Superior Court of the State of California

For the County of Los Angeles

Coordinated Proceeding Special Title (Rule 1550(b))

THE CLERGY CASES I & III

This Order relates to:

1. **FRANCISCAN FRIARS SETTLEMENT PROCEEDINGS REGARDING PUBLICATION OF DOCUMENTS; and**
2. **ARCHDIOCESE OF MILWAUKEE (FRANKLYN W. BECKER ASSERTION OF RIGHT OF PRIVACY)**

Case Nos. JCCP 4286 & 4359

Assigned: Hon. Peter D. Lichtman

Court Orders re:

1. **Publication of the Personnel Files of the Franciscan Friars Accused of Childhood Sexual Abuse; and**
2. **Publication of the Personnel File of Franklyn W. Becker**

Hearing Dates: April 10, 2007 & June 7, 2007

Submitted: June 7, 2007

Background Facts

The Friars

On May 25, 2006, a settlement and general release of all claims was entered into by and between the Franciscan Friars of California, Inc.; St. Anthony's Seminary High School; Santa Barbara Boys Choir; and all corporate, legal or canonical entities owned or operated by, or affiliated with the Order of Friars Minor, Province of Saint Barbara (hereinafter referred to as the ***"Franciscan Friars or Friars"***); the Roman Catholic Archbishop of Los Angeles and other named defendants on the one hand and a variety of plaintiffs identified more fully in the settlement agreement itself on the other.

The settlement agreement of May 25, 2006 like others that have preceded it contains two essential components.[1] One is monetary and this Court assumes, for the purposes of this order, that the monetary component has been successfully consummated. The other is non-monetary which calls for the production of certain documents so that transparency, accountability, public safety and responsibility can and could be assessed with the hope of providing closure for the settling plaintiffs. While each component is of no less import or significance than the other this Court has been assigned the task of carrying out the non-monetary component as set forth in paragraphs 15 and 16 of the settlement document.

[1] Reference is made to the settlement agreements previously entered into by and among various plaintiffs and the Diocese of Orange (dated December 2, 2004) and various plaintiffs and the Archdiocese of Milwaukee (dated August 29, 2006). In each of those agreements as with the instant matter, this Court was asked to preside over the issues concerning the production of both confidential files and personnel files of priests and former priests. Accordingly, this is the Court's third opinion in its series of document review.

Pursuant to an Order dated August 16, 2006, signed by Judge Haley Fromholz, the Honorable Peter D. Lichtman (Judge of the Los Angeles Superior Court) was appointed the hearing officer for the purpose of judicially performing and enforcing the provisions of paragraph 15 of the Settlement Agreement which concerns a number of actions contained in two coordinated sets of litigation commonly referred to as "the Clergy Cases I and the Clergy Cases III." Paragraph 15 sets forth a procedure whereby the personnel files and confidential files of many of the alleged perpetrators are to be deposited with the Court for review and determination of the propriety of objections and asserted privileges.

In attempting to carry out the terms and provisions of paragraph 15, this Court has conducted numerous telephonic conferences as well as informal court conferences with all counsel in order to understand the scope of the review and the nature of the objections that would be interposed.

In that regard, it was stipulated by and between Timothy C. Hale, Esq. of Nye Peabody & Stirling (counsel for various plaintiffs) and Bryan Hance of Lewis Brisbois Bisgaard & Smith (counsel for the Franciscan Friars) that, inter alia, the Friars would not assert privacy objections on behalf those named priests or brothers whose documents were sought in connection with the settlement agreement. This did not mean however, that certain individually named priests or brothers would not assert their own rights of privacy or objections if they felt the need to do so.

In that regard, the following named individuals have asserted rights of privacy:

1. Brother Samuel Cabot
2. Father Mario Cimmarusti
3. Father David Johnson
4. Father Gus Krumm
5. Father Gary Pacheco
6. Father Robert Van Handel

It should be noted that all of the personnel files and confidential files of the above named individuals (if any exist) have been produced to the Court along with various privilege logs wherein certain legal privileges have likewise been asserted in addition to the right of privacy objection. [2]

In prior conferences with counsel it was agreed that the initial issue to be decided by this Court would concern the right of privacy asserted by the above named individuals.

