

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

JOHN DOE XX

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VS.

CIVIL ACTION NO. 11-651-JJB-CN

HOLY SEE (State of the Vatican City), et al

**PLAINTIFF’S RESPONSE TO JOINT MOTION TO QUASH NOTICE OF INTENTION
TO TAKE DEPOSITION BY WRITTEN QUESTIONS AND SUBPOENA FOR
RECORDS FOR UNITED STATES CATHOLIC CONFERENCE OF BISHOPS**

JOHN DOE XX, Plaintiff in the above-styled and numbered cause, files this his response to the Joint Motion to Quash Notice of Intention to Take Deposition by Written Questions and Subpoena for Records for United States Catholic Conference of Bishops filed by Defendants and would respectfully show the Court as follows:

INTRODUCTION

This suit stems from the violence and torture suffered by Plaintiff John Doe XX as a child victim of clergy sex crimes committed by former Catholic priest Christopher Springer. In his complaint, Plaintiff asserts liability *in solido* against all Defendants under the legal theory of conspiracy. Plaintiff alleges that he has suffered damages as a proximate result of “[n]umerous overt acts ... committed in furtherance of this civil conspiracy including overt acts prior to and after September, 2010.” Plaintiff’s Original Complaint, ¶ 94. To establish the Defendants’ liability under conspiracy, Plaintiff alleges:

“...at least by the mid 1960's, the Catholic superiors general, bishops and archbishops of the United States, and The Provincial Superiors

of the Redemptorists New Orleans and The Bishops of The Diocese were well aware of the illegal sexual abuse of children by Catholic Clerics and Priests and of the state statutes requiring the reporting of sex crimes against children. These superiors general and bishops and archbishops and The Provincial Superiors of the Redemptorists New Orleans and The Bishops of The Diocese were also aware that Catholic Clerics and Priests gained access to these children as the direct result of their status and responsibilities as Clerics and Priests who, as spiritual advisors and role models, exercised tremendous power over these children and their families.”

Plaintiff’s Original Complaint, ¶ 56.

See also Plaintiff’s Original Complaint, ¶¶ 52 - 55. Regarding Defendants’ liability *in solido*,

Plaintiff further asserts:

“In Catholic Religious Orders and Dioceses and Archdioceses throughout the United States, to include The Redemptorists New Orleans and The Diocese of Baton Rouge, when cases of illegal rape and molestation and sexual abuse and exploitation of minors by Catholic Clerics and Priests have surfaced, these cases have been handled in such a uniform fashion as to demonstrate a common plan and scheme for concealing these crimes from the public, failing to report and thus avoiding criminal prosecution of cleric and priest perpetrators and the filing of civil claims by victims by covering them up. This common plan and scheme was in existence before Plaintiff John Doe XX was sexually abused and exploited and was followed to conceal the crimes against children by Springer and other Clerics and Priests in the Holy See, including the Clerics and Priests in The Redemptorists New Orleans and The Diocese of Baton Rouge. The members of this common plan and scheme included Holy See and its official representatives and agents and The Provincial Superiors and The Bishops and other official representatives and agents of The Redemptorists New Orleans and The Diocese of Baton Rouge and Springer, and others unknown to Plaintiff.”

Plaintiff’s Original Complaint, ¶ 58.

In addition, John Doe XX alleges:

“Defendant Holy See and the Religious Order Defendants failed to properly report the illegal sexual abuse of children by Springer as

required by law prior to 1972 and in 1972, 1981, 1984, 1985, 1994 and thereafter. Defendant Holy See and the Diocese Defendants failed to properly report the illegal sexual abuse of children by Springer as required by law in 1975, 1981 and 1984 and 1985 and thereafter. Specifically, “RAPE” under La. R.S. §14:41, “INDECENT BEHAVIOR WITH JUVENILES” under La. R.S. §14:81, “MOLESTATION OF A JUVENILE” under La. R.S. §14:81.2 and “SEXUAL BATTERY” under La. R.S. §14:43.1. Defendant Holy See and the Religious Order Defendants and the Diocese Defendants further failed to report the illegal sexual abuse of children by other priests as required by law in the 1960s and through the present time.”

