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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS
CASE NO. 2013-CP-18-00013

THE PROTESTANT EPISCOPAL)
CHURCH IN THE DIOCESE OF)
SOUTH CAROLINA, THE TRUSTEES)
OF THE PROTESTANT EPISCOPAL)
CHURCH IN SOUTH CAROLINA,)
A SOUTH CAROLINA CORPORATE)
BODY, ET AL.,)

PLAINTIFFS,)

vs.)

THE EPISCOPAL CHURCH, (A/K/A)
THE PROTESTANT EPISCOPAL)
CHURCH IN THE UNITED STATES)
OF AMERICA); THE EPISCOPAL)
CHURCH IN SOUTH CAROLINA,)

DEFENDANTS.)

TRANSCRIPT OF RECORD

JULY 15, 2014
ST. GEORGE, SC

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

Ruth L. Mott, RPR, CRR
Official Court Reporter

I N D E X

	DIRECT	CROSS	REDIRECT	RECROSS
1				
2				
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6	MR. TISDALE		1131	
7	BOYD LEGGETT BAKER			
8	MR. PLATTE	1142		
9	MR. TISDALE		1147	
10	MR. BEERS		1168	
11	MARTIN RAY SCARBROUGH			
12	MR. SOWINSKI	1177		
13	MR. SMITH		1182	
14	STEWART HUEY, JR.			
15	MR. PLATTE	1189		
16	MR. BEERS		1192	
17	MR. TISDALE		1196	
18	MYRON HARRINGTON, JR.			
19	MR. PHILLIPS	1200		
20	JOHN ZIMMERMAN, JR.			
21	MR. PLATTE	1223		
22	MR. BEERS		1227	
23	MR. TISDALE		1230	
24	FOR THE DEFENSE:			
25	ARMAND GEORGES DERFNER			
26	MR. TISDALE	1241		
27	MR. RUNYAN		1267	
28	WARREN WILDER MERSEREAU			
29	MR. TISDALE	1270		
30	MARSHALL DOW SANDERSON			
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32	MR. RUNYAN		1317	
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THE COURT'S EXHIBITS

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1 THE COURT: Anything from the plaintiff before we begin
2 this morning?

3 MR. RUNYAN: Nothing, Your Honor.

4 THE COURT: Anything from the defense?

5 MR. TISDALE: No, Your Honor.

6 THE COURT: Now, we need a witness because you need to
7 do your cross-examination. Did you have a chance to look at
8 the documents?

9 MR. TISDALE: Your Honor, the situation with the
10 documents is a lot of these documents are simply illegible,
11 as we discussed yesterday. And, you know, we just are not
12 going to object to them any further. They're for whatever
13 they're worth, they can't be read, and he's going to try to
14 supplement it, I think, with ones that are more readable.

15 MR. SLOAN: I spoke to your team last night. They
16 agreed that the certified copies from the RMC office,
17 particularly the prerevolutionary stuff, it's as good as it's
18 going to get.

19 MR. TISDALE: That's fine. Whatever it is, it is.

20 MR. SLOAN: They're coming in without objection, is my
21 understanding.

22 MR. TISDALE: That is correct.

23 MR. SLOAN: Okay. Christ Church 1A, 1 through 23, which
24 are the certified copies.

25 MR. TISDALE: And we have no objections to that.

1 MR. SLOAN: Thank you, Mr. Tisdale.

2 (Plaintiff's Exhibits CC-1 through CC-38 admitted into
3 evidence.)

4 THE COURT: In other words, they are what they are.

5 MR. TISDALE: They are what they are. We can't read
6 them; doubt if you can.

7 THE COURT: I got it.

8 MR. TISDALE: I mean, I don't want to presume that.

9 MR. SLOAN: I'd ask Mr. Wilson to come back to the
10 stand, Your Honor.

11 THE WITNESS: Yes, yes. And I want to thank you all for
12 doing that too because I know you were tired last evening, so
13 I appreciate it.

14 MR. TISDALE: They're just old documents.

15 THE COURT: Yes.

16 All right. Good morning.

17 THE WITNESS: Good morning, ma'am.

18 THE COURT: Your witness, Mr. Tisdale.

19 MR. TISDALE: Thank you very much, Your Honor.

20 KENNETH NIXON WILSON,

21 being previously duly sworn, testified as follows:

22 CROSS-EXAMINATION BY MR. TISDALE:

23 Q. Mr. Wilson, just to get us back to where we were, you
24 testified you are a representative of Christ Church Mount
25 Pleasant; correct?

1 A. Yes, sir.

2 Q. Just remind me, what is your current leadership role, if
3 any, in that parish?

4 A. I'm currently the senior warden.

5 Q. And how long have you been in that position?

6 A. I've been the senior warden since January this year.

7 Q. 2014?

8 A. Yes, sir.

9 Q. How long have you been a communicant at Christ Church
10 Mount Pleasant?

11 A. Since approximately 2008.

12 Q. All right. Now, since 2008 up until, we'll say, the
13 fall of 2012 have you looked in generally to the history of
14 Christ Church Mount Pleasant that you testified some about
15 yesterday?

16 A. Yes, sir.

17 Q. And you are aware, are you not, that Christ Church has
18 participated in the activities of the diocese? And we're
19 talking about period prior to 2012 forward.

20 A. Yes, sir.

21 Q. Have you ever served on any diocesan committee or board?

22 A. No, sir.

23 Q. Has Christ Church, to your knowledge, based upon your
24 review of the records and so forth, participated in every
25 diocesan convention that the Diocese of South Carolina has

1 held throughout its history?

2 A. In the plaintiff diocese, yes, sir.

3 Q. I'm talking about the one prior to 2012, the Diocese of
4 South Carolina as it existed prior to 2012.

5 A. Prior to 2012? Yes, sir.

6 Q. And you have participated in those conventions, haven't
7 you?

8 A. The parish has, yes, sir.

9 Q. Parish has. Have you ever been a delegate to the
10 convention of the diocese?

11 A. Yes, sir.

12 Q. And as I've asked other witnesses the same thing, you
13 are aware, are you not, that the Diocese of South Carolina
14 and every other diocese, for that matter, in the church
15 elects deputies to attend the general convention of the
16 Episcopal Church? Isn't that right?

17 A. I can't speak for every diocese, but I believe that's
18 true in ours, yes, sir.

19 Q. Well, stick to yours then and this Diocese, South
20 Carolina.

21 A. Yes, sir, I believe that's true.

22 Q. And you're aware, of course, that the general convention
23 of the Episcopal Church is a meeting of all the dioceses in
24 the church that is held every three years, isn't it?

25 A. I'm generally aware of what's publicly available about

1 that. I have not participated, I'm not an expert on it.

2 Q. I understand that. And you are aware, are you not, from
3 what you're publicly aware of and matters in the public press
4 and so forth and church news, that the general convention of
5 the Episcopal Church conducts legislative activities, does it
6 not, on behalf of the church?

7 A. I'm vaguely aware of that. I'm no expert on how that
8 works.

9 Q. And you are aware, of course, as we talked about with
10 Father Jeffords I believe yesterday, there is a constitution
11 and canons of the Episcopal Church, the national church, just
12 as it is of the diocese; isn't that correct?

13 A. I believe that is true.

14 Q. Yes, thank you. Now, just real generally, what sort of
15 property does Christ Church own? I know it owns the place
16 where the church building is; right?

17 A. Yes, sir.

18 Q. What else does it own?

19 A. Approximately 27 acres on Highway 17 at Long Point Road.

20 Q. That's roughly surrounding in the neighborhood of the --

21 A. Contiguous, yes, sir.

22 Q. Contiguous. And, of course, there's a cemetery there
23 too, isn't it?

24 A. Yes, sir.

25 Q. Is that next to the church, the historic church?

1 A. Yes, sir.

2 Q. Mr. Wilson, is any of the property of Christ Church
3 mortgaged because of a secured debt on it?

4 A. Yes, sir, we have a mortgage.

5 Q. And do you know what that mortgage covers, what property
6 it covers?

7 A. Not precisely. The mortgage was taken out when we built
8 several buildings and I'm not sure if it specifically covered
9 one building or the collection.

10 Q. Roughly what is the balance due on that mortgage right
11 now?

12 A. Roughly \$1.5 million.

13 Q. All right. Does the church have any other indebtedness
14 of that sort?

15 A. Not to my knowledge.

16 Q. And are you -- you said you're senior warden now?

17 A. Yes, sir.

18 Q. Are you aware that whenever a parish in the diocese
19 borrows money and to secure it encumbers property, does it
20 not need the approval of the standing committee of the
21 diocese in order to achieve that?

22 A. I was not aware of that.

23 Q. Not aware of it.

24 Were you involved in the financing that led to the
25 million and a half debt that's on it now?

1 A. I was not directly involved in that, no, sir.

2 Q. But whatever the constitution and canons require, you
3 will agree that it requires if there's a provision on that?

4 A. I don't know what the requirement is.

5 Q. Okay. Does Christ Church have an endowment?

6 A. We have several restricted funds on deposit, yes.

7 Q. And like as an example, I don't want you to go through
8 the whole thing but as an example, how are those funds
9 restricted? Just give us an example so we'll generally know.

10 A. There's a significant deposit, which I guess we call an
11 endowment, for the cemetery and there are several smaller
12 funds that communicants have given for specific purposes,
13 such as for the children's building.

14 Q. And just without exact but roughly what is the total
15 amount of the endowments that the parish has?

16 A. Something less than a million dollars.

17 Q. Prior to fall of 2012, did Christ Church handle pensions
18 for its clergy through the church, Episcopal Church, pension
19 fund?

20 A. Prior to that time the church made contributions to the
21 pension fund on behalf of the clergy, yes.

22 Q. Who is the rector of the parish right now?

23 A. Reverend Ted Duvall.

24 Q. Are there any other clergy people on the staff?

25 A. Yes. There is an associate.

1 Q. Who is that?

2 A. Reverend Joe Ananias.

3 Q. Joe Ananias?

4 A. Ananias, yes, sir.

5 Q. Are you able to testify, based upon your knowledge and
6 experience, as to whether or not Christ Church has used the
7 Church Insurance Corporation of the Episcopal Church to
8 insure its property both against liability and for casualty?