In that regard and memorialized in a stipulation entered and filed on March 2, 2007, the threshold issue now presented is whether the personnel or confidential files of any member of the Friars (*who has not waived his right to privacy*) may be given to plaintiffs pursuant to the settlement agreement so that the contents of said files may be disclosed to the public. If this issue were answered in the affirmative this Court would then address (at a subsequent hearing) the legal privileges that have likewise been asserted.

[2] In prior opinions issued by this Court and likewise referenced herein this Court has used the nomenclature Confidential files and Personnel files. In many instances, these are not the same or similar files. In fact, they are generally separate files, both maintained by the religious entity referenced in the operative settlement agreement. For example, the Diocese of Orange did maintain both a confidential file and personnel on various former priests.

Conversely, if this Court were to find that the standards governing rights of privacy did not permit disclosure then the propriety of the privileges asserted would be moot, since no production or dissemination of the documents could take place.

Becker/Archdiocese of Milwaukee

On February 6, 2007, this Court issued its ruling concerning the objections asserted by the Archdiocese of Milwaukee seeking to preclude production and dissemination of certain documents as a result of its settlement with various plaintiffs on August 29, 2006. Accordingly, the sole issue remaining for this Court with respect to the Archdiocese of Milwaukee concerns the right of privacy objection interposed by former priest Franklyn W. Becker. Because many of the legal issues that confront this Court regarding the Friars overlap with the Becker right of privacy assertion, all counsel agreed that this Court could combine the hearings and arguments of counsel.

Legal Issues Presented

All of the above named priests or former priests (and in one instance a Brother of the Order) are still living. However, the litigation which gave rise to the original discovery requests has settled on specified conditions that confidential and personnel files be brought before this Court and legal challenges be resolved post settlement.

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The Friars

In the instant matter, the settlement agreement with the Friars of May 25, 2006 contains language that did not appear in the Diocese of Orange settlement, to wit:

> "The production of materials set forth below is agreed to in recognition of the fact that the Documents to be produced ***have been or would have been subject to discovery obligations*** in the litigation..." [Emphasis added].

In addition to the settlement language difference and unlike the circumstances presented in the Diocese of Orange, all of the above named individuals have either admitted to acts of sexual molestation of a minor; the Friars themselves have conceded such conduct; or prior records have indicated a propensity to commit sexual acts. In the case of one former priest (Robert Van Handel) a criminal conviction was obtained mandating registration as a sex offender.[3]

Accordingly, this Court is faced with numerous issues of first impression based on a factual record not previously before this Court at

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[3] With respect to Fr. Gary Pacheco, all of the records maintained by the Diocese of Orange were produced by way of this Court's prior ruling issued on May 17, 2005. Specifically, as to Fr. Pacheco this Court previously ruled: "A privilege log was submitted as to Mr. Pacheco. With respect to those documents withheld on the basis of psychotherapist-patient privilege the Court notes that ***no*** holder is asserting the privilege. Hence, all documents that have been designated as psychotherapist-patient privilege are to be produced; however the names of third parties are to be redacted." It should be noted that the records in issue before this Court as to Fr. Pacheco concern those held by the Friars.

the time of the Diocese of Orange settlement and ruling. Naturally, this Court faces the same public policy considerations as before but the record as to admissions and in one instance a conviction did not previously exist.

For example, compelling and competing public policies of the State of California must now be juxtaposed with the State's evolving rights of privacy.

Specifically, there is simply no dispute by any of the parties that the State of California has a strong public policy favoring settlements of civil litigation. It is likewise conceded that the State of California has a strong public policy and compelling state interest in seeing that its children are protected from sexual predators. See ***Roe v. Superior Court*** (1991) 229 Cal. App. 3rd 832, 838.

