

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

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COORDINATED PROCEEDING
SPECIAL TITLE (RULE 1550(b)),

JUDICIAL COUNCIL COORDINATED
PROCEEDING NO. 4359

THE CLERGY CASES III,

//

DEPOSITION OF FATHER WALTER S. (MARIO) CIMMARRUSTI

Tuesday, February 14, 2006

Volume I (Pages 1 - 43)

REPORTED BY:

HOLLY MOOSE, RDR-CRR-CRP
CSR NO. 6438

HOLLY MOOSE & ASSOCIATES
Certified Shorthand Reporters
236 Spencer Avenue
Sausalito, California 94965
Phone: (415) 332-4959
Fax: (415) 332-4943

A P P E A R A N C E S

FOR THE PLAINTIFF:

NYE, PEABODY & STIRLING
BY: TIMOTHY HALE, ESQ.
DAVID L. NYE, ESQ.
33 West Mission Street, Suite 201
Santa Barbara, CA 93101
(805)963-2345

FOR THE DEFENDANT FRANCISCAN FRIARS OF CALIFORNIA, INC.

LEWIS, BRISBOIS, BISGAARD & SMITH
BY: ROBERT A. FORD, ESQ.
One Sansome Street, Suite 1400
San Francisco, CA 94104
(415)362-2580

FOR THE WITNESS:

HOWIE & SMITH
BY: ROBERT G. HOWIE, ESQ.
28 East Third Avenue, Suite 200
San Mateo, CA 94401
(650)685-9300

ALSO PRESENT: Steve Leftwich, Videographer
Dan Mottaz Video Productions
(415)624-1300

TAKEN AT:

HOWIE & SMITH
28 East Third Avenue, Suite 200
San Mateo, CA 94401
(650)685-9300

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I N D E X

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DEPOSITION OF FATHER WALTER S. (MARIO) CIMMARRUSTI

EXAMINATION BY:	PAGE
MR. HALE	5

PLAINTIFF'S EXHIBITS

(None marked)

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1 BE IT REMEMBERED that, pursuant to Notice and
2 on Tuesday, February 14, 2006, commencing at the hour of
3 10:09 a.m., before me, HOLLY MOOSE, CSR No. 6438, a
4 Certified Shorthand Reporter in the State of California,
5 there personally appeared

6
7 FATHER WALTER S. (MARIO) CIMMARRUSTI,
8
9 called as a witness by the Plaintiff, who, having been
10 first duly sworn, was examined and testified as
11 hereinafter set forth:

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1 PROCEEDINGS 10:09 A.M.

2 THE VIDEOGRAPHER: This is the beginning of
3 Volume I, videotape 1 in the deposition of Father Mario
4 Cimmarrusti in the matter of the Clergy Cases III, in
5 the superior court of the state of California, county of
6 Alameda, Judicial Council Coordinating [sic] Procedure
7 No. 4359.

8 Today's date is February 14, 2006, and the
9 time is 10:09 a.m. This deposition is being taken at
10 the offices of Howie & Smith, 28 East Third Avenue, San
11 Mateo, California. The deposition was noticed, by and
12 the videotape is being produced on behalf of, attorneys
13 for the plaintiffs.

14 I'm Steve Leftwich, the video operator and a
15 California notary public for the county of San
16 Francisco, employed by Dan Mottaz Video Productions,
17 LLC, 182 Second Street, Suite 202, San Francisco,
18 California, 94105, telephone 415-624-1300. The court
19 reporter is Holly Moose of Holly Moose & Associates.

20 Would counsel present please identify
21 themselves and state whom they represent.

22 MR. HALE: Tim Hale for plaintiffs.

23 MR. NYE: David Nye for plaintiffs.

24 MR. FORD: Robert Ford for Franciscan Friars
25 of California, Inc.

1 MR. HOWIE: Robert Skip Howie of Howie &
2 Smith, for the deponent.

3 THE VIDEOGRAPHER: And if there are no
4 stipulations, the reporter may administer the oath.

5 (Witness sworn).

6 FATHER WALTER S. (MARIO) CIMMARRUSTI,
7 having been first duly sworn, testified as follows:

8 EXAMINATION BY

9 MR. HALE: Q. Good morning, Father. My name
10 is Tim Hale.

11 A. Tim.

12 Q. Have you ever had your deposition taken
13 before?

14 A. No.

15 MR. HOWIE: Um -- go ahead.

16 MR. HALE: Q. Okay. Could you state and
17 spell your full name for the record, please.

18 A. My legal name is Walter Sigmund Cimmarrusti.

19 Q. Okay. And could you spell that for me.

20 A. Walter, W-A-L-T-E-R, Sigmund, S-I-G-M-U-N-D,
21 Cimmarrusti, C-I-M-M-A-R-R-U-S-T-I.

22 Q. Okay, thank you. I assume Mr. Howie's had a
23 chance to discuss with you the whole deposition process.
24 Just for the sake of the record and to make sure we're
25 on the same page, I'm going to go over some of the rules

1 with you.

2 Did you have something you wanted to add?

3 MR. HOWIE: I think it might be appropriate to
4 have him assert, if you're just going to ask him a
5 question, because he -- it's my understanding from my
6 discussions with him that he's going to assert the
7 privilege throughout.