9 A. Prior to?

10 Q. 2012.

11 A. Approximately 2012? Yes, sir.

12 Q. Okay. Does Christ Church use the Book of Common Prayer
13 for its worship right now?

14 A. Yes, sir. We use that among other things.

15 Q. Okay. And is the Book of Common Prayer of the Episcopal
16 Church in the pews of the parish?

17 A. Yes, sir.

18 Q. Do you know anything about how -- I know it was a long
19 time ago because we can't read the old documents, but do you
20 know how -- what the origin of the property was that created
21 the parish? Was it given? Was it bought? How did the
22 church acquire it, if you know?

23 A. Yes, sir. I believe that's in our stipulations.

24 Q. Can you just tell us really quickly what it was?

25 A. There was a grant from the British government in 1706.

1 Q. So it was a governmental grant, as far as you know, by
2 which the church acquired the property?

3 A. I'm not sure of the legalese of that statement, but yes,
4 generally.

5 Q. Okay. Let's talk about just real briefly the signs on
6 the parish. What is the official name of the parish right
7 now?

8 A. I'll read it from the trial exhibits if I might.

9 Q. That would be good.

10 A. The Vestry and Church Wardens of the Episcopal Church of
11 the Parish of Christ Church.

12 Q. All right. Now, on your signs to indicate, you know,
13 signage, what do your signs say outside the church?

14 A. Christ Church.

15 Q. Nothing more?

16 A. No, sir.

17 Q. How long has that been the case that it's just said
18 Christ Church, as far as you know?

19 A. Since approximately 2008.

20 Q. What was it before that?

21 A. I'm not entirely sure.

22 Q. Because you weren't there?

23 A. Yes.

24 Q. Okay. Does the parish have any indicia of connection to
25 the Episcopal Church inside the building, such as an

1 Episcopal Church flag?

2 A. No, sir.

3 Q. Did you ever?

4 A. Not that I'm aware of.

5 Q. All right. I just wanted to ask you real briefly about
6 Exhibit CC 23, which is a quitclaim deed. Are you generally
7 familiar with this document, CC 23?

8 A. Yes, sir.

9 Q. And what is it?

10 A. It is a quitclaim deed.

11 Q. All right. Now, I'm looking for a date on this
12 quitclaim deed but I'm having trouble finding it. I only see
13 the date of the probate at various times. Do you see a date
14 that this deed is dated by any chance? I can't find it.

15 A. The only date I see is on the second page. It says 4
16 October 2011.

17 Q. That's when the notary public signed the probate clause,
18 didn't it?

19 A. I'll take your word for that.

20 Q. Yes. And then on the next page two more, which are
21 different dates. Excuse me. No. It's still October 4th,
22 2011; right?

23 A. Yes, sir.

24 Q. This is the notary public. So let's just go with that
25 date on the deed, although I don't see a date on the deed

1 itself but only on the probate. So we really don't know
2 whether the deed has a date, do we?

3 A. I don't know how to answer that.

4 Q. Okay. When did you become aware of this quitclaim deed?

5 A. I don't remember specifically, but I would say sometime
6 contemporaneous with the time we received it.

7 Q. Did the church, Christ Church, request that this deed be
8 issued to it?

9 A. Not that I'm aware of.

10 Q. And what did you do with the deed when you got it?

11 A. It appears that it was filed.

12 Q. Do you know anything about it?

13 A. I don't understand.

14 Q. You said it appears it was filed. Do you know anything
15 else about what was done with it by the parish?

16 A. No, sir.

17 Q. Did the parish ask -- did you know it was coming?

18 A. Personally, I'm not sure that I did.

19 Q. Did the parish know it was coming?

20 A. I suppose our chancellor may have known, he received it.
21 I'm not sure otherwise.

22 Q. And that would be Mr. Sloan?

23 A. The chancellor is Mr. Guerard.

24 Q. Mr. Ted Guerard?

25 A. Yes, sir.

1 Q. All right. So did anyone ask why it was issued or do
2 you know?

3 A. I can't speak to what anyone did know, sir.

4 Q. You do not know?

5 A. I don't know.

6 Q. And do you know anything about what the deed conveyed to
7 the parish, if anything?

8 A. I believe the deed is what it is. It says that the
9 diocese makes no claim on our property.

10 Q. And this, you believe, was an acknowledgment of that,
11 that they were making no claim?

12 A. That is my understanding of what a quitclaim deed does,
13 yes, sir.

14 MR. TISDALE: Mr. Wilson, thank you very much. I don't
15 have any other questions right now.

16 THE WITNESS: You're welcome.

17 THE COURT: All right.

18 MS. KOSTEL: Nothing.

19 THE COURT: No questions.

20 Redirect?

21 MR. SLOAN: None, Your Honor.

22 THE COURT: Thank you, you may come down.

23 THE WITNESS: Thank you.

24 THE COURT: All right. Call your next witness.

25 (Plaintiff's Exhibits SJC-1 through SJC-20 premarked for

1 identification.)

2 BOYD LEGGETT BAKER,

3 being first duly sworn, testified as follows:

4 THE COURT: All right. If you'd state your full name
5 again for our record.

6 THE WITNESS: Boyd Leggett Baker.

7 THE COURT: Thank you.

8 Your witness, Mr. Platte.

9 MR. PLATTE: Andrew Platte on behalf of the Vestry and
10 Church Wardens of the Episcopal Church of the Parish of St.
11 John's, Charleston County.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION BY MR. PLATTE:

14 Q. Mr. Baker, how old are you?

15 A. 59.

16 Q. Are you employed?

17 A. Semi-retired, sometime employed.

18 Q. What do you do when you work?

19 A. A shipbuilder, repairer for 20 years and then a general
20 contractor for another 20 years about.

21 Q. Are you a member of a parish?

22 A. St. John's, Johns Island.

23 Q. And that's the short name for the longer one I just --

24 A. Yes. Our rector is Reverend Greg Snyder.

25 Q. Okay. And where is St. John's located?

1 A. We're on Maybank Highway just before you cross over to
2 Wadmalaw Island.

3 Q. How long have you been a member?

4 A. Since about 1976.

5 Q. What positions, leadership positions, have you held at
6 St. John's?

7 A. Just about anything you can think of. Probably over
8 that period of time I've probably been a senior warden
9 cumulatively maybe -- or been on the vestry cumulatively for
10 probably about 20 years.

11 Q. How long has St. John's been in existence?

12 A. 1734.

13 Q. Was that through an act by the Colonial Assembly?

14 A. Yes, that was through an act of the Colonial Assembly of
15 South Carolina.

16 Q. When was it incorporated?

17 A. It was incorporated in 1786.

18 Q. That was by the state legislature of South Carolina?

19 A. Yes, sir.

20 Q. About how large in terms of members is St. John's?

21 A. It's about 620 members.

22 Q. What is the parish's board of directors?

23 A. The board of directors would be the vestry, 12 members
24 at St. John's, and your CEO of the board would be your
25 rector.

1 Q. Does it have any other officers?

2 A. No.

3 Q. Does it have a senior -- you said senior and junior
4 warden?

5 A. Yes. Within that encompass you have a senior warden and
6 a junior warden, but they're members of that 12.

7 Q. So it's officers of the vestry?

8 A. Yes, sir, mm-hmm.

9 Q. Anybody else besides the junior and senior warden?

10 A. The rest are what would be general board members of any
11 board, any corporate board. And your rector is like your CEO
12 and he has a vote.

13 Q. Okay. How did you learn about the history of St.
14 John's?

15 A. I've read some stuff. I've had to do some discovery
16 because of this trial. And then, of course, I've known a lot
17 of people, older members of the congregation, for a lot of
18 years that will tell you about it.

19 Q. Okay. Are you familiar with the attached stipulations
20 labeled Exhibit 20, SJC-20?

21 A. I need one of those --

22 Q. I hand you what's been labeled as Exhibit SJC-20.

23 A. Okay.

24 Q. Have you seen that document before?

25 A. Let's see. Yes, I have seen this.

1 Q. And would that be your testimony today in lieu of those
2 written stipulations?

3 A. This is -- let's see. Let me look at this.

4 Yes.

5 Q. Okay. Talking about the property, does St. John's have
6 an actual deed for the church building?

7 A. No.

8 Q. And why is that?

9 A. I know it was created -- we were created by a
10 legislative act in 1734. I've never seen a deed.

11 Q. And the land was granted as part of that act?

12 A. As I understand it.

13 Q. What happened at the December 21st, 2010, vestry
14 meeting?

15 A. That would have been the meeting where we were -- our
16 regular scheduled meeting would have been December 14th, and
17 we were almost ready to make some modifications to our
18 constitutions and we weren't quite ready on the 14th, we were
19 almost happy with it, so we decided to wait one more week.
20 So we gave everybody notice and we provided notice again on
21 Sunday that we would meet on that day, and so that's when we
22 passed it to make those changes.

23 Q. And those proposed constitution and canons then went to
24 a parish vote?

25 A. Yes. They went to the annual meeting, which normally

1 would occur on the third Sunday of January of each year.

2 Q. Okay. Were all notices for all meetings given in
3 accordance to the bylaws?

4 A. Yes. We're very particular about that and that's always
5 done.

6 Q. Was there a quorum present at all meetings?

7 A. Yes, there was.

8 Q. And did all matters that were voted upon pass with the
9 required majority according to the constitution and canons?

10 A. Overwhelmingly, yes.

11 Q. Does St. John's have any relationship with defendants
12 TEC or defendant TECSC?

13 A. No, sir.

14 Q. Did St. John's send delegates to defendant TECSC's
15 convention?

16 A. No.

17 Q. Is St. John's a parish in the defendant TECSC?

18 A. No.

19 Q. Is defendant TECSC authorized to use St. John's name or
20 likeness?

21 A. No.

22 MR. PLATTE: Your Honor, at this time we move to admit
23 exhibits SJC-1 through 20 into evidence.

24 THE COURT: Any objection?

25 MS. ST. AMAND: No objection, but for two pages that we

1 can't read.

2 MR. TISDALE: Just two pages that are illegible.

3 THE COURT: Okay.

4 MR. TISDALE: No objection, Your Honor.

5 MS. KOSTEL: No objection.

6 THE COURT: Very well.

7 (Plaintiff's Exhibits SJC-1 through SJC-20 admitted into
8 evidence.)