In this regard, California has required the reporting by health care providers of suspected child abuse even where such reporting would abrogate statutory privileges between patient and health care providers and the courts have determined that the protection of children outweighs the privacy interest in medical records. See ***Roe v. Superior Court*** (1991) 229 Cal. App. 3d 832.

However, while the court in ***Roe*** did state that a person's right to privacy (in certain instances) is not absolute and may have to yield in the furtherance of compelling state interests, the fact remains that there still existed on-going litigation and the ***Roe*** court ultimately decided that certain information could be used to the extent necessary for a fair resolution of the lawsuit.

Here, while it is true that the formal litigation phase has ended, the settlement agreement in issue does provide that the materials subject to production either have been produced or would have been subject to discovery obligations.

Accordingly, the questions that face this Court are as follows:

1. Does the compelling state interest of California in protecting its children from sexual predators yield to rights of privacy once the litigation has concluded by way of another favored public policy which promotes settlement?
2. Has the purpose of the litigation been satisfied when the settlement in question requires full transparency, accountability and the promotion of public safety by way of production of the documents in question?
3. Based on the admissions provided by the former priests (and in one instance an actual conviction) has the expectation of the right of privacy been waived or lessened so as to permit dissemination of the materials sought?

The plaintiffs argue that the information sought is relevant to the proceedings in that evidence of sexual misconduct demonstrates that the Friars were on notice that these individuals were a danger to children and yet did nothing. Specifically, plaintiffs contend that even to this day, the Friars have continued to do nothing to protect minors and that many minors are still at risk.

Plaintiffs' counsel submits sworn testimony that outlines a troublesome history of child abuse in the Santa Barbara area which clearly implicates the Friars.[4] The evidence gathered through counsel's investigation and discovery has revealed that since 1960 Santa Barbara has had one of the highest per capita concentrations of clergy pedophiles in the history of United States clergy abuse.

Plaintiffs' counsel has identified 41 child abusing clergy transferred to and/or allowed to live in Santa Barbara County at various times from 1960 to the present. Of the 40 or so perpetrators, 24 of them were Franciscan priests or brothers from the province of St. Barbara, including 9 of the perpetrators who are the subject of the current settlement.

The Franciscans have acknowledged publicly in various newspaper interviews that Brother Sam Cabot has admitted to the sexual abuse of a young girl. As for Fr. Robert Van Handel, a sexual autobiography was prepared by this former priest and contained in his 1994 probation report wherein he describes to a Franciscan counselor the attraction he has to young boys.

Discovery and informal investigations have revealed that since 1958 76 Santa Barbara children have been sexually assaulted by Roman Catholic clergy and of the 76 victims, 54 of those individuals were abused by the Friars assigned to the adjoining properties of St. Anthony's seminary and the Old Mission Santa Barbara.

[4] None of the data contained in the declaration of Mr. Timothy C. Hale, Esq. is disputed by the Friars.

Simply put, the plaintiffs vociferously contend that the Friars' supervision and mismanagement have allowed the perpetrators in these cases to repeatedly sexually assault countless children. It is further asserted that some of the perpetrators are still in ministry and living in communities without any warning having been provided to families or child care custodians. Plaintiffs assert that only by exposing this sordid history will the public become better aware of the warning signs that hopefully will trigger preventative and prophylactic measures against both the perpetrators and enablers.

Court's Discussion

Both Courts and Legislatures Nationwide Recognize the Compelling Interest in Protecting Children from Sexual Abuse

The federal government enacted Megan's Law (42 U.S.C. § 14071) in 1996. The law required every state to enact some form of the law so as to protect children from sexual predators. The law was comprised of two parts. First, people convicted of sex crimes against children were to register as sex offenders. Second, the law gave discretion to the states to determine the procedure for disclosure. California passed Megan's Law in 1996.