8 MR. HALE: For the entire deposition?

9 MR. HOWIE: Correct. But I thought you might
10 want to have him do that on the record.

11 MR. HALE: Well -- hmm. Every question?
12 Where he went to school, assignment history?

13 MR. HOWIE: Yes.

14 MR. HALE: I think that's -- that's
15 inappropriate. I mean, there's got to be -- my
16 understanding of the case law is there's got to be a
17 link in the chain, so to speak, for the assertion of the
18 privilege to be appropriate. And certainly questions
19 about Father Cimmarrusti attending St. Anthony's himself
20 or his assignment history, there's no way it could
21 possibly be used as a link in the chain in any future
22 criminal prosecution.

23 MR. HOWIE: Do you want this colloquy on the
24 record?

25 MR. HALE: Yeah.

1 MR. HOWIE: Would it be all right if we excuse
2 the witness while we do it?

3 MR. HALE: Sure, that's fine.

4 MR. HOWIE: Why don't you just step into my
5 office. It's right there through that door.

6 THE WITNESS: Excuse me.

7 (Father Cimmarrusti left the room).

8 MR. HALE: Anyway, I'm curious to hear what
9 your position is regarding -- I'm not saying there won't
10 be points where it may be appropriate to assert the
11 privilege today.

12 MR. HOWIE: I understand. My -- in the
13 context -- I mean, for purposes of this discussion
14 today -- and I think it's totally appropriate for him to
15 assert the privilege with regard to any questioning
16 on -- given the terrain and the atmosphere in these
17 cases, the attempts by the legislature in the past to
18 change the criminal law and the potential for
19 interpretation of that law with regard to -- with regard
20 to the Supreme Court of this state and the United
21 States, I think there are virtually no questions that
22 would not be a threat to this particular witness this in
23 that context.

24 MR. HALE: And when you say "threat," you mean
25 for potential use in a subsequent criminal prosecution

1 of this witness?

2 MR. HOWIE: Well, he is asserting the
3 privilege. And I believe he has the right to do that.

4 MR. HALE: Okay. I --

5 MR. HOWIE: Or he will assert it. He hasn't
6 done it yet. And for your purposes, you might want him
7 to do that. That's up to you.

8 MR. HALE: No, we're absolutely going to want
9 him to do that. But I want to be -- I'm just not clear
10 on what --

11 Could you read that last question I asked
12 back.

13 (Record read as follows:

14 And when you say "threat," you mean
15 for potential use in a subsequent criminal
16 prosecution of this witness?)

17 MR. HALE: I guess my question is how does his
18 assignment history -- how could his assignment history
19 possibly be used to support the prosecution of him for
20 childhood sexual abuse?

21 MR. HOWIE: Identity is an issue in every
22 case. Location, opportunity, motive. You know, I was a
23 District Attorney for six years. I know that there are
24 elements to the case that would be affected by virtually
25 anything he might say.

1 And remember, we're talking about alleged
2 allegations, as well as prosecutions. I can't imagine
3 any -- as I sit here today -- any limitation that would
4 be appropriate.

5 MR. HALE: Okay. And what about questions,
6 for instance, regarding the structure of the St.
7 Anthony's faculty administration while he was a student
8 there; how is that possibly going to be used as evidence
9 against him in a criminal prosecution?

10 Talking about solely background information.
11 I just don't see it.

12 MR. HOWIE: Well, I see it as -- you know, if
13 nothing else, the background for opportunity as an
14 element of a case.

15 MR. HALE: Okay.

16 MR. NYE: Tim, if I could, just a minute.

17 MR. HALE: Sure.

18 MR. NYE: There is not an absolute right for
19 him to claim the Fifth Amendment privilege. There has
20 to be a basis for him doing so. In the case law, that
21 is extremely clear.

22 If he is going to sit here today and claim the
23 privilege on each and every question, then we'll have no
24 choice but to file a motion to compel. And I think it's
25 only appropriate that we would seek substantial

1 sanctions. We've gone to great time and expense to come
2 up here. We're on the eve of trial. And for him to
3 just do a blanket privilege is highly inappropriate and
4 not supported at all by the case law.

5 The ultimate entity that determines whether or
6 not he has a Fifth Amendment privilege is the court, not
7 him. And in order for the court to make that
8 determination, the question has to be asked and the
9 basis for the privilege has to be stated. So --

10 MR. HOWIE: I think I'm giving you kind of an
11 open field, in the sense that you can generate whatever
12 question you feel is innocuous, and I'm prepared to
13 defend against it. I believe that -- I think I've
14 stated my position. I don't want to, you know, exhaust
15 your record with more on the same.

16 But I think in this context, with the
17 political climate around these type of cases, that he's
18 within his rights to take whatever steps -- any steps to
19 protect himself from prosecution.

20 MR. HALE: And I assume you are familiar with
21 Judge Sabraw's ruling in the Timmons matter where he
22 granted a motion to compel based on instructions similar
23 to what apparently are going to be given today regarding
24 taking the Fifth.

25 MR. HOWIE: Refresh my recollection.

1 MR. HALE: I can give you a copy right now if
2 you want.

3 MR. NYE: And in that regard, I'm going to
4 cite you the Fuller v. Superior Court 2001 case under
5 the second district court of appeals, 87 Cal.App. 4th
6 299. And I'll be glad to give you a copy of that too.