9 MR. PLATTE: That's all the questions we have, Your
10 Honor.

11 THE COURT: Cross-examination. Mr. Tisdale, you're
12 going to go first?

13 MR. TISDALE: I am. Thank you, Your Honor.

14 CROSS-EXAMINATION BY MR. TISDALE:

15 Q. Mr. Baker, good morning.

16 A. Good morning.

17 Q. You've been involved in the conduct of the business of
18 the parish one way or another since 1976?

19 A. Yes, sir.

20 Q. And have you attended diocesan conventions prior to the
21 fall of 2012 on behalf of the parish?

22 A. Yes.

23 Q. How many of those have you gone to, roughly?

24 A. Two, I think.

25 Q. All right. Are you familiar with the fact that that

1 diocesan convention, the annual convention of the Diocese of
2 South Carolina, in turn elects deputies to attend the general
3 convention of the Episcopal Church?

4 A. No, sir.

5 Q. You're not aware of that?

6 A. No.

7 Q. Okay. You don't recall voting on such?

8 A. No.

9 Q. Now, Mr. Baker, are you familiar within your
10 recollection that sometime around 1994 -- that would have
11 been ten (sic) years ago -- the parish amended its bylaws and
12 charter?

13 A. Yes, sir.

14 Q. All right. And in that -- I don't have a copy of that
15 document to show you, unfortunately, but I want to ask you --
16 was not the purpose, one of the purposes, of that amendment
17 in 1994 to state that the parish was operating as a parish of
18 the Episcopal Church in accordance with the constitution and
19 canons of the Diocese of South Carolina and the Episcopal
20 Church in the United States of America?

21 A. I don't know that.

22 Q. You don't know that?

23 A. No, sir.

24 Q. You don't remember being involved in that amendment or
25 planning for that amendment?

1 A. I vaguely remember.

2 Q. All right. You do now vaguely remember?

3 A. Yes, sir.

4 Q. All right. Do you doubt that that's what the purpose of
5 that, one of the purposes of that, amendment was?

6 MR. PLATTE: Objection, Your Honor. I would ask that he
7 show him the document.

8 MR. TISDALE: I don't have it.

9 MR. PLATTE: If he's asking about specifics about
10 wording on a document that's 20 years old, I think that
11 showing him the document would be most appropriate.

12 MR. TISDALE: Your Honor, I don't have the document.
13 But I'm just asking him what he knows about it. If he
14 remembers, fine; if he doesn't, fine.

15 THE COURT: I understand, Mr. Tisdale. But our rules
16 are very clear that when someone's being questioned with
17 regards to a document and there is a request for the
18 document, the document must be provided to the witness.

19 MR. TISDALE: I understand that, Your Honor. If I had
20 it, I certainly would.

21 THE COURT: Has it not been provided to you?

22 MR. TISDALE: I don't believe that it has. We can't
23 find it anywhere.

24 MS. KOSTEL: What exhibit was it?

25 MR. TISDALE: 1994 amendment. We do have it?

1 THE COURT: Here comes the calvary.

2 MR. TISDALE: Let's see if we have it. It wasn't in the
3 exhibits. It was not in the exhibits.

4 THE COURT: You mean in the stipulated?

5 MR. TISDALE: Yes.

6 THE COURT: I understand.

7 MR. TISDALE: We can come back to that in a minute if we
8 can find it.

9 THE COURT: Give Ms. Kostel a moment to take a look
10 because she probably has it.

11 MR. TISDALE: If we have it, I'd like to put it on the
12 screen. Let's go to something else in the meantime.

13 THE COURT: Very well. Thank you.

14 Q. Mr. Baker, in 2012 did the parish create a land trust?

15 A. I don't understand what exactly you mean. Explain that
16 to me. You mean did we create a trust?

17 Q. Well, I asked you in 2012, based on your knowledge of
18 the parish and your leadership position, did the parish
19 create what I asked to be, if you knew, was a land trust?

20 A. The only -- my problem with answering you is I'm not
21 familiar with the term "land trust". We created a trust at
22 sometime at St. John's, but it was never referred to as a
23 land trust to my knowledge.

24 Q. Let's use what you recall then and say that you created
25 a trust. When was that trust created?

1 A. I don't remember exactly, because it took us quite a
2 while to come to an agreement on that thing. So we did
3 create a trust and we put our property at St. John's in that
4 trust.

5 Q. All right. So do you think that would have been around
6 2012?

7 A. I don't know. That would be a guess. I'm not real good
8 with dates, but that would be a guess. So you're probably
9 not too far.

10 Q. So we're in agreement then that although you don't
11 recall it being called a land trust, a trust was created by
12 St. John's and St. John's put all this property, real estate,
13 in that trust?

14 A. Correct.

15 Q. Okay. Now, what was the purpose of that, doing that?

16 A. We had done an overview of our insurance, our property
17 insurance, which at the time was the Episcopal Church
18 insurance. We found out that an exclusion had been put in
19 there that basically stripped, as we understood it, all our
20 protection under our board of directors, our ability to
21 protect ourselves, and so we said, okay, let's figure out how
22 to create something here that will help us, and we decided to
23 create a trust.

24 Q. That would help you do what?

25 A. Protect our property from lawsuits from anywhere.

1 Q. Okay. Protect your property from lawsuits?

2 A. Yes, sir.

3 Q. Okay.

4 A. Be it anywhere.

5 MR. TISDALE: Excuse me a minute, Your Honor, I want to
6 try to get a document up for him to look at.

7 Q. We're going to try to put on the screen some of your
8 vestry minutes. And it's vestry minutes from January of
9 2012.

10 Were you present at this meeting?

11 A. Let's see. Back up.

12 Q. Don't see your name there.

13 A. I don't see it. I'm looking for it but I don't see it.

14 Q. You would have gotten copies of the minutes, wouldn't
15 you?

16 A. Okay.

17 Q. Wouldn't you have?

18 A. Oh, yes. No, I wouldn't necessarily have copies of the
19 minutes, but I would have known of the meeting.

20 Q. You would have known about the meeting?

21 A. We meet every second Tuesday of the month.

22 Q. Well, let's look at these minutes a minute because I
23 want to see if there's anything in there. Here we go, right
24 there. Do you see where it says "Old Business"?

25 A. Yes, mm-hmm.

1 Q. And what's right under "Old Business"?

2 MR. PLATTE: Your Honor, I object to this line of
3 questioning. He wasn't listed as present at this meeting, he
4 wasn't listed as not present. I believe the document speaks
5 for itself if it's entered in, but right now it's an exhibit
6 where -- it's not an exhibit and he wasn't present and it
7 would be inappropriate to continue the line of questioning.

8 THE COURT: Okay. If he wasn't there and doesn't know
9 anything about it he can testify to that.

10 Very well, you may proceed.

11 MR. TISDALE: Thank you. Excuse me just a minute, Your
12 Honor. I'm trying to save time.

13 Q. Let's look at the next month's meeting, see if you see
14 your name on that just to see if you were present.

15 A. Yes, I was, yes.

16 Q. You were?

17 A. Yes.

18 Q. February 7, 2012. Let's come down, see if we can find
19 anything about this trust. Here we go. Do you see under
20 "Old Business" --

21 A. Yes.

22 Q. -- where it says "Land Assets Trust"?

23 A. Yes.

24 THE COURT: You have to wait until Mr. Tisdale finishes
25 his questions before you respond. Mr. Tisdale has to wait

1 for you to finish your response before he asks you another
2 question. Please do not answer with an uh-huh or an unh-unh
3 because that means that Ms. Mott has to interpret your
4 answer, and I don't want her interpreting anything. I want
5 your answers to be clear.

6 THE WITNESS: Okay.

7 THE COURT: Give us a yes or no or I don't know.

8 THE WITNESS: I understand.

9 THE COURT: Thank you so much.

10 Q. Go back up to the heading on this trust, if you will,
11 Ms. Kostel. Okay. Let's talk about this a minute, Mr.
12 Davis -- I mean Mr. Baker; right?

13 A. Correct, yes.

14 Q. Let's read about this land situation, whatever it's
15 called. Do you see where it says in January a trust
16 subcommittee, and it names the committee, and that's where
17 Mr. Davis is, right there, Charlie Davis?

18 A. Yes.

19 Q. It says: Tom Gopsill distributed a list of an estimate
20 of the net assets of St. John's.

21 Are you following me?

22 A. Yes.

23 Q. Tom stated that attorney Jim Hardin -- who is Mr. Jim
24 Hardin, do you know?

25 A. He is a trust attorney who deals strictly with trusts.

1 His office is up in Charlotte.

2 Q. And was he a lawyer retained by the parish to advise on
3 land matters?

4 A. Yes, sir. Well, to make this trust.

5 Q. To make the trust?

6 A. Yes.

7 Q. All right. And it says: Tom stated that attorney Jim
8 Hardin suggested that if St. John's plans to do a land/assets
9 trust, they should do it, quote, sooner rather than later,
10 period.

11 A. Yes.

12 Q. Tom said: A trust would be filed with the Secretary of
13 State and should be set up with three to five trustees.
14 There will need to be two sets of books, one for the church,
15 one for the trust. The trust will take six to eight weeks
16 minimum to set up and will cost approximately 20 to 30
17 thousand dollars to set up.

18 Did that happen?

19 A. Yes, sir. All that was -- and that's correct, and we
20 did set up a trust.

21 Q. Let's go down just a little bit more. I'm looking for
22 one particular thing I wanted to ask you about. Trying to
23 save time, not have to read the whole thing.

24 Mr. Baker, I want to skip down a little bit. I'm going
25 down to a place where it says: Mr. Hardin would do the work

1 on the trust at \$200 an hour.

2 A. I see that.

3 Q. Then it says this -- this is what I want to read and get
4 you to comment on -- He also commented that he does not want
5 a three-person trust and prefers a five-person trust. Do you
6 see that?

7 A. Yes.

8 Q. Ford Walpole does not feel he can vote to put the assets
9 of St. John's in the hands of the trustees. Steve
10 Brantley -- was Mr. Brantley on the vestry?