In ***Fredenburg v. City of Fremont*** (2004) 119 Cal. App. 4th 408, 412, the California Legislature "found that sex offenders pose a high risk of engaging in further offenses after release"; that "protection of the public from these offenders is a paramount public interest"; that "the public had a compelling and necessary...interest in obtaining information about released sex offenders so they can adequately protect themselves and

their children"; and that "[b]ecause of the public's interest in public safety, released sex offenders have a reduced expectation of privacy..."

In addition to sex offender registries, plaintiffs assert that each state has enacted laws that require the state or a specific agency to keep central registries of **all** reports of childhood sexual abuse (See Child Welfare website---Nationwide survey of central registries available at http://www.childwelfare.gov/systemwide/laws_policies/statutes). The majority of the entries *are not convictions* but rather reports of child abuse. Likewise a majority of the states require that employers check the registry before any person is permitted to work with children. The same is true for those individuals who wish to become adoptive or foster parents.

The Right of Privacy

Before proceeding with an analysis of California's compelling interest in protecting its minors from sexual abuse, this Court must first examine the rights of privacy, if any, that have been asserted by these former priests. In that regard, the California Supreme Court's recent decision in ***Pioneer Electronics (USA), Inc. v. Superior Court***, 40 Cal. 4th 360, 370-371 (Cal. 2007) provides the guidance needed.

Set forth in *haec verba* is a portion of the Supreme Court's decision in ***Pioneer***:

> The right of privacy protects the individual's reasonable expectation of privacy against a serious invasion. (*Hill*, *supra*, 7 Cal.4th at pp. 36–37.) *Hill* observed that whether a legally

recognized privacy interest exists is a question of law, and whether the circumstances give rise to a reasonable expectation of privacy and a serious invasion thereof are mixed questions of law and fact. (*Hill*, *supra*, 7 Cal.4th at p. 40.) "If the undisputed material facts show no reasonable expectation of privacy or an insubstantial impact on privacy interests, the question of invasion may be adjudicated as a matter of law." (*Ibid.*)

Hill sets forth in detail the analytical framework for assessing claims of invasion of privacy under the state Constitution. First, the claimant must possess a "legally protected privacy interest." (*Hill*, supra, 7 Cal.4th at p. 35.) An apt example from *Hill* is an interest "in precluding the dissemination or misuse of sensitive and confidential information ('informational privacy') ... ." (*Id.* at p. 35.) Under *Hill*, this class of information is deemed private "when well-established social norms recognize the need to maximize individual control over its dissemination and use to prevent unjustified embarrassment or indignity." (*Ibid.*) Additionally, *Hill* recognized the interest "in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference ('autonomy privacy')." (*Ibid.*) As with claims of informational privacy, we must examine whether established social norms protect a person's private decisions or activities from "public or private intervention." (*Id.* at p. 36.)

Second, *Hill* teaches that the privacy claimant must possess a reasonable expectation of privacy under the particular circumstances, including "customs, practices, and physical settings surrounding particular activities ... ." (*Hill, supra*, 7 Cal.4th at p. 36.) As *Hill* explains, "A 'reasonable' expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms." (*Hill, supra*, 7 Cal.4th at p. 37.) "[O]pportunities to consent voluntarily to activities impacting privacy interests obviously affect[] the expectations of the participant." (*Ibid.*)

Third, *Hill* explains that the invasion of privacy complained of must be "serious" in nature, scope, and actual or potential impact to constitute an "egregious" breach of social norms, for trivial invasions afford no cause of action. (*Hill, supra*, 7 Cal.4th at p. 37.)

Assuming that a claimant has met the foregoing *Hill* criteria for invasion of a privacy interest, that interest must be measured against other competing or countervailing interests in a " 'balancing test.' " (*Hill, supra*, 7 Cal.4th at p. 37; see *Parris v. Superior Court, supra*, 109 Cal.App.4th at pp. 300–301 [balancing privacy rights of putative class members against discovery rights of civil litigants]; see also *Britt v. Superior Court* (1978) 20 Cal.3d 844, 855–856 [143 Cal. Rptr. 695, 574 P.2d 766] [balancing right of associational privacy with discovery rights of litigants]; *Valley Bank, supra*, 15 Cal.3d at p. 657 [balancing test in bank customer privacy case]; *Planned Parenthood Golden Gate v. Superior Court, supra*, 83

