultivated that atmosphere by incorporating religion into the molestation episodes and even going as far as portraying himself as God or Jesus and telling others

²⁵ See Appendix (chart categorizing the proffered evidence) (which will be provided to the Court).

that they were “chosen” or that he was a “worker of God.” As a result, the schematic connection between Father Shanley’s molestation of others and his molestation of Greg is resoundingly clear.

Moreover, the requisite temporal nexus exists between evidence of Father Shanley’s molestation of Messrs. Busa, Driscoll, [REDACTED], and [REDACTED] and Father Shanley’s molestation of Greg. In particular, Messrs. Busa, Driscoll, and [REDACTED] were molested at the same time and place as Greg – between 1983 and 1989 at St. Jean’s. See supra. Indeed, Messrs. Busa, Driscoll, and [REDACTED] were all in the same CCD class as Greg. See supra. Likewise, [REDACTED] was molested during his CCD class at St. Jean’s between 1980 and 1984, which actually overlapped with Father Shanley’s molestation of Greg. See supra. Therefore, admitting evidence of Father Shanley’s molestation of Messrs. Busa, Driscoll, [REDACTED], and [REDACTED] is logically probative to (1) prove that during the 1980s, Father Shanley was inclined to molest children similarly situated with Greg and had a passion to do so; (2) corroborate Greg’s claims of molestation to show that Greg was the type of child Father Shanley molested; and (3) to identify Father Shanley as Greg’s molester.

The requisite temporal nexus also exists between Father Shanley’s molestation of Greg and those others who were not molested by Father Shanley during CCD class at St. Jean’s. In particular, evidence of Father Shanley’s *modus operandi* of penetrating his victim’s anuses with his finger, threatening his victims, playing games with his victims,

forcing his victims to perform oral sex on him, and using religious undertones during the actual sexual molestation further serves to identify Father Shanley as Greg's molester, thereby making evidence of Father Shanley's molestation of J. Kelly, Doe (██████), Doe (██████), Ridge, Devlin, Doe (██████), Doe (██████), and Doe (██████) logically probative.

Furthermore, the prior sexual molestation of others evidence will not be proffered to prove that Father Shanley acted in conformity with his prior bad acts and the Plaintiffs invite a proper limiting instruction to the jury in that regard.

2. Probative Value/Unfair Prejudice

As discussed in detail above, the probative value of the proffered prior sexual molestation of others evidence is unmistakable. Assuredly, admitting the proffered evidence tends to establish or at least shed light on the issue of whether or not Greg was molested by Father Shanley or, at the very least, renders the inference that Father Shanley molested Greg more probable than it would be absent the evidence. Indeed, it is in that regard that the evidence is highly probative.

A judge, however, must weigh the probative value of other bad acts evidence against the risk of undue prejudice to the defendant. See Barrett, 418 Mass. at 794-95; Hanlon, 44 Mass. App. Ct. at 820; Fluery-Ehrhart, 20 Mass. App. Ct. at 430-31. With a proper limiting instruction that the evidence may not be considered to demonstrate propensity, but may be considered for other relevant purposes, the balance weighs in

favor of the evidence being properly admitted. See Hanlon, 44 Mass. App. Ct. 816-17 and 820-21; see also, Helfant, 398 Mass. at 225-26 (admitting evidence of prior sexual molestation with proper limiting instruction that evidence could be considered to prove a scheme or state of mind of the defendant, not for propensity to commit the charged act). Moreover, if the probative value of prior sexual molestation with others outweighed the prejudicial effect of admitting the evidence in a criminal setting, such as in Hanlon, it certainly outweighs any prejudicial effect in a civil setting, such as in this action. See Hubin v. Shira, 563 P.2d 1079, 1083-84 (1977) (“If the admission of such evidence is perfectly proper in a criminal case (where the defendant’s liberty is at stake), so much more is the appropriateness of such evidence existent in a civil case.”).

Furthermore, the Federal Rules of Evidence, although not controlling on this Court, address this issue directly with Rules 413-415, which allow admission of evidence of any sex crimes committed by the defendant against anyone when the defendant is charged with sexual assault or child molestation. See generally, FED. R. EVID. 413-415. Such evidence is admissible in criminal and civil cases. See id. The Rules create an evidentiary presumption that evidence of prior sexual assaults or child molestation is admissible in sexual assault or molestation cases. See 137 Cong. Rec. 53191-02 at S3240 (3/13/91). Rule 413 has been deemed constitutional and not violative of a criminal defendant’s right to due process. See United States v. Enjady, 134 F.3d 1427, 1431-32 (10th Cir. 1998); United States v. Mound, 149 F.3d 799 (8th Cir. 1998).

Indeed, in Enjady, the Tenth Circuit upheld an aggravated sexual abuse conviction based, in part, on the admission of testimony of a prior rape victim. See 134 F.3d at 1434. In doing so, the Tenth Circuit rejected the defendant's claim that admission of the evidence was unfairly prejudicial. See id. (commenting that the district court did not abuse its discretion by admitting the testimony after proper balancing under Rule 403).