7 MR. HALE: What I'm going to hand you is a
8 three-page order on eight motions, the fourth motion
9 being the motion to compel testimony from Gary Timmons,
10 who is a perpetrator in some of these cases in Clergy
11 III. And it was -- it's file-stamped in Alameda County
12 March 18th, 2005 and it's signed by Judge Sabraw. And
13 the date is the date of the (inaudible), March 18th,
14 2005.

15 And what I'm -- again, the relevant discussion
16 is on -- for motion number 10. You'll see it
17 highlighted.

18 MR. HOWIE: Can we take a brief --

19 MR. NYE: I'd like to get that back because
20 I've got some notes on it.

21 MR. HOWIE: Can we take a brief recess.

22 MR. HALE: Sure.

23 THE VIDEOGRAPHER: Off the record at
24 10:18 a.m.

25 (Recess taken).

1 THE VIDEOGRAPHER: Back on the record at
2 10:28 a.m.

3 MR. HALE: Okay. Just -- we've been off the
4 record. And in addition to the court order previously
5 referenced that I've provided a copy to Mr. Howie of,
6 I've also given him a copy of the memorandum of points
7 and authorities in support of the motion to compel
8 regarding that order. That's a -- it was filed by
9 Richard Simons and signed February 7th, 2005. I
10 understand Mr. Howie has read that document.

11 I also provided him with plaintiff's separate
12 statement in support of that motion. Again, that was
13 filed by Richard Simons' office. It provides text of
14 the deposition testimony at issue. It's dated
15 February 7, 2005. And again, it's my understanding Mr.
16 Howie is -- has read that document as well.

17 And nevertheless, the expectation is that
18 there will be no answers to any questions asked of this
19 witness today. Is that --

20 MR. HOWIE: Correct.

21 MR. HALE: Okay. Can I -- can we get the
22 witness back in here so that I can at least confirm that
23 he is not going to answer any questions today without
24 asserting his Fifth Amendment privilege.

25 (Discussion off the record).

1 MR. HALE: Q. Father, whenever you're ready,
2 just let me know.

3 A. Okay.

4 Q. I just want to -- I've spoken with your
5 attorney both on and off the record. And I want to
6 confirm that it is your position today that, based on
7 the Fifth Amendment, you are going to refuse to answer
8 any questions that I ask you today; is that correct?

9 A. Yes.

10 Q. And do you understand that by taking that
11 position, that gives plaintiff's counsel the right at
12 trial to -- you can tell me to stop, but I just want to
13 make sure I understand his rights -- gives us the right
14 at trial to ask the judge to exclude any testimony from
15 you related to this lawsuit? Do you understand that?

16 A. Yes.

17 Q. Okay. And then the last thing you need to
18 understand and -- this is directed at Mr. Howie as
19 well -- is we do plan on filing a motion to compel, ask
20 the judge to order you to answer questions that I
21 intended to ask you today. Do you understand that?

22 A. Yes.

23 Q. Okay. We also intend to ask the court for
24 sanctions regarding our expenses having to come up here
25 the first time and coming to this deposition and you

1 refusing to answer questions.

2 MR. HOWIE: Yeah, he doesn't need to answer
3 that one.

4 MR. HALE: Okay. But --

5 MR. HOWIE: I am -- for the record, I just
6 wanted to state that we have had a discussion. I have
7 reviewed certain documents that you previously put on
8 the record. I didn't see the opposition, but based on
9 the ruling, it is my assumption it was not argued that
10 there had been any immunities granted in either of the
11 authorities that we looked at, nor was the argument made
12 that there is some fluidity with regard to the
13 legislature in these uncertain times and that the prior
14 ruling that I saw was based on one case involving one
15 law, but not a case based on generically what the
16 legislature might do in the future or what a Supreme
17 Court might see, based on new appointments or new law.

18 And I think Mr. Cimmarrusti has appropriately
19 indicated that he will not answer questions today.

20 MR. HALE: Let's go off the record one second
21 and we'll finish the thing up, okay.

22 THE VIDEOGRAPHER: Off the record at
23 10:33 a.m.

24 (Recess taken).

25 THE VIDEOGRAPHER: Back on the record at

1 10:38 a.m.

2 MR. HALE: Q. Father, I want to go over the
3 rules of the deposition with you. Do you understand
4 your testimony today has the same force and effect as if
5 we were in front of a court of law before a judge and a
6 jury?

7 A. (Nods head).

8 Q. Okay.

9 MR. HOWIE: Now, that is a question?

10 THE WITNESS: It is a question.

11 MR. HOWIE: Believe it or not, that is a
12 question.

13 THE WITNESS: I respectfully refuse to answer
14 that question under the Fifth Amendment.

15 MR. HALE: Q. Okay. And do you understand
16 that by refusing to answer that question, we can still
17 call you as a witness at trial, but you will be limited
18 in what you can testify to with regards to any questions
19 we've asked you here today?

20 A. I respectfully refuse to answer any
21 question -- or that question under the protection of the
22 Fifth Amendment.

23 Q. Father, are you still a priest with the
24 Franciscans?

25 A. I refuse to answer that question under the

1 protection of the Fifth Amendment.

2 Q. Okay. Father, did you attend St. Anthony's
3 Seminary?

4 A. I refuse to answer that question under the
5 protection of the Fifth Commandment -- Fifth Amendment.

6 Q. It's okay. And if I ask you any further
7 questions about your educational background, is your
8 answer going to be the same?