11 A. Yes, sir.

12 Q. -- reminded vestry members that the lawyer said the
13 trust is another brick in the wall, hyphen, there is no
14 guarantee of success, but it does add another layer of
15 protection. Boyd Baker made a motion to continue to move
16 forward with developing the trust. And then it says the
17 trust was approved; is that correct?

18 A. We --

19 Q. Look at the last line.

20 A. I made a motion to -- can you move up?

21 Yes, it was approved. The motion was approved 9 to 2.

22 Q. 9 to 2. Did you vote for it?

23 A. Yes, sir.

24 Q. All right. Now, what were you protecting the property
25 from?

1 A. Like I said, we had changes in our insurance program
2 with the church insurance that made us nervous and when we
3 talked to Mr. Hardin, he said this was a good way to protect
4 ourselves.

5 Q. Protect yourself from what?

6 A. Lawsuits that could come from anywhere, sir.

7 Q. Were you expecting any?

8 A. Well, we had watched the trial, the All Saints, you
9 know. So we watched that. And so we're like anybody, we
10 read the newspapers and we knew we had lost our protection in
11 our insurance program. So that's all we knew.

12 Q. Well, let me ask you this: In All Saints, are you
13 familiar with that case?

14 A. A little.

15 Q. And that's a case where -- was the Diocese of South
16 Carolina suing All Saints?

17 A. As I understood it, the national church was suing All
18 Saints.

19 Q. Did you have any fear that the national church might sue
20 St. John's?

21 A. I was more interested and more concerned about just
22 having no protection at all from anybody. I mean, they would
23 certainly be a possibility, but as we understood it, as it
24 was explained to us, anybody could sue us, so our directors
25 insurance was just almost nonexistent.

1 Q. Let me ask you this directly, Mr. Baker: Was there any
2 concern that the national church was going to sue St. John's?

3 A. There could have been.

4 Q. Could have been?

5 A. Mm-hmm.

6 Q. And wasn't this trust set up to put another brick in the
7 wall to protect you from a suit by the national church?

8 A. That could have been one part of it.

9 Q. Okay. And did you have any evidence that the national
10 church had any claim to sue St. John's about?

11 A. What we saw was we saw that Pawleys Island disagreed
12 with the national church on some issues and so they were
13 essentially sued because they disagreed. And we don't
14 disagree with -- we disagree -- we have some disagreements
15 with the national church also, so that would be, that
16 would...

17 Q. So isn't it a fact then that this trust, land trust, you
18 all spent 20 to 30 thousand dollars to set up to keep the
19 parish from being sued or protect the parish from being sued
20 by the national church?

21 A. From anybody.

22 Q. Including the national church?

23 A. From anybody.

24 MR. PLATTE: Objection, Your Honor; asked and answered.

25 THE COURT: It's cross-examination, I'll allow it. You

1 may proceed.

2 Q. Well, Mr. Baker, in fact, St. John's is suing the
3 national church in this very lawsuit we're in right now,
4 aren't they?

5 A. I suppose you could look at it that way.

6 Q. Well, that's what it says, isn't it, St. John's Parish
7 Episcopal Church versus the Episcopal Church?

8 A. I noticed that the document did have that on it.

9 Q. Does have that on it. All right. So this was to
10 prevent you from a suit by them, not them for a suit by you,
11 was it?

12 A. This was to protect us from anybody that would try to
13 sue us.

14 Q. Including the Episcopal Church?

15 THE COURT: Now it's asked and answered.

16 THE WITNESS: Including anybody, sir.

17 MR. PLATTE: Objection, Your Honor.

18 MR. TISDALE: Including the Episcopal Church --

19 THE COURT: Asked and answered. I got it. I got it. I
20 got it.

21 Q. All right. So has the trust been effective so far?

22 A. Well, it hasn't been tested. All right?

23 Q. All right.

24 A. We have it in place, but it has not been tested.

25 Q. It has not been tested?

1 A. No, sir.

2 Q. And you're pleased with the way its operated to hold the
3 land of the parish? I mean, has it been a satisfactory
4 arrangement?

5 A. Yes, sir.

6 Q. Okay. Well, thank you very much for going over that
7 with me. Now, has the parish used the facilities of the
8 Pension Fund of the Episcopal Church to take care of the
9 pensions of the clergy staff prior to the fall of 2012?

10 A. We do not now, but we have in the past.

11 Q. That's what I was asking, in the past.

12 A. Yes, sir.

13 Q. Before 2012?

14 A. Yes.

15 Q. And would the same be true of the Church Insurance
16 Corporation, have you all used it to get insurance coverage
17 for your property for casualty and liability and things like
18 that?

19 A. We don't now but we have in the past.

20 Q. Before 2012; correct?

21 A. Correct.

22 Q. Does St. John's use the Book of Common Prayer?

23 A. Yes.

24 Q. And of the Episcopal Church?

25 A. We just use the Book of Common Prayer, period.

1 Q. Well, it says Episcopal Church on the title page.

2 A. I don't know about that. But we Episcopal -- we use the
3 Book of Common Prayer.

4 Q. You might want to take a look next time you go to see
5 does it say the Episcopal Church on the bottom of the title
6 page. Okay? We won't call you back to check that, but...

7 Now, did St. John's prior to 2012 participate in all the
8 activities, committees and so forth, of the work of the
9 Diocese of South Carolina prior to 2012?

10 A. We to this day participate in the Diocese of South
11 Carolina led by Bishop Lawrence.

12 Q. I understand that. But I was asking you about before
13 2012.

14 A. Okay. Yes, we've been in this Diocese of South
15 Carolina, yes.

16 Q. From the beginning, haven't you?

17 A. Yes, sir.

18 Q. Okay. Finally I just want to ask you a couple questions
19 about the quitclaim deeds you all got. Are you familiar with
20 them?

21 A. Yes.

22 Q. The exhibits, if you want to look at them, SJ-5 and 6.

23 A. I don't have them in front of me, but I'm familiar with
24 the quitclaim deeds. I'm sure my name's on the documents
25 more than likely.

1 Q. Might be better if we talk about them that you have one
2 to look at.

3 A. Okay.

4 Q. It's 5 and 6, SJC-5 and 6.

5 A. Okay. I'm on No. 5 right now.

6 Q. Let's talk about it a minute first then. You said you
7 had familiarity with these deeds. Let me ask you as
8 background, what do you know -- when did you learn about the
9 issuance of this deed, No. 5?

10 A. I don't remember exactly. I know we got it. I know it
11 came to us and we had it, it was given to us.

12 Q. Yes. And what's the date of this deed? You can look at
13 the top of Page 2.

14 A. February 1st, 2010.

15 Q. And when did you learn that this deed had been received
16 by the parish?

17 A. I do not recall.

18 Q. Well, obviously --

19 A. I think I was a junior warden at the time, but I just
20 don't remember when.

21 Q. And how did you learn about it, if you remember?

22 A. I just know it came to us, I know we got it. I suppose
23 it came to us in the mail.

24 Q. Had the parish requested that it receive a deed?

25 A. No.

1 Q. And why was it sent to you, did you ever find that out?

2 Why was it issued?

3 A. It was not given a reason, no.

4 Q. No reason?

5 A. I could make you a -- I could dream up something but --

6 Q. No, I don't want you to dream up anything.

7 A. -- I was not given a reason.

8 Q. I don't want you to dream it up, and I can guarantee you

9 the Judge doesn't want you to dream it up.

10 THE COURT: Thank you for that. That's correct.

11 Q. You said your name might be on here somewhere.

12 A. I'm sure if my name's on almost any document you look

13 for, you'll find it somewhere probably.

14 Q. I don't want you to spend a lot of time, but I'm having

15 trouble finding yours on this.

16 A. I don't see it on this one, but I'm surprised it's not.

17 But I'm familiar with it.

18 Q. Mr. Baker, who did sign this deed on behalf of whoever

19 granted it?

20 A. I see the names that I can read. I can read Bishop Mark

21 Lawrence, I can read Jeffrey Miller, standing committee.

22 Q. And who did they sign for?

23 A. The Episcopal Diocese of South Carolina a/k/a Diocese of

24 South Carolina.

25 Q. And did that organization, a/k/a Diocese of South

1 Carolina, have any claim against St. John's in any way,
2 shape, or form?

3 A. Mark Lawrence is our bishop.

4 Q. I understand that.

5 A. I mean, that's how we're tied to the diocese of
6 Carolina.

7 Q. What were they conveying to you with this deed?

8 A. Oh, okay. I gotcha. They were saying they had no claim
9 to any of our property, as I understand it. I'm not
10 technically real good on these things, but I understand it.
11 That's the best of my understanding.

12 Q. Do you know of any claim they did have to give up?

13 A. No.

14 Q. Did there come a time, Mr. Baker, that you got another
15 deed? Look at No. 6.

16 A. Okay.

17 Q. SJ-6.

18 A. Okay. Right.

19 Q. Is that a quitclaim deed to St. John's, John's Island?

20 A. Yes.

21 Q. And I don't see a signature page on this deed. Maybe
22 you do.

23 A. I'm looking.

24 Q. Oh, I see. It's way back.

25 A. I think I see it now, yes.

1 Q. I see it now too. And who is that deed signed by?

2 A. The names I can read are Jim Lewis.

3 Q. Up above that.

4 A. Paul Fuener.

5 Q. Right. And who did he sign on behalf of?

6 A. The Protestant Episcopal Church in the Diocese of South
7 Carolina.

8 Q. And did the Protestant Episcopal Church in the Diocese
9 of South Carolina, as far as you know, have any claim to give
10 up against St. John's?

11 A. No.

12 Q. Did you all pay anything for these deeds?

13 A. I'm not sure. I think it may have been a couple
14 dollars, but I'm not sure about that.

15 Q. All right. You don't know who paid it, do you?

16 A. Well, it would have been St. John's Church, if that's
17 what we were supposed to pay I'm sure.

18 Q. Supposed to pay?

19 A. I guess. I don't know would be the best answer on that.

20 Q. Okay. Did you ever ask anybody to explain about why
21 these deeds were issued and why they were sent to you, to the
22 parish?

23 A. No, sir. I had watched the Pawleys Island case so I
24 believe I understood their importance, but in any technical
25 sense of how they were important, I would only have the

1 vaguest sense.