> Cal. App. 3d at pp. 358–369 [balancing associational privacy rights].) "Conduct alleged to be an invasion of privacy is to be evaluated based on the extent to which it furthers legitimate and important competing interests." (*Hill*, *supra*, 7 Cal.4th at p. 38.) Protective measures, safeguards and other alternatives may minimize the privacy intrusion. "For example, if intrusion is limited and confidential information is carefully shielded from disclosure except to those who have a legitimate need to know, privacy concerns are assuaged." (*Ibid.*)

Pioneer Electronics (USA), Inc. v. Superior Court, 40 Cal. 4th 360, 370-371 (Cal. 2007)

The Four Step Analysis

Step one is to determine the existence of a recognized privacy right. Applied to the Clergy, personnel files are generally recognized as confidential. See e.g. ***El Dorado Savings & Loan Assn. v. Superior Court*** (1987)190 Cal. App. 3d 342. Hence, for the purposes of this Court's ruling it will be assumed that the files in question trigger a privacy right.

Step two examines whether the person asserting the privacy right enjoys a reasonable expectation of privacy. Here, sex offenders and child abusers have a reduced expectation of privacy. Generally, criminal activity is not protected by the right of privacy. ***Stidham v. Peace Officer Standards and Training***, 265 F.3d 1144 (10th Cir. 2001).

Objectors have no right to sexual privacy in illegal sexual conduct. See ***Lawrence v Texas***, 539 US 558, 578 (2003); ***Fleisher v. City of Signal Hill***, 829 F.2d 1491, 1499 (1987) (probationary police officers right to privacy did not extend to his illegal sexual contact with a minor under the US constitution); ***In re T.A.J.*** (1998) 62 Cal. App. 4th 1350, 1359-61 (no privacy right among minors to engage in consensual sexual intercourse)

In ***Rosales v. Los Angeles*** (2000) 82 Cal. App. 4th 419, the court found that a police officer who had engaged in inappropriate sexual conduct has no cause of action against the City who had produced his personnel records to plaintiffs counsel in the underlying litigation against the City for negligent hiring. The court found that the plaintiff had no expectation of privacy in that context.

The same is true for any documents in the files that are medical or psychiatric records. See ***People v. Martinez*** (2001) 88 Cal. App. 4th 465, 475 (convicted sex offenders reasonable expectation of privacy in his medical/psychological records must be evaluated in light of circumstances including his criminal background. A defendant's expectation of privacy in this context concerning his records is substantially reduced)

Even absent a conviction, a perpetrator's or alleged perpetrators' rights are greatly diminished. In ***Stidham***, a police officer brought suit against the Peace Officer Standards and Training agency ("POST"), alleging among other things a violation of his constitutional right to privacy by disclosing to potential employers that Stidham's file contained allegations that he raped a young girl and assaulted a resident. ***Stidham v. Peace Officer Standards and Training***, 265 F.3d 1144, 1155 (10th Cir. 2001). The Tenth Circuit Court of Appeals held that he did not have a

constitutional right to privacy or protection from disclosure of this information, because the allegations involved alleged criminal activity. *Id.* The Court stated, "as we have previously noted, 'a validly enacted law places citizens on notice that violations thereof do not fall into the realm of privacy', and '[c]riminal activity is thus not protected by the right to privacy.' ... (citations omitted). It is irrelevant to a constitutional privacy analysis whether these allegations are true or false; '[t]he disclosed information itself must warrant constitutional protection.'" *Id.* (citations omitted). Because the allegations against Stidham did not give him a legitimate expectation of privacy, he did not state a claim for violation of his constitutional right to privacy. *Id.*