9 A. I refuse to answer that question under the
10 protection of the Fifth Amendment.

11 Q. Okay. Father, where were you first assigned
12 after you finished -- after you became ordained?

13 A. I refuse to answer that question under the
14 protection of the Fifth Amendment.

15 Q. Okay. Bear with me here. I'm going to have
16 to fly through my outline a bit because of the way we're
17 going about this.

18 Father, do you know who [REDACTED] is?

19 A. I refuse to answer that question under the
20 protection of the Fifth Amendment.

21 Q. Okay. Father, were you ever on faculty of St.
22 Anthony's Seminary?

23 A. I refuse to answer that question under the
24 protection of the Fifth Amendment.

25 Q. Father, do you know who [REDACTED] is?

1 A. I refuse to answer that question under the
2 protection of the Fifth Amendment.

3 Q. And Father, if I ask you the name of any other
4 former students at St. Anthony's Seminary, is your
5 response going to be the same?

6 A. I refuse to answer that question under the
7 protection of the Fifth Amendment.

8 Q. Okay. Father, if I ask you any questions
9 about students who attended St. Anthony's prior to
10 January 1st, 1990, is your response going to be the
11 same?

12 A. I refuse to answer that question under the
13 protection of the Fifth Amendment.

14 Q. Father, did you ever supervise study hall at
15 St. Anthony's?

16 A. I refuse to answer that question under the
17 protection of the Fifth Amendment.

18 Q. If you want, rather than restate your -- if
19 Mr. Howie approves, if you wanted to say "same
20 response," that way you don't have to repeat the -- I'm
21 trying to just shorten things, if that helps.

22 You tell me. If he says "same response," I
23 will recognize him as asserting his Fifth Amendment
24 privilege.

25 MR. NYE: How about if he just says "Fifth

1 Amendment."

2 MR. HALE: Sure. How's that? Is that -- you
3 tell me, Mr. Howie. Or if you want --

4 MR. HOWIE: I think we're going in a pattern
5 and we should --

6 MR. HALE: Okay.

7 MR. HOWIE: -- continue to go on that pattern.

8 MR. HALE: Fair enough. Fair enough.

9 Q. Father, when you joined the faculty at St.
10 Anthony's Seminary, were there any approved methods of
11 discipline?

12 A. I refuse to answer that question under the
13 protection of the Fifth Amendment.

14 Q. And Father, if I ask you any further questions
15 about discipline of students at St. Anthony's, will your
16 response be the same?

17 A. I refuse to answer that question under the
18 protection of the Fifth Amendment.

19 Q. Okay. Father, did you ever attend faculty
20 meetings at St. Anthony's?

21 A. I refuse to answer that question under the
22 protection of the Fifth Amendment.

23 Q. And Father, if I ask you any further questions
24 about faculty meetings in St. Anthony's, will your
25 responses be the same?

1 A. I refuse to answer that question under the
2 protection of the Fifth Amendment.

3 Q. Okay. Father, did you ever have any
4 discussions with Father Harris or any other faculty
5 member about instituting a program to assess students'
6 physical maturity or development?

7 A. I refuse to answer that question under the
8 protection of the Fifth Commandment [sic].

9 Q. And Father, if I ask you any further questions
10 about a program you instituted to assess student
11 physical development or maturity, will your response be
12 the same?

13 A. I refuse to answer that question under the
14 protection of the Fifth Commandment -- Fifth Amendment.

15 Q. Father, do you ever -- do you recall any
16 students from St. Anthony's Seminary being expelled for
17 putting on some kind of skit where they parodied faculty
18 behavior?

19 A. I refuse to answer that question under the
20 protection of the Fifth Amendment.

21 Q. And Father, if I ask you any further questions
22 about students parodying faculty behavior, will your
23 response be the same?

24 A. I refuse to answer that question under the
25 protection of the Fifth Amendment.

1 Q. Father, have you ever spoken with a reporter
2 from the Santa Barbara News Press named Tom Schultz,
3 S-C-H-U-L-T-Z?

4 A. I refuse to answer that question under the
5 protection of the Fifth Amendment.

6 Q. And Father, if I ask you any further questions
7 about speaking with Mr. Schultz, will you -- will your
8 response be the same?

9 A. I refuse to answer that question under the
10 protection of the Fifth Amendment.

11 Q. Father, do you remember a student named [REDACTED]
12 [REDACTED]?

13 A. I refuse to answer that question under the
14 protection of the Fifth Amendment.

15 Q. Father, did you ever spank any St. Anthony's
16 students?

17 A. I refuse to answer that question under the
18 protection of the Fifth -- Fifth Amendment.

19 Q. Father, did you ever spank any St. Anthony's
20 students before 1990, January 1st?

21 A. I refuse to answer that question under the
22 protection of the Fifth Amendment.

23 Q. And Father, if I ask you any further questions
24 about your conduct toward students before January 1st,
25 1990, will your response be the same?

1 A. I refuse to answer that question under the
2 protection of the Fifth Amendment.

3 Q. Father, were you assigned in Guymas, Mexico?

4 A. I refuse to answer that question under the
5 protection of the Fifth Amendment.

6 Q. And Father, if I ask you any further questions
7 regarding your assignment history, will your response be
8 the same?

9 A. I refuse to answer that question under the
10 protection of the Fifth Amendment.

11 Q. Father, were there counselors at St. Luis Rey
12 when you attended there?

13 A. I refuse to answer that question under the
14 protection of the Fifth Amendment.

15 Q. And Father, if I ask you any further questions
16 regarding St. Luis Rey or the faculty there, will your
17 response be the same?