2 Q. Okay. And do you know anything about why there were two
3 deeds instead of just one?

4 A. Never have understood that.

5 Q. Never have?

6 A. No, sir.

7 MR. TISDALE: One second, Your Honor.

8 THE COURT: All right.

9 MR. TISDALE: Going to pull up one more document, Your
10 Honor.

11 THE COURT: All right.

12 Q. I asked you earlier in my questions of you about some
13 bylaws.

14 A. Right.

15 Q. You said you might have had a vague recollection of
16 that.

17 A. Oh, I remember -- I mean, I've seen this document.

18 Q. You have?

19 A. It certainly looks familiar from here.

20 Q. Let's look at the top of it first, Mr. Baker.

21 A. Right.

22 Q. Does it say Constitution and Bylaws of St. John's
23 Episcopal Church, Johns Island, South Carolina?

24 A. Yes.

25 Q. Read Article 1.

1 A. St. John's Church, Johns Island, South Carolina accedes
2 to and adopts the constitution and canons of the Diocese of
3 South Carolina and the Protestant Episcopal Church in the
4 United States of America and acknowledges these authorities
5 accordingly.

6 Q. And you said, I think, you had a vague recollection.
7 Does this refresh that they really said that?

8 A. This was -- this was the adopted -- you know, this
9 was -- when you talked about a change in '94, this was --

10 Q. I think I said '94, but let's check the date to be sure.

11 A. I think this was what it was changed to in '94.

12 Q. Let's get a date on it if we can.

13 Doesn't seem to be any date on this, but do you recall
14 it being around '94?

15 A. That's my best guess.

16 Q. And you were involved in the leadership and management
17 of the parish then, weren't you?

18 A. Yes.

19 Q. So in 1994 this was a bylaw in the constitution of St.
20 John's Parish Johns Island?

21 A. It was from then until now, but from 1734 to 1994 this
22 was not the case.

23 Q. I understand. I'm talking about then to now. Okay?

24 A. Right, right.

25 MR. TISDALE: Your Honor, thank you very much. I

1 appreciate the time with the witness.

2 THE COURT: Thank you, Mr. Tisdale.

3 Mr. Beers.

4 CROSS-EXAMINATION BY MR. BEERS:

5 Q. Good morning.

6 A. Good morning.

7 Q. I'm David Beers. I represent the Episcopal Church.

8 A. Okay.

9 Q. Mr. Tisdale wants me to ask you whether or not the
10 parish had signs out on the highway or in the neighborhood in
11 front of the church?

12 A. We do have signs. We have signage only at the church.

13 Q. How about in the past, say, ten years?

14 A. Only at the church.

15 Q. You've never had signs out on the highway?

16 A. There may have been many, many years ago, but since --
17 into the last ten years it's just been at the church.

18 Q. Have you ever had a sign that said "The Episcopal Church
19 Welcomes You" at the top?

20 A. I don't remember.

21 Q. Have you seen those signs someplace?

22 A. I've seen them in places.

23 Q. But you don't remember having them in your parish?

24 A. Correct.

25 Q. What does the sign say out in front of your parish?

1 A. St. John's Church in the tradition of the Anglican
2 tradition. And then we have service names and service times
3 and the rector and that sort of thing.

4 Q. How long has that form been used?

5 A. That form's been used for many years. The sign we
6 presently have is new, just months old.

7 Q. It's the same language?

8 A. Yes, sir. The old sign wore out, we put a new one in.

9 Q. You said that you amended the bylaws in order to provide
10 more protection for the parish, right, protection of your
11 property?

12 A. Yes, that's right.

13 Q. And the thinking was that you adopted -- if you got a
14 quitclaim deed and changed your bylaws, it might be harder
15 for the national Episcopal Church to sue you to get ahold of
16 your property?

17 A. That was not the thinking at the time. We didn't -- you
18 know, we didn't know about a quitclaim deed and at that time
19 we'd just done a -- we'd looked at -- if you look back at
20 some of the same minutes, a fellow named David Bernthall, who
21 knows all about insurance, we asked him to look at our
22 policy, tell us is everything okay, any changes. And when we
23 found exclusions that pulled all our protection out from
24 anybody, that's when we started.

25 Q. Didn't you testify a few moments ago that either you or

1 other leaders of the parish were concerned that the Episcopal
2 Church might sue you to make some claim to your property?

3 A. We were concerned that anybody could sue us. They would
4 be a part of that, but anybody.

5 Q. And you said you based that on what you heard about All
6 Saints Waccamaw?

7 A. That would be part of it, yes. But we knew our bishop
8 was under attack also from the national church, so there are
9 a lot of things going on.

10 Q. Let me ask you, when the lawsuit with All Saints
11 Waccamaw arose, the parish had already left the Episcopal
12 Church and the diocese, hadn't it?

13 A. Run that by me again.

14 Q. When the litigation involving All Saints Pawleys Island
15 or All Saints Waccamaw arose, the parish had already
16 attempted to leave the diocese and the Episcopal Church?

17 MS. GOLDING: Your Honor, I'm going to make an objection
18 because that is factually and legally incorrect. The All
19 Saints parish remained with its diocese from September 2000
20 to the year 2005. At that time it was a national church that
21 disassociated the All Saints parish. The lawsuit was going
22 on for about four years before the disassociation. So I
23 think that when counsel, Mr. Beers, was involved representing
24 the national church in that litigation, he is well aware that
25 factually what he has stated to this witness is not correct.

1 MR. BEERS: I move to strike, Your Honor, it just is
2 testimony not under oath.

3 THE COURT: I understand that. But here's the
4 uniqueness of this particular situation: I have both lawyers
5 that were involved in that litigation, it's critical
6 litigation, it calls for a legal opinion, and this gentleman
7 is not a lawyer.

8 MR. BEERS: I'll withdraw the question.

9 THE COURT: Very well.

10 MR. BEERS: But I move to strike that speech.

11 THE COURT: You move to strike the speech because you're
12 going to withdraw it? Okay. It's stricken.

13 Q. Have you heard of any instance in which the national
14 church sued one of its -- a parish that still had some
15 affiliation with the Episcopal Church?

16 THE COURT: Now, can you ask that again? I'm sorry. I
17 missed it. I'm sorry.

18 THE WITNESS: I'm having trouble with that question too.

19 THE COURT: Are you picking up on agreeing with the
20 Judge?

21 THE WITNESS: I'm having trouble understanding the
22 question, Judge. I'm trying, but --

23 THE COURT: I started that, Mr. Beers. I'm so sorry.

24 Q. In your case I'm not surprised, Mr. Witness.

25 MS. GOLDING: I'm sorry. I think that was an

1 inappropriate comment. It was an insult to the witness, Your
2 Honor, and I believe that that's inappropriate for counsel to
3 do.

4 MR. BEERS: I apologize.

5 MR. RUNYAN: I would join in that too.

6 MR. BEERS: Let's everybody join in, and I'll apologize
7 to the witness.

8 THE WITNESS: Apology accepted.

9 Q. Have you ever heard that the national Episcopal Church
10 sued a parish that was still affiliated with the Episcopal
11 Church over that parish's property?

12 A. I can answer this question this way: I have a friend
13 who is a rector -- see if this fits, because I'm still having
14 a little trouble here. But I have a friend who is a rector
15 at the Episcopal Church in Groton, Connecticut, and he was
16 sued and he lost his church and parish and everything. Does
17 that -- I know you were at that case and you know of it.
18 It's a major Episcopal Church there. That's the only one I
19 know of. I mean, you're asking me -- is that answering your
20 question?

21 THE COURT: Yes, I would find that as a responsive
22 response.

23 THE WITNESS: Okay.

24 Q. Did you have any understanding as to whether that church
25 in Groton, Connecticut, was still affiliated with the

1 Episcopal Church when the Episcopal Church sued it?

2 A. Here's what I understood: I understood that they were
3 in a disagreement with Bishop Schori. She did not like the
4 fact that they did not agree with her on some subject and she
5 said I'm going to take your property because you don't agree
6 with me. That's what I understood.

7 Q. And that's what that rector told you?

8 A. That's what I understood right there. That's how I
9 understood that case. That's what I understood was going on.
10 You're asking me. That's what I understood.

11 Q. And were you in your leadership afraid that the
12 Episcopal Church would sue you even if you stayed in
13 affiliation with the Episcopal Church?

14 A. What I understood was this: That, okay, there's a big
15 question -- there's some really big questions in the country
16 right now. Same sex union would be one of those. Should I
17 disagree with Bishop Schori? It's like this, if I was to
18 disagree with Bishop Lawrence, he would try to teach me and
19 say, okay, you don't understand what you need to know and
20 that would be the end of it. But what I understood is if I
21 disagreed with her on the same subject, she would say, okay,
22 I'm taking your property and your church.

23 Q. And, by the way --

24 A. That's what I understood. You asked me. That's what I
25 understood.

1 Q. By the way, the presiding bishop's name is Jefferts
2 Schori, Bishop Jefferts Schori.

3 A. Okay.

4 Q. Where did you get that understanding?

5 MR. RUNYAN: Your Honor, I think Mr. Beers has made his
6 point. I think we passed the line of relevance at this
7 point. I think he's established that there was some concern
8 about the Episcopal Church suing at some point in time, and
9 beyond that we're just into speculation about what and why
10 and for what reason, and so I object to that.

11 THE COURT: Thank you. Let me hear the question, Mr.
12 Beers.

13 Don't answer it now until I've had a chance to rule on
14 it.

15 Q. I want to know how you came to the understanding that if
16 you disagreed with the presiding bishop on a serious matter,
17 that she would sue the parish to try to take away its
18 property, and here's the key part, even though the parish was
19 still affiliated with the Episcopal Church. That's what I
20 want, that's what I'm after. I'm not talking about what
21 happens when parishes leave their dioceses or leave the
22 Episcopal Church or cut all ties to the Episcopal Church, I
23 want to know if you understood that she would authorize us to
24 bring suit against a parish that was still affiliated with
25 the Episcopal Church?