Plaintiff’s Original Complaint, ¶ 51.

The files and records of the Defendant parties are necessarily the primary source of evidence to prove these allegations that refer to:

- a) what the Defendants and the Catholic Church as an institution knew about clergy sex crimes within its rank and file; and
- b) how the Defendants and the Catholic Church responded to clergy sex crimes as an institution.

Discovery request for documents have been served on both the Redemptorists Fathers and Roman Catholic Diocese of Baton Rouge. The Redemptorists Fathers have responded in part. The Roman Catholic Diocese of Baton Rouge, however, has not responded to-date.

A secondary source of evidence is the United States Conference of Catholic Bishops (“USCCB”), which is the official governing body for the 195 archdioceses/dioceses in the United States. See generally, <http://usccb.org/about/bishops-and-dioceses/> In 2002, the USCCB created a remedial committee and policies to confront the scandal and crisis caused by clergy sex crimes committed within the Catholic ranks. See <http://usccb.org/about/child-and-youth-protection/who->

[we-are.cfm](#) As the USCCB’s website indicates, the Secretariat on Child and Youth Protection prepares an annual report that describes in general the overall compliance of archdioceses/dioceses to the policies adopted by the USCCB in its “Charter for the Protection of Children and Young People”. *Id.* Beginning in 2002, the annual report is prepared from information collected either through an on-site audit of the archdiocese/diocese or compiled by the archdiocese/diocese and provided to the Secretariat on Child and Youth Protection. *See* “*Annual Report on the Implementation of the Charter for the Protection of Children and Young People - 2010*”, Preface by Archbishop Timothy M. Dolan, Letter from Ms. Teresa Kettlekamp, Letter from Mr. William A. Gavin, Letter from Fr. Thomas P. Gaunt, SJ, Appendix B: CARA Questionnaire for Dioceses and Eparchies, Appendix C: CARA Questionnaire for Religious Institutes at <http://usccb.org/issues-andaction/child-and-youth-protection/reports-and-research.cfm> While the USCCB is now collecting and reporting the data in real time (2002 to the present), the information from the archdioceses/dioceses is retrospective, dating back to 1954 or earlier to the present time. *Id.* at Appendix B: CARA Questionnaire for Dioceses and Eparchies, Appendix C: CARA Questionnaire for Religious Institutes.

To discover the raw data and information USCCB received from Defendant The Roman Catholic Church of the Diocese of Baton Rouge for the “*Annual Report on the Implementation of the Charter for the Protection of Children and Young People*” - 2002 to present, Plaintiff served a subpoena on the USCCB.¹ All institutional Defendants contend the subpoena should be quashed.

¹ It is not known whether the Redemptorists Fathers, a Catholic Religious Order, participated in the *Annual Report*. The Conference of Major Superiors of Men is the governing body for Catholic religious institutes and orders. The members of the Conference of Major Superiors of Men were invited to complete a survey for their congregations, provinces or monasteries for the *2010 Annual Report*.

However, considering all of the objective and subjective requirements under Rule 45 and the discovery boundaries under Rule 26, the Plaintiff's subpoena is valid and the Defendants motion to quash must be denied.

ARGUMENT AND AUTHORITY

A. The Subpoena Complies With All Objective Requirements Under Rule 45.

In all respects, the subpoena served on the U.S. Conference of Catholic Bishops, a nonparty, complies with Rule 45. Under Rule 45(a)(2)(B), only the district in which the deposition is to be taken has the power to issue a subpoena. FED. R. CIV. P. 45(a)(2)(B). The USCCB resides in Washington, D.C. and the records sought vis a vis a deposition by written questions and its custodian for these records are also located in Washington, D.C. As Rule 45 requires, the deposition by written questions of the USCCB are to take place in Washington, DC under a subpoena issued by the District Court for the District of Columbia. See "Subpoena in a Civil Case To: Custodian of Records for: U.S. Conference of Catholic Bishops", "Affidavit" regarding service and witness fee attached hereto as Exhibit "A".