18 A. I refuse to answer that question under the
19 protection of the Fifth Amendment.

20 Q. Father, were you ever spanked by Father Brian
21 Lyons, L-Y-O-N-S?

22 A. I refuse to answer that question under the
23 protection of the Fifth Amendment.

24 Q. And Father, if I ask you any further questions
25 regarding Father Lyons, will your response be the same?

1 A. I refuse to answer that question under the
2 protection of the Fifth Amendment.

3 Q. Father, are you familiar with the Board of
4 Inquiry?

5 A. I refuse to answer that question under the
6 protection of the Fifth Amendment.

7 Q. And Father, if I ask you any further questions
8 regarding the Board of Inquiry, will your response be
9 the same?

10 A. I refuse to answer that question under the
11 protection of the Fifth Amendment.

12 Q. Father, have you ever been aware of any member
13 of the province warning a member or members of a parish
14 or community that a Franciscan who had been accused of
15 the sexual abuse of a minor was assigned or in residence
16 at that location?

17 A. I refuse to answer that question under the
18 protection of the Fifth Amendment.

19 Q. Father, if I ask you any further questions
20 regarding such warnings, will your response be the same?

21 A. I refuse to answer that question under the
22 protection of the Fifth Amendment.

23 Q. Father, do you know who Father Owen DeSilva
24 is?

25 A. I refuse to answer that question under the

1 protection of the Fifth Amendment.

2 Q. And if I have to ask you any further questions
3 about Father DeSilva, will your response be the same?

4 A. I refuse to answer that question under the
5 protection of the Fifth Amendment.

6 Q. And Father, if I ask you any questions about
7 your duties while you were a faculty member while you
8 were at St. Anthony's, will your response be the same?

9 A. I refuse to answer that question under the
10 protection of the Fifth Amendment.

11 MR. HALE: All right. Let's take a break and
12 then we'll tie this thing up.

13 THE VIDEOGRAPHER: Off the record at
14 10:48 a.m.

15 (Recess taken).

16 THE VIDEOGRAPHER: Back on the record at
17 10:53 a.m.

18 MR. HALE: Q. Father, has anyone ever
19 confronted you or talked to you about allegations of
20 inappropriate conduct by you prior to January 1st,
21 1990? In other words, the conduct was committed prior
22 to January 1st, 1990.

23 A. I refuse to answer that question under the
24 protection of the Fifth Amendment.

25 Q. Okay. And Father --

1 MR. HOWIE: There's an additional objection
2 there that it's vague as to time. It got confusing at
3 the end of the question.

4 MR. HALE: Sure.

5 Q. And what I mean is, in other words, did anyone
6 confront you about conduct that took place prior to
7 January 1st, 1990?

8 Does that answer --

9 MR. HOWIE: No, because the activity is what
10 you're talking about now as far as the comment -- I
11 understand the question to be about the timing of the
12 comment, correct?

13 MR. HALE: Okay.

14 MR. HOWIE: And that comment could be at any
15 time, even yesterday, for example.

16 MR. HALE: Right, right.

17 MR. HOWIE: Okay. Well, for whatever purpose,
18 that one I would object to. At least now it's more
19 specific.

20 But go ahead and answer with your --

21 MR. NYE: Break it down before and after 1990.

22 MR. HALE: Okay, sure.

23 Q. Prior to January 1st, 1990, Father, did
24 anyone ever confront you about alleged misconduct by you
25 which took place prior to January 1st, 1990?

1 A. I refuse to answer that question under the
2 protection of the Fifth Amendment.

3 Q. Okay. And if I ask you any further questions
4 about that subject matter, is your response going to be
5 the same?

6 A. I refuse to answer that question under the
7 protection of the Fifth Amendment.

8 Q. Okay. And subsequent to January 1st, 1990,
9 has anyone ever confronted you about alleged misconduct
10 which took place prior to January 1st, 1990?

11 A. I refuse to answer that question under the
12 protection of the Fifth Amendment.

13 Q. And if I ask you further questions on that
14 subject matter, will your response be the same?

15 A. I refuse to answer that question under the
16 protection of the Fifth Amendment.

17 Q. Okay. Father, prior to January 1st, 1990,
18 did you ever spank any St. Anthony's Seminary students?

19 A. I refuse to answer that question under the
20 protection of the Fifth Amendment.

21 Q. And Father, if I ask you any further questions
22 about you spanking seminarians prior to January 1st,
23 1990, will your response be the same?

24 A. I refuse to answer that question under the
25 protection of the Fifth Amendment.

1 Q. Father, prior to January 1st, 1990, did you
2 ever massage and apply lotion to the buttocks of a St.
3 Anthony's Seminary student?

4 A. I refuse to answer that question under the
5 protection of the Fifth Amendment.

6 Q. And Father, if I ask you any further questions
7 on that subject matter, will your response be the same?

8 A. I refuse to answer that question under the
9 protection of the Fifth Amendment.

10 Q. Father, prior to January 1st, 1990, did you
11 ever examine any St. Anthony's Seminary student's
12 genitals?

13 A. I refuse to answer that question under the
14 protection of the Fifth Amendment.

15 Q. And Father, if I ask you any further questions
16 on that subject, will your response be the same?

17 A. I refuse to answer that question under the
18 protection of the Fifth Amendment.

19 Q. Father, prior to January 1st, 1990, did you
20 ever instruct any St. Anthony's seminarian to take his
21 clothes off?