1 THE COURT: Now, is there an objection to that question?

2 MR. RUNYAN: Not the last part.

3 THE COURT: Say again.

4 MR. RUNYAN: Not to that question, no.

5 THE COURT: There's not an objection to that question.

6 MR. RUNYAN: No. As I understand, the question is would
7 the Episcopal Church bring a suit against a parish still
8 affiliated for whatever reason.

9 THE COURT: Okay. You may answer it. You clearly have
10 answered it, but you may answer it again.

11 THE WITNESS: I understood it, so maybe I incorrectly
12 understood it, But the way I understood it you would get sued
13 even if you were still affiliated with the Episcopal Church.
14 Q. And my question has been for some minutes now where did
15 you get that understanding?

16 MR. RUNYAN: I think he asked and answered that. I
17 think he said Groton, Connecticut.

18 THE COURT: Sustained. He has asked and answered that
19 question.

20 Q. Let me be clear then. I'll ask a clarifying question.
21 Did you get that understanding from the rector of the parish
22 in Groton?

23 A. When you say record, what do you mean?

24 Q. Rector.

25 A. Oh, rector. I know the rector and talked to him at

1 times as just a friendly conversation, but I've watched and
2 listened to -- you know, I knew the proceedings were going on
3 and I sometimes read blogs in the computers and that sort of
4 thing and I knew it was going on.

5 Q. Do you remember what blogs you read?

6 A. There's really -- my favorite one would be Alex Haley.
7 That's really my main one.

8 Q. The Anglican curmudgeon?

9 A. Yes.

10 Q. Wasn't your parish really afraid that you needed
11 protection if the parish decided to leave?

12 A. No.

13 MR. BEERS: That's all I have, Your Honor.

14 THE COURT: Thank you, Mr. Beers.

15 All right. Hold on. All right. Redirect?

16 MR. PLATTE: No.

17 THE COURT: Very well.

18 Thank you, sir. You may come down.

19 THE WITNESS: Thank you, Judge.

20 THE COURT: Call your next witness.

21 (Plaintiff's Exhibits HT-1 through HT-21 premarked for
22 identification.)

23 MARTIN RAY SCARBROUGH,
24 being first duly sworn, testified as follows:

25 MR. SOWINKSI: Good morning, Your Honor.

1 THE COURT: Good morning.

2 MR. SOWINKSI: My name is Dane Sowinski with the Rogers
3 Townsend law firm. We represent the plaintiff Holy Trinity
4 Episcopal Church and I call to the stand Martin Scarbrough.

5 THE COURT: Thank you. Thank you so much for that
6 introduction. Very well.

7 Would you do me a favor, please, sir. I'm going to ask
8 you to state your full name for the record and spell your
9 last name. You know, we use this as a bit of a sound check.

10 THE WITNESS: Yes, ma'am. It's Martin Ray Scarbrough,
11 S-C-A-R-B-R-O-U-G-H.

12 THE COURT: Your witness, sir.

13 MR. SOWINKSI: Thank you, Your Honor.

14 DIRECT EXAMINATION BY MR. SOWINSKI:

15 Q. Mr. Scarbrough, where do you currently reside?

16 A. I live on James Island.

17 Q. What do you do for a living?

18 A. I retired from fire and emergency services with 33 years
19 service to the Department of Defense.

20 Q. And are you married, sir?

21 A. I'm a widower, sir.

22 Q. And are you currently a member of a church?

23 A. I'm currently a member of Holy Trinity Episcopal Church
24 at 95 Folly Road, Charleston, South Carolina.

25 Q. And how long have you been a member of that church?

1 A. I've been attending that church since it was my mother's
2 parish since 2004 and gradually became a member.

3 Q. Have you held any leadership roles at that church?

4 A. In 2013 I was the senior warden, 2012 the junior warden,
5 2011 the junior warden.

6 Q. And in these leadership roles have you learned about the
7 history of Holy Trinity?

8 A. Yes, I have.

9 MR. SOWINKSI: Your Honor, at this time I'd like to move
10 to admit into evidence plaintiff Holy Trinity Episcopal
11 Church's Exhibits HT 1 through HT 21, as well as Holy
12 Trinity's stipulations, both of which have been provided to
13 the defendants.

14 THE COURT: And let me ask you this question: Do your
15 stipulations have an exhibit number?

16 MR. SOWINKSI: They do not. But the Court can label as
17 them as Exhibit HT 22.

18 THE COURT: That would probably be of assistance.

19 Any objection?

20 MR. TISDALE: None, Your Honor.

21 THE COURT: Very well. Thank you.

22 If you will show her the stipulations and just give her
23 a moment to mark that, then that will be done.

24 (Plaintiff's Exhibit HT-22 marked for identification.)

25 (Plaintiff's Exhibits HT-1 through HT-22 admitted into

1 evidence.)

2 Q. Now, Mr. Scarbrough, have you had a chance to look over
3 these stipulations?

4 A. Yes, I have.

5 Q. And would they be a correct account of your testimony
6 here today?

7 A. They would be.

8 Q. When was Holy Trinity incorporated?

9 A. That would be February 11th, 1957.

10 Q. And has Holy Trinity existed as a corporation since
11 1957?

12 A. Continually, sir.

13 Q. And has Holy Trinity continuously carried out its
14 religious purposes since that time?

15 A. Yes, it has.

16 Q. Does Holy Trinity have a board of directors?

17 A. Yes, it has. That would be the vestry.

18 Q. Does Holy Trinity have corporate officers?

19 A. That would be the vestry members consisting of the
20 senior warden, junior warden, secretary, treasurer, and the
21 other members of the vestry.

22 Q. Thank you. Does Holy Trinity own any real estate
23 currently?

24 A. They currently do.

25 Q. And I believe you stated the address earlier, but could

1 you repeat the address where that real estate is located?

2 A. Holy Trinity Episcopal Church is located in Charleston
3 County in the City of Charleston, South Carolina, at 95 Folly
4 Road.

5 Q. Now, Mr. Scarbrough, could you please look at Exhibit HT
6 21? It's the second-to-last page in the exhibits. I don't
7 know if we have a copy of that for the screen.

8 A. I have it.

9 Q. It's a map. It's from the County of Charleston. And
10 could you identify on that map where Holy Trinity's real
11 estate is located?

12 A. Our plot number is 063.

13 Q. Thank you. Are you currently aware of any deeds or
14 titles to real estate conveying the property at 95 Folly Road
15 Boulevard, Charleston, to the Episcopal Church, which I'll
16 refer to as TEC, or the Episcopal Church in South Carolina,
17 which I'll refer to as TECSC?

18 A. No.

19 Q. To your knowledge, what interest does TEC or TECSC have
20 in Holy Trinity's property?

21 A. None.

22 Q. Is it your understanding that the interest in church
23 property is the main dispute of this legal proceeding here?

24 A. Yes.

25 Q. Did there come a time when you knew that Holy Trinity

1 and the Diocese of South Carolina had a dispute with TEC and
2 TECSC?

3 A. Yes.

4 Q. Did the leadership of Holy Trinity discuss this dispute?

5 A. Yes.

6 Q. Now, several of the documents in our exhibits are
7 minutes for executive meetings at Holy Trinity. Is the
8 vestry part of those executive meetings?

9 A. The vestry was present in all the executive meetings.

10 Q. And also several of these minutes indicate that an
11 attorney was present, Attorney Forrest Norvell. What is your
12 understanding as to why Mr. Norvell was present at these
13 meetings?

14 A. Our attorney, Mr. Norvell, was present in all of our
15 meetings and any discussions with any actions that we took to
16 make sure that we did everything in a timely manner, a legal
17 manner, and with the interest of the parish, the vestry, and
18 the church.

19 Q. Are you currently aware of any ongoing relationship that
20 Holy Trinity has with TEC or TECSC?

21 A. We have none.

22 Q. Are you aware of any funds that Holy Trinity has
23 received from TEC or TECSC?

24 A. We haven't received any funds.

25 Q. And, to your knowledge, did Holy Trinity seek TEC or

1 TECSC's permission to amend Holy Trinity's bylaws?

2 A. No, we did not.

3 Q. And, to your knowledge, did Holy Trinity seek TEC or
4 TECSC's permission to amend Holy Trinity's articles of
5 incorporation?

6 A. No, we did not.

7 MR. SOWINKSI: Thank you, Mr. Scarbrough. Please answer
8 any questions that the defendants may have.

9 THE WITNESS: Yes, sir.

10 THE COURT: Mr. Smith.

11 CROSS-EXAMINATION BY MR. SMITH:

12 Q. Thank you, Mr. Scarbrough. Were you involved in recent
13 amendments to your charter and bylaws in or around 2012?

14 A. I was a member of the vestry, yes, sir.

15 Q. And did you vote for those changes?

16 A. Yes, I did, sir.

17 Q. And did those changes generally remove all references to
18 the constitution and canons of the national church?

19 A. That is my belief, sir.

20 Q. And at that time did you review the constitution and
21 canons of the national church?

22 A. We had an attorney that reviewed it and told us what it
23 said and we also had the opportunity to look through it also.

24 Q. And did you take that opportunity?

25 A. Yes, I did.

1 Q. Have you ever served as a delegate to the convention of
2 the diocese?

3 A. Numerous times.

4 Q. Have you ever been a delegate to the general convention
5 of the national church?

6 A. No, I haven't.

7 Q. Did you vote for delegates to go to the general
8 convention of the national church?

9 A. I don't recall.

10 Q. Do you recall what happened at the convention of the
11 diocese, what kinds of things you did there?

12 A. I was at the convention where we voted to make Reverend
13 Skilton the suffragan bishop, so that was quite some time
14 ago.

15 Q. And at these conventions at which you were a delegate
16 was there a discussion of the national church?

17 A. At one of the conventions I attended, yes.

18 Q. Is your church the beneficiary of any trusts?

19 A. No, sir.

20 Q. Has the church participated in the Church Pension Fund?

21 A. We have participated in the Church Pension Fund, but we
22 no longer do.

23 Q. Has the church received grants or aid from the diocese
24 prior to 2012?

25 A. From the diocese we lapsed into a mission status but

1 we're still called a parish, so a fund called Builders for
2 Christ helped us with some funding is my recollection.

3 Q. Do you know what the amounts of that funding were?

4 A. I do not recall.

5 Q. Can you tell me about the current sign in front of your
6 parish?

7 A. The signage all says Holy Trinity Church. The bulletins
8 and all paperwork everything is just called Holy Trinity
9 Church.