In the action before the Court, the balance weighs heavily in favor of admitting the evidence even more so than it did in Enjady because, unlike the defendant in Enjady, there are no liberty interests at stake in this action. Father Shanley is not a defendant and this is not a criminal case. Therefore, the balancing test the Court must perform when weighing the probative value of the evidence proffered by the Plaintiffs against any claims of unfair prejudice that likely will be claimed by the Defendants weighs resoundingly in favor of admitting the evidence. Indeed, a jury finding in this action that Father Shanley molested Greg is not tantamount to a jury finding that the Defendants' were negligent in their supervision of Father Shanley.

III. EVIDENCE THAT FATHER SHANLEY SEXUALLY MOLESTED OTHERS IS ADMISSIBLE IN SUPPORT OF GREGORY'S RECOVERED MEMORIES, WHICH THE DEFENDANTS HAVE CHALLENGED DIRECTLY

When a plaintiff claims a recovered memory of the sexual molestation causing the harm, a plaintiff may offer corroborating evidence in support of the allegations of

molestation. See Moriarty v. Garden Sanctuary Church of God, 511 S.E.2d 699, 710 (S.C. Ct. App. 1999), aff'd, 341 S.E.2d 672 (S.C. 2000). Some examples of corroborating evidence include:

1. an admission by the abuser;
2. a criminal conviction;
3. documented medical history of childhood sexual abuse;
4. contemporaneous records or written statements of the abuser, such as diaries or letters;
5. photographs or recordings of the abuse;
6. an objective eyewitness's account;
7. **evidence the abuser had sexually abused others**; or
8. proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred.

See id. (holding that independently verifiable, objective evidence is required evidence to toll statute of limitations under South Carolina law) (emphasis added).²⁶ In particular, evidence that the molester had sexually molested others is admissible subject to applicable rules for admission of bad acts evidence. See id. Similarly, and especially in light of a denial of the molestation or challenge to a plaintiff's molestation claims, prior bad act evidence is admissible, as described above. See supra.

As the Court is aware, Greg alleges that he had no conscious memory of the molestation perpetrated upon him by Father Shanley when he achieved majority and, indeed, did not recall Father Shanley's molestation until January 31, 2002. The Plaintiffs

²⁶ Although made mandatory by the Court of Appeals of South Carolina, there are no known reported cases in the Commonwealth making such objective evidence mandatory. The objective reasonable person standard utilized by the SJC makes consideration of the evidentiary examples used to corroborate the plaintiff's claim of sexual molestation in Moriarty instructive.

also are facing denials that Father Shanley molested Greg, strident challenges on the reliability of Greg's memories, and even claims that Greg may have been molested by others. Specifically, in the parties' Joint Pre-Trial Memorandum, dated March 5, 2003, the Defendants informed the Court that they intended to call Elizabeth Loftus, Ph.D. ("Dr. Loftus"), J. Alexander Bodkin, M.D. ("Dr. Bodkin"), and William Grove, Ph.D. ("Dr. Grove") as expert witnesses.²⁷ See Exhibit "16" (a copy of the joint pre-trial memorandum, without exhibits, as signed by all parties on March 5, 2003), pp. 55-61. In particular, Drs. Loftus, Bodkin, and Grove will testify that the evidence does not support the opinion that Gregory Ford was molested by Father Shanley. See Exhibit "16" at pp. 54-61.²⁸ In addition, Dr. Loftus will testify that "the established record of this case is inconsistent with the claimed reliability of . . . [Greg's] newly surfaced memories." See Exhibit "16" at p. 61.²⁹ Moreover, the Defendants ostensibly will attempt to admit evidence that somebody other than Father Shanley molested Greg, such as Greg's father or even perhaps Greg's uncle. See Exhibit "17" (a copy of the transcript from a hearing before the Court on April 4, 2003, where defense counsel stated "[t]here are hints in these records that Greg possibly was abused by his father as

²⁷ As the Court may recall, at the parties' pre-trial conference, the defendants' counsel asked for a few days to respond in rebuttal to arguments made by the plaintiffs in the pre-trial memorandum. The parties then were to file the memorandum with the Court. Despite repeated requests, however, the defendants' counsel failed to provide a rebuttal and declined to jointly file the memorandum.

²⁸ The Plaintiffs reserve the right to challenge these opinions with a Lanigan motion after they depose these doctors.

²⁹ The Plaintiffs contend that the asserted opinion is not reliable and that Dr. Loftus should not be allowed to so testify at trial. The Plaintiffs intend to file a proper motion on that subject after her deposition.

opposed to what he alleges in the complaint . . .” and that Greg may have “been raped when he was younger by an uncle.”), pp. 14 and 31-32.

In light of the Defendants’ challenges to the reliability of Greg’s memory, evidence showing that Father Shanley commonly and continually sexually molested other persons (whom Greg either has never met or has never spoken with about his or their molestation) in similar ways is highly probative in support of Greg’s memory that Father Shanley molested him. Indeed, if the Defendants are allowed to attack the reliability of Greg’s memory, the Plaintiffs should be allowed to offer corroborating evidence in support of its reliability. Otherwise, the Plaintiffs will be unfairly prejudiced in their ability to present their case in chief and seek proper redress for their injuries from the jury.

CONCLUSION

For the foregoing reasons, the Court should grant the Plaintiffs' motion in limine in its entirety.

Respectfully submitted,

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Dated: July 21, 2003