22 A. I refuse to answer that question under the
23 protection of the Fifth Amendment.

24 Q. And Father, if I ask you any further questions
25 on that subject matter, will your response be the same?

1 A. I refuse to answer that question under the
2 protection of the Fifth Amendment.

3 Q. Father, prior to January 1st, 1990, did your
4 conduct a hernia exam of a St. Anthony's Seminary
5 student?

6 A. I refuse to answer that question under the
7 protection of the Fifth Amendment.

8 Q. And Father, if I ask you any further questions
9 on that subject matter, will your response be the same?

10 A. I refuse to answer that question under the
11 protection of the Fifth Amendment.

12 Q. Father, prior to January 1st, 1990, did you
13 ever visually examine a student's genitals?

14 A. I refuse to answer that question under the
15 protection of the Fifth Amendment.

16 Q. And if I ask you any further questions on that
17 subject matter, Father, will your response be the same?

18 A. I refuse to answer that question under the
19 protection of the Fifth Amendment.

20 Q. Father, prior to January 1st, 1990, did you
21 ever rub your hands down a St. Anthony's seminarian's
22 thighs?

23 A. I refuse to answer that question under the
24 protection of the Fifth Amendment.

25 Q. And Father, if I ask you any further questions

1 on that subject matter, will your response be the same?

2 A. I refuse to answer that question under the
3 protection of the Fifth Amendment.

4 Q. Father, prior to January 1st, 1990, did you
5 ever give a student at St. Anthony's Seminary an alcohol
6 rubdown?

7 A. I refuse to answer that question under the
8 protection of the Fifth Amendment.

9 Q. And if I ask you any further questions on that
10 subject, Father, will your response be the same?

11 A. I refuse to answer that question under the
12 protection of the Fifth Amendment.

13 Q. Father, prior to January 1st, 1990, did you
14 ever take a student's temperature rectally, a St.
15 Anthony's seminarian's temperature rectally?

16 A. I refuse to answer that question under the
17 protection of the Fifth Amendment.

18 Q. And Father, if I ask you any further questions
19 regarding your taking the temperature of a St. Anthony's
20 seminarian prior to January 1st, 1990, will your
21 response be the same?

22 A. I refuse to answer that question under the
23 protection of the Fifth Amendment.

24 Q. Father, prior to January 1st, 1990, did you
25 ever french kiss a St. Anthony's Seminary student?

1 A. I refuse to answer that question under the
2 protection of the Fifth Amendment.

3 Q. And Father, if I ask you any further questions
4 regarding that subject matter, will your answer be the
5 same?

6 A. I refuse to answer that question under the
7 protection of the Fifth Amendment.

8 Q. Father, prior to January 1st, 1990, did you
9 ever apply lotion to a St. Anthony's seminarian's
10 genitals?

11 A. I refuse to answer that question under the
12 protection of the Fifth Amendment.

13 Q. And Father, if I ask you any further questions
14 on that subject, will your response be the same?

15 A. I refuse to answer that question under the
16 protection of the Fifth Amendment.

17 Q. Father, prior to January 1st, 1990, did you
18 ever take a shower with a St. Anthony's Seminary
19 student?

20 A. I refuse to answer that question under the
21 protection of the Fifth Amendment.

22 Q. And Father, if I ask you any further questions
23 on that subject, will your response be the same?

24 A. I refuse to answer that question under the
25 protection of the Fifth Amendment.

1 Q. Father, prior to January 1st, 1990, did you
2 ever give a student a sponge bath at St. Anthony's
3 Seminary?

4 A. I refuse to answer that question under the
5 protection of the Fifth Amendment.

6 Q. And if I asked you any further questions on
7 that subject matter, will your response be the same?

8 A. I refuse to answer that question under the
9 protection of the Fifth Amendment.

10 Q. Father, while you were on the faculty at St.
11 Anthony's Seminary in the 1960s, did you ever own
12 pornography?

13 A. I refuse to answer that question under the
14 protection of the Fifth Amendment.

15 Q. And if I ask you any further questions on that
16 subject matter, will your response be the same?

17 A. I refuse to answer that question under the
18 protection of the Fifth Amendment.

19 Q. Father, prior to January 1st, 1990, did you
20 ever masturbate a student to ejaculation?

21 A. I refuse to answer that question under the
22 protection of the Fifth Amendment.

23 Q. And Father, if I ask you any further questions
24 about your masturbating a student prior to
25 January 1st, 1990, will your response be the same?