In ***Cinel***, the Fifth Circuit Court of Appeals, addressing the plaintiff's state law claim for invasion of privacy, noted that to recover in Louisiana for invasion of privacy,, one must prove that: 1) the defendant publicized information concerning the plaintiff's private life; 2) the publicized matter would be highly offensive to the reasonable person; and 3) the information is not of legitimate public concern. ***Cinel v. Connick***, 15 F.3d 1338, 1345 (5th Cir. 1994). The Fifth Circuit affirmed the district court's holding that the third element was not met, because the videotape of the plaintiff, a priest, engaging in homosexual conduct with two adult males, related to the plaintiff's guilt or innocence of criminal conduct. Thus the videotape was a matter of legitimate public concern. See *id.* Also, the videotape was of legitimate public concern because it concerned plaintiff's activities while an ordained Catholic priest and the Church's response to those activities. *Id.*

Even if the law required more than just an allegation, an admission to the abuse shows that the perpetrator engaged in illegal sexual conduct. Also an admission to a sexual interest in youth and sexual problems with

youth shows a propensity to engage in criminal activity. Those that admit to the abuse or show dangerous propensities know that the activities are criminal in nature. Like those that are ultimately convicted, those engaging in criminal activity should not benefit from secrecy under the right to privacy.

Both the opening brief and supplemental brief submitted by counsel for various plaintiffs show that the perpetrators at issue here have either admitted to the abuse or have shown dangerous propensities towards youth. The factual background concerning the Friars has been set forth above. Facts concerning former priest Franklyn Becker of the Archdiocese of Milwaukee demonstrates that he has dangerous propensities to harm children. In sworn testimony, Becker testified about his attraction to boys, his interest in the Man/Boy Love Association, his leanings toward being attracted to post pubescent boys and that he gave names of people to the Archdiocese that might come forward with allegations. (Becker's sworn statement taken August 7, 2006 at pgs. 77, 80, 82, and 87.)

Accordingly, to the extent that the objecting priests in this action have given testimony or statements admitting to abusing or molesting children, there no longer exists an expectation of privacy.

Convictions of many priests throughout the United States have been elusive due to the passage of time. Numerous alleged offenders, including clergy, were arrested under California's former law allowing for retroactive criminal prosecutions for child sexual abuse offenses. The vast majority of these alleged offenders were released when the United States Supreme Court issued its decision in ***Stogner v. California***, 539 U.S. 607 (2003).

The public's interest in information regarding the alleged perpetrators at issue who admitted the abuse or admitted to dangerous propensities towards children may be even stronger because these alleged perpetrators are not known to the communities and often have unlimited access to children. The state has a compelling interest in making the information known to the community.

Hence, the perpetrators at issue in this case – those convicted of abuse, those that admitted to abuse, and those that admitted to dangerous propensities to harm children – should be accorded a reduced expectation of privacy.

Step three of the ***Pioneer*** analysis looks at whether the privacy invasion is serious. Here, this Court acknowledges that the privacy invasion is serious. This is not simply a matter of releasing the addresses of consumers (as was the case in ***Pioneer***) but rather, releasing legally protected files.

Step four requires the court to engage in a balancing test measuring the privacy rights against competing interests such as the State's obligation to protect its children from abuse.

The State's compelling interest in protecting children from harm is present regardless of the stage of litigation. The State's interest in the prevention of child abuse does not change. Many cases at both the federal and state levels have ordered the re-opening of sealed settlement agreements in recognition of the strong common law presumption favoring access to public records, which presumption may be overcome only by a showing of an "overriding" interest in closure. See, e.g. ***Estates of***

Zimmer v. Mewis, Wis.2d 122, 442 N.W.2d 578, 583 (Wis. Ct. App. 1989); ***Zuckerman v. Piper Pools, Inc.***, 256 N.J. Super. 622, 607 A.2d 1027 (1992).

Accordingly, can the fact that the actions have settled derail dissemination of the documents simply because the parties have availed themselves of California's public policy favoring settlement?

Can the act of settlement turn off the scrutiny switch and exalt rights of privacy over the State's parens partiae obligation to its minor children?