10 Q. There's no reference to Episcopal in any of your
11 signage?

12 A. Not in any of the signage, publications, or bulletins.

13 Q. Now, are those new signs? Have they been amended
14 anytime recently?

15 A. In the last few years; yes, sir.

16 Q. Okay. And what did they say before?

17 A. Holy Trinity Episcopal Church.

18 Q. And why did you make those changes?

19 A. It was a unanimous vote of the vestry and the
20 parishioners to do so.

21 Q. Was there any reason that they voted to do so? I
22 understand there's a majority --

23 A. It was because of changes in our bylaws and changes in
24 our articles of incorporation where we disassociated
25 ourselves with TEC.

1 Q. So did you want to make clear that you had disassociated
2 from TEC? Is that why you changed the signs?

3 A. The consensus was to let the community know exactly
4 which side of the fence we were on so they knew which church
5 that would be more to their liking.

6 Q. Okay. Now, can you explain again on the name, what does
7 your current website -- does it use the word "Episcopal"?

8 A. The website does not, sir.

9 Q. It does not?

10 A. Does not.

11 Q. Was there a website -- is that a change, a recent
12 change, to remove Episcopal from your website?

13 A. I'm 60 years old, so to be honest with you, I don't surf
14 the web so I have no idea what it said before.

15 Q. I believe you testified that you joined the church in
16 2004; correct?

17 A. It was my mother's parish, she was unable to drive
18 herself, so I was a member of St. Thomas North Charleston and
19 on the vestry there and so I took a leave of absence from St.
20 Thomas and would drive my mother to church, hence attending
21 her church. And over a period of years I was assimilated,
22 you might say, into that church and eventually became a
23 member.

24 Q. Okay. Did you review some of the church's history in
25 anticipation of testifying in this case?

1 A. My mother used to tell me the church history on every
2 trip to and from the church.

3 Q. Would you consider yourself an expert on your church's
4 history?

5 A. I would consider myself a good son who listened to his
6 mother and believes what his mother said, but I wouldn't say
7 I was an expert because my mother's point of view is her
8 point of view.

9 Q. Does the church have archives?

10 A. Not to my knowledge. But we have a pretty good filing
11 system and we still own file cabinets.

12 Q. Okay. And did you review all the documents in those
13 file cabinets?

14 A. Being totally honest, there are some things that I have
15 looked at in the file cabinets, but there's a lot of things
16 there since 1957.

17 Q. So your understanding of the history of the church is
18 based on what your mother told you?

19 A. And what the congregation told me as I was becoming a
20 member.

21 Q. Becoming a member. Okay. Did your mother tell you
22 about the governance of the church?

23 A. She was mostly -- most of her life she was an
24 Episcopalian, that's correct; but when it came to politics,
25 that was not her strong suit.

1 Q. Okay. Would you agree with me that your knowledge of
2 the church's governance is limited to what your mother may
3 have told you and what the congregation told you and your
4 time serving in leadership since 2004?

5 A. I would say it is completed by those three things that
6 you've mentioned.

7 Q. Okay. And would you agree with me that your knowledge
8 of any promises that your church may have made would be
9 limited to those things as well?

10 A. I would be aware of them if they were a part of our
11 business of the vestry between 2011 and 2013.

12 Q. And would you agree that your knowledge of any
13 relationships that your church entered into would be limited
14 in that same way?

15 A. I would be aware of any relationships my church had
16 while I was in the leadership positions of junior and senior
17 warden.

18 Q. Since starting in 2004 or can you give me the date of
19 which you'd be aware of those relationships?

20 A. I would have knowledge of them and I would have greater
21 knowledge and be more aware once I entered leadership
22 positions, that would be correct.

23 Q. And forgive me if you've already testified to this, but
24 remind me exactly when you assumed a leadership role.

25 A. I was a junior warden in 2011, a junior warden in 2012,

1 and a senior warden in 2013.

2 Q. Okay. Would you agree with me that your knowledge of
3 benefits that your church has received would be limited in
4 that same respect to what your mother told you and what
5 you've heard from the congregation and your involvement since
6 2004?

7 A. It would be a little greater than that because it would
8 be at the annual parish meetings since 2004. And we would
9 also discuss any benefits or anything that we would have
10 received, so it would be in the annual reports I have seen
11 since 2004.

12 MR. SMITH: Hold just one second.

13 THE COURT: Yes.

14 MR. SMITH: Thank you very much, sir.

15 THE COURT: All right.

16 MS. KOSTEL: Nothing.

17 THE COURT: Thank you. Is there any redirect?

18 MR. SOWINKSI: No, Your Honor.

19 THE COURT: Thank you.

20 Thank you, sir. You may come down.

21 Next witness, please.

22 (Plaintiff's Exhibits OSA-1 through OSA-13 premarked for
23 identification.)

24 STEWART MARSHALL HUEY, JR.,

25 being first duly sworn, testified as follows:

1 THE COURT: All right. And would you state your name
2 for the record again. This is our sound check.

3 THE WITNESS: Stewart Marshall Huey, Jr.

4 THE COURT: Just to be sure we have it correct, spell
5 your last name.

6 THE WITNESS: H-U-E-Y. And Stewart is S-T-E-W-A-R-T.

7 THE COURT: Mr. Platte, your witness.

8 MR. PLATTE: Thank you, Your Honor. Andrew Platte on
9 behalf of the Vestries and Church Wardens of the Parish of
10 St. Andrew's.

11 DIRECT EXAMINATION BY MR. PLATTE:

12 Q. Father Huey, how old are you?

13 A. I'm 56.

14 Q. And are you currently employed?

15 A. I am.

16 Q. What is your position?

17 A. I'm the rector of St. Andrew's Parish Church.

18 Q. And where is that located?

19 A. It's on Ashley River Road in the West Ashley section of
20 Charleston, otherwise known as Highway 61.

21 Q. And how long have you been the rector there?

22 A. Almost eight years.

23 Q. How long has Old St. Andrew's been in existence?

24 A. St. Andrew's was chartered by the Church Act of 1706,
25 November 30th, 1706, which was St. Andrew's Day.

1 Q. And when was it incorporated?

2 A. St. Andrew's was incorporated as an Episcopal Church by
3 the state legislature in 1785.

4 Q. How many members does Old St. Andrew's have?

5 A. Last count on our books we had 615 voting members.

6 Q. Are you familiar with the history and the governance of
7 the parish?

8 A. I am generally familiar, yes, sir.

9 Q. We've marked Exhibit OSA 13. It's stipulations. Are
10 you familiar with those stipulations?

11 A. Yes, sir, I am.

12 Q. And would that be your testimony today?

13 A. Yes, sir, it is.

14 Q. Were all notices for all meetings given in accordance
15 with the constitution and canons?

16 A. I believe that they were.

17 Q. Was there a quorum at all meetings?

18 A. Yes, sir, there was.

19 Q. Did all matters that were voted upon pass with a
20 required majority?

21 A. Yes, they did.

22 Q. Old St. Andrew's doesn't have an original deed to its
23 property; correct?

24 A. That's correct.

25 Q. What's your understanding of where the land came from or

1 how they acquired the land?

2 A. The land on which the church sits was originally given
3 by someone who became a parishioner by a farmer in that area,
4 and then the Colonial Assembly recognized the land and
5 basically chartered it and gave it to the church.

6 Q. Were the proposed changes to the constitution and canons
7 available before the vote?

8 A. Yes, they were. For more than 30 days.

9 Q. And where would they be located?

10 A. They were made available in the parish hall and to the
11 congregation.

12 Q. Does Old St. Andrew's have any relationship with
13 defendant's TEC or defendant TECSC?

14 A. No, sir.

15 Q. Did Old St. Andrew's send delegates to defendant TECSC's
16 conventions?

17 A. I attended one meeting as an observer in late January of
18 2013 of TECSC at Grace Church; other than that, no, sir.

19 Q. So they did not send delegates to vote at that
20 convention?

21 A. That's correct.

22 Q. Is Old St. Andrew's a parish of defendant TECSC?

23 A. No, sir.

24 Q. At any point did you ask defendant TECSC to remove Old
25 St. Andrew's name from their website?

1 A. My recollection is that I did.

2 Q. And were they listed as a parish at that point?

3 A. Would you clarify that question?

4 Q. On the defendant TECSC's website was Old St. Andrew's
5 listed at any point as a parish prior to you asking them to
6 remove --

7 A. Yes, sir, I believe we were.

8 MR. PLATTE: At this time I would ask to admit Exhibits
9 OSA 1 through 13 into evidence.

10 THE COURT: Any objection?

11 MS. KOSTEL: No objection.

12 MR. TISDALE: No objection.

13 THE COURT: Very well.

14 (Plaintiff's Exhibits OSA-1 through OSA-13 admitted into
15 evidence.)

16 MR. PLATTE: Thank you.

17 THE COURT: Yes.

18 Cross-examination, Mr. Beers.

19 CROSS-EXAMINATION BY MR. BEERS:

20 Q. Good morning, Father.

21 A. Good morning.

22 Q. As you know, my name is David Beers.

23 A. Yes, sir.

24 Q. I represent the Episcopal Church.

25 A. Yes, sir.

1 Q. You knew that?

2 A. Yes, sir.

3 Q. I'm here to ask you some questions that I forgot to ask
4 you on Sunday.

5 A. All right.

6 Q. The parish is incorporated; right?

7 A. The parish is chartered by the General Assembly and was
8 done -- that was done in 1785.

9 Q. And that corporate forum still exists at St. Andrew's?

10 A. As far as I know.

11 Q. And who are the officers of that entity?

12 A. Our senior warden, our junior warden, our officers of
13 the vestry, and I chair the vestry meetings as the rector.

14 Q. So do you and the wardens and the vestry operate both as
15 the, what we might call, ecclesiastical officers and officers
16 of the corporation?