1 A. I refuse to answer that question under the
2 protection of the Fifth Amendment.

3 Q. Father, prior to January 1st, 1990, did you
4 ever have a student masturbate you?

5 A. I refuse to answer that question under the
6 protection of the Fifth Amendment.

7 Q. And if I ask you any further questions
8 regarding that subject matter, Father, will your
9 response be the same?

10 A. I refuse to answer that question under the
11 protection of the Fifth Amendment.

12 Q. Father, prior to January 1st, 1990, did you
13 ever have a student orally copulate you?

14 A. I refuse to answer that question under the
15 protection of the Fifth Amendment.

16 Q. And if I ask any further questions on that
17 subject matter, will your response be the same?

18 A. I refuse to answer that question under the
19 protection of the Fifth Amendment.

20 Q. Prior to January 1st, 1990, Father, did you
21 ever orally copulate a student?

22 A. I refuse to answer that question under the
23 protection of the Fifth Amendment.

24 Q. And if I ask you any further questions on that
25 subject matter, will your response be the same?

1 A. I refuse to answer that question under the
2 protection of the Fifth Amendment.

3 Q. Father, prior to January 1st, 1990, did you
4 ever attempt to sodomize a St. Anthony's Seminary
5 student?

6 A. I refuse to answer that question under the
7 protection of the Fifth Amendment.

8 Q. And if I ask you any further questions on that
9 subject matter, will your response be the same?

10 A. I refuse to answer that question under the
11 protection of the Fifth Amendment.

12 Q. Father, prior to January 1st, 1991, did any
13 student ever sodomize you?

14 MR. NYE: You said "1991."

15 MR. HALE: Oh, sorry. 1990, thanks.

16 THE WITNESS: I refuse to answer that question
17 under the protection of the Fifth Amendment.

18 MR. HALE: Q. And if I ask you any further
19 questions regarding that subject matter, Father, will
20 your response be the same?

21 A. I refuse to answer that question under the
22 protection of the Fifth Amendment.

23 Q. Father, was there a spa or whirlpool in the
24 infirmary for students to use if they were -- the
25 students were injured prior to January 1st, 1991

1 [sic]?

2 A. I refuse to answer that question under the
3 protection of the Fifth Amendment.

4 Q. And if I ask you any further questions on that
5 subject matter, Father, will your response be the same?

6 A. I refuse to answer that question under the
7 protection of the Fifth Amendment.

8 Q. Father, did you ever threaten to expel any
9 student from St. Anthony's Seminary?

10 A. I refuse to answer that question under the
11 protection of the Fifth Amendment.

12 Q. And if I ask you any further questions
13 regarding that subject matter, will your response be the
14 same, Father?

15 A. I refuse to answer that question under the
16 protection of the Fifth Amendment.

17 Q. Father, have you ever heard anyone say a St.
18 Anthony's Seminary student, prior to January 1st,
19 1991, was crazy or had mental problems of some sort?

20 A. I refuse to answer that question under the
21 protection of the Fifth Amendment.

22 Q. And if I ask you any further questions on that
23 subject matter, will your response be the same?

24 A. I refuse to answer that question under the
25 protection of the Fifth Amendment.

1 Q. Father, has anyone ever shown you
2 correspondence written by a former St. Anthony's
3 Seminary student which alleged abuse by you taking place
4 prior to January 1st, 1990?

5 A. I refuse to answer that question under the
6 protection of the Fifth Amendment.

7 Q. And if I ask you any further questions
8 regarding such correspondence, will your response be the
9 same?

10 A. I refuse to answer that question under the
11 protection of the Fifth Amendment.

12 Q. Father, were you aware that while you were a
13 student at San Luis Rey and at the school of theology,
14 you were being evaluated?

15 A. I refuse to answer that question under the
16 protection of the Fifth Amendment.

17 Q. And Father, if I ask you any further questions
18 regarding you being evaluated while a student at either
19 of those locations, will your response be the same?

20 A. I refuse to answer that question under the
21 protection of the Fifth Amendment.

22 Q. And Father, while you were on the faculty at
23 St. Anthony's Seminary, were you aware you were being
24 evaluated?

25 A. I refuse to answer that question under the

1 protection of the Fifth Amendment.

2 Q. And if I ask you any further questions about
3 you being evaluated as a faculty member at St.
4 Anthony's, will your response be the same?

5 A. I refuse to answer that question under the
6 protection of the Fifth Amendment.

7 Q. Father, have you ever been sent anywhere for
8 evaluation for sexual problems?

9 A. I refuse to answer that question under the
10 protection of the Fifth Amendment.

11 Q. And if I ask you any further questions related
12 to that subject matter, Father, will your response be
13 the same?

14 A. I refuse to answer that question under the
15 protection of the Fifth Amendment.

16 Q. Father, have you ever been transferred from an
17 assignment as a result of sexual abuse allegations which
18 allegedly took place prior to January 1st, 1990? And
19 what I mean is the abuse took place prior to
20 January 1st, 1990.

21 A. I refuse to answer that question under the
22 protection of the Fifth Amendment.

23 Q. And Father, if I ask any more questions on
24 that subject matter, will your response be the same?

25 A. I refuse to answer that question under the

1 protection of the Fifth Amendment.

2 MR. HALE: Okay. Let's go off the record one
3 more time and I think that's going to do it.

4 MR. HOWIE: Let me just get one thing on
5 before we quit, 'cause we may be able to quit, and that
6 is that I had offered the stipulation but it wasn't
7 accepted, so we're going to be operating on the
8 questions not based on the stipulation that I offered.

9 MR. NYE: That's fine.

10 MR. HOWIE: That's all I have.

11 THE VIDEOGRAPHER: Off the record at
12 11:05 a.m.

13 (Recess taken).

14 THE VIDEOGRAPHER: Back on the record at 11:10
15 a.m.

16 MR. HALE: Q. Father, in your assignments
17 subsequent to the release of the Board of Inquiry
18 report, what, if any, limitations were placed on your
19 ministry?

20 A. I refuse to answer that question under the
21 protection of the Fifth Amendment.

22 Q. And if I ask you any further questions
23 regarding such subject matter, will your response be the
24 same?

25 A. I refuse to answer that question under the

1 protection of the Fifth Amendment.