The answer to each of these questions has to be **no.**

To answer any of the above questions in the affirmative would be to punish the alleged victims for seeking an early resolution of the cases and needlessly prolong matters through trial. Additionally, it would provide the alleged perpetrators and enablers with a safe haven for settlement. The defendant's conduct would be forever hidden and safe from scrutiny.

Privacy interests are not absolute and must be balanced against other important interests. Intrusion into constitutionally protected areas of privacy is appropriate where there is a balancing of the privacy right with a state interest and a finding that the state interest is compelling and outweighs the individual's privacy right. ***Palay v. Sup. Crt.*** (1993) 18 Cal. App. 4th 919, 933.

In this regard, courts have also recognized an interest in making documents public which show cover ups and concealment of the truth, so

as to provide the transparency necessary to ensure a cessation of this type of conduct in the future.

In ***Kalinaiskas v. Wong***, 151 F.R.D. 363, 365-66 (D. Nev. 1993), the Federal District Court granted the motion of the Plaintiff to depose a former employee who had settled a similar sex discrimination claim against the employer under a Protective Order and Confidentiality Order. The sealed Stipulation for Protective Order and for Confidentiality Order stated that the employee would not "discuss any aspect of the plaintiff's employment at Caesars other than to state the dates of her employment and her job title." ***Wong***, 151 F.R.D. at 365.

When noting the public interest in protecting the finality of suits and the secrecy of settlements desired by the parties, the court also was concerned that preventing the deposition of the former employee would "condone the practice of 'buying the silence of a witness with a settlement agreement', and that the secrecy agreement not only protected Caesar's interests, it could serve to conceal "legitimate areas of public concern. This concern grows more pressing as additional individuals are harmed by identical or similar action." *Id* at 365-66.

A second concern to the court was that the deposition of the former employee was likely to lead to relevant evidence, and that preventing her deposition "or the discovery of documents created in her case, could lead to wasteful efforts to generate discovery already in existence." *Id.* at 366. The court held that the plaintiff in ***Wong*** would be permitted to depose the former employee, but would not be allowed to inquire as to the substantive terms of the settlement. *Id.* at 367.

There can be no doubt, that in the matters presently before this Court, there exists legitimate public concern regarding how church officials have allegedly covered up and concealed the sexual abuse of children for years. This concern, as in ***Wong***, grows more pressing as additional individuals may be harmed by identical or similar action. This public concern clearly weighs in favor of allowing these documents to be made public.

Both the Friars and Milwaukee settlement agreements contain provisions dictating that the court is to retain jurisdiction over the actions pursuant CCP § 664.6 to oversee compliance with the settlement agreements. Plaintiffs urge that fundamental terms of those settlement agreements were the disclosure of the personnel files of priests accused of sexually molesting children. Thus, the settlement agreements and dismissals of the actions do not end this Court's inquiry. Courts are permitted to make findings of facts under a Section 664.6 reservation. See **Hernandez v. Board of Education** (2004) 126 Cal. App. 4th 1161, 1176; ***Malouf Bros. v. Dixon*** (1991) 230 Cal. App. 3d 280.

Conclusion

There is no dispute, based on the record before it, and in accord with the balancing test required by law that a compelling state interest mandates a production of the documents in question and that discovery of these documents would have been ordered. The rights of privacy must give way to the State's interest in protecting its children from sexual abuse. The Friars, Franklyn Becker and counsel for the individual priests cannot refute the fact that if the instant actions were still ongoing the materials

subject to the dispute would have been produced in discovery if the only objection was right of privacy.

For individual defense counsel, counsel for the Archdiocese of Milwaukee or for any Diocese or Archdiocese for that matter to argue that the right of privacy trumps a state's interest in protecting its children from sexual abuse must ring hollow and has no support of the law.

Accordingly, this Court hereby overrules all objections interposed on behalf of the priests listed or named above wherein rights of privacy have been asserted. This is the Order of the Court.

Dated: June 18, 2007

Peter D. Lichtman

Judge of the Los Angeles Superior Court