B. The Subpoena Meets All Subjective Requirements Under Rule 45.

The Defendants do not contend that the USCCB will be subjected to an undue burden if the court does not quash the subpoena. FED. R. CIV. P. 45(c)(3)(A)(iv). In fact, according to the USCCB's website, the stated purpose for requesting the data and information from the Defendant Diocese is to prepare a "public report" on the progress made in response to the crises of clergy sex crimes; an additional purpose is for the data and information and report to serve as a tool for the USCCB to be an effective resource to the Diocese in implementing and maintaining the agreed standards and responsibilities in addressing clergy sex crimes. See

<http://usccb.org/about/child-and-youth-protection/who-we-are.cfm>

Clearly, the USCCB does not view the data and information collected from the Diocese as an “undue burden”. Certainly, the Defendants can not argue that the USCCB would be subjected to an “undue burden” by responding to the subpoena. This Court, likewise, should not find the subpoena subjects the USCCB to any “undue burden”.

C. The Subpoena Meets All Subjective Requirements Under Rule 26.

Rule 26 obligates courts to limit discovery where “the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.” FED. R. CIV. P. 26(b)(2)(C)(iii). However, “[f]or good cause, the court may order discovery of any matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” FED. R. CIV. P. 26(b)(1). See also In re: Roman Catholic Archbishop of Portland in Oregon, and Successors, a Corporation Sole, dba the Archdiocese of Portland in Oregon, 335 B.R. 815, (BDtOr. 2005) (ruling “[t]he burden is on the party objecting to discovery to show that discovery should not be allowed”). The Advisory Committee Notes to Rule 26 indicate that “[t]he purpose of discovery is to allow a broad search for facts, the names of witnesses, or any other matters which may aid a party in the preparation or presentation of his case.” Adv. Com. Notes, 1946 Amendment, FED. R. CIV. P. 26. Furthermore, the Advisory Committee Notes approvingly cite language from a case stating that “the Rules . . . permit ‘fishing for evidence as they should.’” Id. Clearly under the long established rule in the Fifth Circuit, a judge’s discovery rulings must “adhere to the liberal spirit of the Rules.” **Burns v. Thiokol Chem. Corp.**, 483 F.2d 300, 305 (5th Cir.

1973).

Defendants argue that the data and information requested under the subpoena is not relevant to Plaintiff's case and is therefore, outside of the scope of discovery.² Specifically, Defendants' Rule 26 argument refers to the timeframe of the Plaintiff's allegations and the date the Diocese submitted the data and information to the USCCB. However, as discussed above, the data and information is collected in real time, i.e., as it becomes available to the Diocese (2002 to present); it is understood and expected, nevertheless that the data and information will refer to earlier time periods, i.e., before the scandal and crises in 2002 (1954 and earlier to present).³ As the allegations cited above indicate, Defendants' acts and omissions and knowledge of clergy sex crimes that is the subject of Plaintiff's complaint parallel the earlier time periods of the data and information collected by the USCCB, i.e., pre-scandal and crises in 2002. This data and information can establish or lead to information that establishes what the Diocese knew about clergy sex crimes and what was the Diocese's response, pre-scandal and crises in 2002. In 2002, the USCCB responded to the scandal and crises and agreed to adopt a standard policy and procedures for all archdioceses/dioceses to follow in addressing clergy sex crimes. Presumably, from 2002 to the present, all archdioceses/dioceses have complied with the established policy and procedures. But, the timeframe in question regarding Catholic institutions' policy and procedures and response to clergy sex crimes is pre-scandal and crises in 2002, which is

² Defendants also argue that the data and information submitted by the Diocese to the USCCB has been obtained from the Diocese. However, as the attached correspondence to the Diocese's counsel indicates, the Diocese has never responded to Plaintiff's request for production. See Exhibit B attached hereto.

³ The Roman Catholic Diocese of Baton Rouge was not created until 1961. See Diocesan History at http://www.diobr.org/index.php?option=com_content&view=article&id=17&Itemid=23

the identical timeframe of Plaintiff's allegations and also, for the most part, the timeframe of data and information collected by the USCCB. There is no question that these documents are relevant to Plaintiff's case.

CONCLUSION

This Court must order the USCCB to respond to the subpoena.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by electronic transmission and U.S. Mail on the following counsel pursuant to the Federal Rules of Civil Procedure on this the 21st day of March, 2012.

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