2 Q. Father, have there ever been any limitations
3 placed on your ability to have contact with children
4 under the age of 18?

5 A. I refuse to answer that question under the
6 protection of the Fifth Amendment.

7 Q. And if I ask you any further questions on that
8 subject matter, will your response be the same, Father?

9 A. I refuse to answer that question under the
10 protection of the Fifth Amendment.

11 Q. Father, have there ever been any limitations
12 placed on how close in proximity -- how close you can be
13 in residence to a school?

14 A. I refuse to answer that question under the
15 protection of the Fifth Amendment.

16 Q. And if I ask you any further questions
17 regarding that subject matter, will your response be the
18 same?

19 A. I refuse to answer that question under the
20 protection of the Fifth Amendment.

21 Q. Father, have there ever been any limitations
22 placed on how close you could be assigned to work near a
23 school?

24 A. I refuse to answer that question under the
25 protection of the Fifth Amendment.

1 Q. And if I ask you any further questions on that
2 subject matter, will your response be the same?

3 A. I refuse to answer that question under the
4 protection of the Fifth Amendment.

5 MR. HALE: I think we're done. Anything you
6 want to add?

7 MR. HOWIE: (Shakes head).

8 MR. HALE: Okay. Let's relieve the reporter
9 of her duties under the code. We'll send the original
10 over to Mr. Howie's office. He can maintain custody of
11 the original. And if he can then forward that over to
12 Father Cimmarrusti, and we'll give Father Cimmarrusti --
13 I can't imagine it's going to take a whole lot of time
14 to review this transcript. How much time do you want?

15 MR. HOWIE: Whatever you think you need. You
16 have some time limitations, I understand.

17 MR. HALE: Right. Five days okay?

18 MR. HOWIE: Sure.

19 MR. HALE: Okay -- five days to review the
20 transcript, sign the transcript under penalty of perjury
21 and then provide them -- that to your counsel, notify
22 him that you've made any changes, although I suspect
23 there aren't going to be any change made. And then if
24 Mr. Howie could also notify us promptly as soon as he
25 receives those changes.

1 And if a signed original is not available at
2 the time of trial, and unsigned certified copy can be
3 used for all purposes.

4 MR. HOWIE: That's acceptable.

5 MR. HALE: Okay.

6 THE VIDEOGRAPHER: This is the end of Volume
7 I, videotape 1 in the deposition of Father Cimmarrusti.
8 Off the record at 11:11 a.m.

9 THE REPORTER: Are you okay with him reviewing
10 your copy, Mr. Howie, so that I can retain the original
11 and release it sealed to Mr. Hale, so that I can follow
12 the code?

13 MR. HALE: Sure.

14 MR. HOWIE: Review a copy, is what you're
15 saying? That's fine.

16 (Deposition adjourned at 11:11 a.m.)

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CERTIFICATE OF WITNESS

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I, the undersigned, declare under penalty of perjury that I have read the foregoing transcript and I have made any corrections, additions or deletions that I was desirous of making; that the foregoing is a true and correct transcript of my testimony contained therein.

EXECUTED this _____ day of _____, 200_, at _____, _____.

Signature of Witness

1 REPORTER CERTIFICATE

2 I hereby certify that the witness in the
3 foregoing deposition was by me duly sworn to testify to
4 the truth, the whole truth and nothing but the truth in
5 the within-entitled cause; that said deposition was
6 taken at the time and place herein named; that the
7 deposition is a true record of the witness's testimony
8 as reported to the best of my ability by me, a duly
9 certified shorthand reporter and a disinterested person,
10 and was thereafter transcribed under my direction into
11 typewriting by computer; that the witness was given an
12 opportunity to read and correct said deposition and to
13 subscribe the same. Should the signature of the witness
14 not be affixed to the deposition, the witness shall not
15 have availed himself or herself of the opportunity to
16 sign or the signature has been waived.

17 I further certify that I am not interested in
18 the outcome of said action, nor connected with, nor
19 related to any of the parties in said action, nor to
20 their respective counsel.

21 IN WITNESS WHEREOF, I have hereunto set my
22 hand this 14th day of March, 2006.

23
24 _____
25 HOLLY MOOSE, CSR NO. 6438

HOLLY MOOSE & ASSOCIATES
236 Spencer Avenue
Sausalito, California 94965
Phone: (415)332-4959
Fax: (415)332-4943

Date: March 14, 2006

TO: FATHER WALTER S. (MARIO) CIMMARRUSTI
C/O: ROBERT G. HOWIE, ESQ.
HOWIE & SMITH
28 East Third Avenue, Suite 200
San Mateo, CA 94401
(650)685-9300

RE: CLERGY CASES III
Deposition taken February 14, 2006

Dear FATHER WALTER S. (MARIO) CIMMARRUSTI:

The original transcript of your deposition taken in the above-entitled action has been prepared and is available at this office for your reading, correcting and signing. In the alternative, you may wish to review a copy. Please notify this office and all counsel in writing of any changes you wish to make to your deposition transcript.

Your rights regarding signature of this deposition are contained in the California Code of Civil Procedure. Unless otherwise directed, your original deposition transcript will be sealed in accordance with the code.

If you wish to make arrangements to review the original transcript of your deposition, please contact this office during office hours, 9 to 5, Monday through Friday, to make an appointment.

Sincerely,

Holly Moose
CSR No. 6438

cc: All counsel