17 A. No, sir.

18 Q. Okay. Straighten me out.

19 A. Ecclesial matters are the purview of the rector.

20 Q. I see. Did you ever use a vestry manual --

21 A. Yes.

22 Q. -- or handbook?

23 A. Yes, sir.

24 Q. And was it one the parish devised or did it come from
25 the diocese?

1 A. Provided by the diocese.

2 Q. And used it as long as you've been there?

3 A. Yes, sir.

4 Q. Could you summarize the real property the parish has?

5 A. Yes, sir.

6 Q. Would you now?

7 A. Yes, sir. All right. We have approximately 7 acres of
8 land contiguous on which the church and the parish hall and
9 Sunday school building rest.

10 Q. Is that the only real estate you have?

11 A. At present, yes, sir.

12 Q. Do you have any idea how much that property's worth,
13 either from appraisals or from informal conversations with
14 real estate people or from insurance brokers?

15 A. My only knowledge of that would come from an appraisal
16 of the property probably two or three years ago from Church
17 Insurance Company, and that was approximately 1.2 million.

18 Q. For the real estate?

19 A. Yes, sir.

20 Q. Now, do you have bank accounts and investment accounts;
21 in other words, other assets? I'm not counting the silver.

22 A. Yes, sir.

23 Q. How much are they worth right at the moment?

24 A. At the moment probably on deposit in various accounts
25 about 125,000.

1 Q. Do you know whether or not the parish has ever received
2 loans or grants from the national church or one of the
3 entities affiliated with the national church?

4 A. My belief is that the answer to that is no.

5 Q. Do you think the parish has received anything else of
6 value from the national church?

7 A. No, sir.

8 MR. BEERS: That's all the questions I have, Your Honor.

9 THE COURT: All right.

10 MR. BEERS: I gather you were pleased at the brevity of
11 that examination.

12 THE COURT: Brief, long, Mr. Beers, it's always
13 exciting.

14 MR. HOLMES: Your Honor, one thing I wanted to pass
15 along, in federal court in Columbia they have little teeny
16 cups like this with water, which I think is intended to
17 reduce the length of time that counsel stays at the podium.
18 I'm just passing that along.

19 THE COURT: We're so excited to have you here in the
20 country, I'm liable to bring in a big old barrel if that is
21 any indication.

22 Mr. Tisdale, please.

23 MR. TISDALE: I've just got some very brief questions, I
24 believe, for you.

25 THE COURT: Mr. Tisdale, take the time that you need.

1 It's not a problem.

2 CROSS-EXAMINATION BY MR. TISDALE:

3 Q. What I'm curious about, more than curious, what I want
4 to ask you about is the quitclaim deeds.

5 A. All right.

6 Q. And you're probably familiar with this whole thing, but
7 Old St. Andrew's did receive some quitclaim deeds, didn't it?

8 A. Yes, sir.

9 Q. And you've heard testimony and everything about the
10 normal quitclaim deeds, including the one you all got which
11 was granted by the Protestant Episcopal Church in South
12 Carolina and maybe another similar entity. And that came
13 unannounced and just kind of bestowed on the parish, wasn't
14 it?

15 A. Yes, sir.

16 Q. Did you know anything about it before you got it?

17 A. I knew that it was coming.

18 Q. And did you know anything about why it was being issued?

19 A. Not other than my general supposition, no, sir. I'm
20 sorry.

21 Q. What was your general supposition?

22 A. My supposition was based on what the document said,
23 which is the diocese was releasing any claim it had on our
24 property.

25 Q. Right. And that's what it says, apparently. But did

1 they have any claim on your property that you knew about?

2 A. No, sir.

3 Q. All right. Now, what I really want to ask you about is
4 what's been marked as OSA 4. And you can look at it if you
5 want to, but you might not need to.

6 A. I'd like to, please.

7 Q. Okay. OSA 4. It's right here. It's another quitclaim
8 deed. And I just wanted to ask you if you knew anything
9 about it.

10 A. All right.

11 MR. TISDALE: Just for the record, that first deed that
12 we talked about, that first deed that we talked about is No.
13 5. Again, it doesn't seem to have a date on it, but the date
14 of the first probate is October 4th, 2011, just for the
15 record.

16 Q. Have you had a chance?

17 A. Yes, sir.

18 Q. OSA 4. This is another quitclaim deed to Old St.
19 Andrew's, is it not?

20 A. Yes, it is.

21 Q. And who is the grantor on this deed?

22 A. Trustees of the Protestant Episcopal Church in South
23 Carolina.

24 Q. And this deed is dated, as I see it, January 18th, 2013;
25 right?

1 A. I believe the date is January 18.

2 Q. 2013?

3 A. Yes, sir.

4 Q. Now, that's just last year; right?

5 A. Yes, sir.

6 Q. Now, why was this deed granted?

7 A. My understanding is that this deed was requested by our
8 financial institution in connection with some refinancing we
9 were doing --

10 Q. Okay.

11 A. -- just to clarify the title of the property.

12 Q. Was there any question about the title to the property
13 as far as you know?

14 A. No. Well, as far as I know, my knowledge came from the
15 bank, which is they're requesting this because of some real
16 estate transactions that took place during a period of
17 dormancy of the parish.

18 Q. A long time ago.

19 A. Yes, sir.

20 Q. I gotcha. So that explains that. But so you all
21 requested this quitclaim deed?

22 A. Yes, sir, we did.

23 Q. And it was given to you?

24 A. Yes.

25 Q. Okay. What does Old St. Andrew's call itself now on the

1 signs it puts out along the road and on the building, if any?

2 A. Either Old St. Andrew's, which is our colloquialism,
3 people know us as Old St. Andrew's, or St. Andrew's Parish
4 Church.

5 MR. TISDALE: I don't think I have any other questions.
6 Thank you very much.

7 THE WITNESS: Thank you.

8 THE COURT: All right.

9 Redirect?

10 MR. PLATTE: No, Your Honor.

11 THE COURT: Very well.

12 You may come down.

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness, please.

15 (Plaintiff's Exhibits SPH-1 through SPH-43 premarked for
16 identification.)

17 MR. PHILLIPS: Your Honor, I'm Mark Phillips from Nelson
18 Mullins on behalf of St. Philip's Church, and the witness we
19 call is Mr. Myron Harrington.

20 MYRON CHARLES HARRINGTON, JR.,

21 being first duly sworn, testified as follows:

22 THE COURT: I'm going to ask you if you would please
23 just state your full name for the record and spell your last
24 name. We use this as a sound check.

25 THE WITNESS: Myron Charles Harrington, Jr. Harrington

1 is H-A-R-R-I-N-G-T-O-N.

2 THE COURT: Thank you so much.

3 Mr. Phillips, your witness.

4 DIRECT EXAMINATION BY MR. PHILLIPS:

5 Q. Mr. Harrington, you spoke beautifully just now. For the
6 sake of Ms. Mott and Judge Goodstein, please speak into the
7 microphone and a little deliberately. Okay?

8 A. Got it.

9 Q. We will shorten the examination. If you do that, we'll
10 do that, okay.

11 MR. PHILLIPS: Your Honor, housekeeping-wise --

12 THE COURT: Yes.

13 MR. PHILLIPS -- I would like to tender into evidence St.
14 Philip's as SPH Exhibits 1 through 42, which I understand
15 there are no objections to, and also Exhibit SPH 43, which is
16 a binder of stipulations that are tendered by St. Philip's
17 Church.

18 MR. TISDALE: We don't have any objection, except there
19 are two of them that are illegible, 11 and 40, if we can
20 address that in the best way.

21 MR. PHILLIPS: All right, sir.

22 Your Honor, if there are any copies available of 11 and
23 40 -- and the 11 I've got that you're going to have in about
24 a second looks legible to me.

25 MR. TISDALE: Well, in that case, I mean, we'll just

1 agree for whatever they're worth, and if you can get better
2 copies, fine; if you can't, we've just got what we've got.

3 MR. PHILLIPS: Your Honor, if you please, I'll bring you
4 a copy as well.

5 THE COURT: Very well. And for the national church?

6 MS. KOSTEL: Same position.

7 THE COURT: Thank you.

8 MR. TISDALE: We agree that it's worth what it's worth
9 and accept it on that basis.

10 THE COURT: Thank you, Mr. Tisdale.

11 MR. PHILLIPS: Your Honor, again I tender then into
12 evidence as discussed SPH Exhibits 1 through 42, which are in
13 a binder that you have, and SPH Exhibit 43, which is in a
14 separate binder which is the set of stipulations.

15 THE COURT: And they are admitted.

16 MR. PHILLIPS: Thank you.

17 THE COURT: Thank you.

18 (Plaintiff's Exhibits SPH-1 through SPH-43 admitted into
19 evidence.)

20 Q. Mr. Harrington, would you tell Judge Goodstein, please,
21 who you are, where you live, and how you were educated and
22 then we'll get into the rest of it.

23 A. Myron Harrington. I'm a resident of downtown Charleston
24 and I'm a graduate of The Citadel.

25 Q. What year did you finish The Citadel?

1 A. 1960.

2 Q. And do you have family?

3 A. I am married to Ann Hurst Harrington. I have two adult
4 children, Ann Hunley, who resides with us here in Charleston;
5 and our son Mike, who resides in Charlotte with his wife and
6 six grandchildren.

7 Q. Very good. And of the Harrington family that lives in
8 Charleston, where do you all go to church?

9 A. We are members of St. Philip's Church.

10 Q. And have you been going there for quite a while?

11 A. We've been going there for ten years.

12 Q. All right, sir. And tell us briefly, please, the Court,
13 about your two careers, where you've spent your working life.

14 A. I spent 30 years in the United States Marine Corps and
15 15 years as headmaster of a specialized school for children
16 who have learning disabilities, Trident Academy in Mount
17 Pleasant, South Carolina.

18 Q. And just for the Court's interest and for mine, in the
19 Marine Corps did you ever serve in combat?

20 A. I did.

21 Q. Where?

22 A. In Vietnam and Beirut.

23 Q. All right, sir. And did you receive any special
24 commendations from the United States Marine Corps for service
25 in Vietnam?

1 A. I was recognized for what my Marines did.

2 Q. What your Marines did, exactly. And what recognition
3 was that?

4 A. I'm a recipient of the Navy Cross and the Silver Star.

5 Q. All right, sir. Now, at St. Philip's Church are you
6 aware of what body forms that entity's board of directors?

7 A. Yes. It is the vestry.

8 Q. Have you ever served on the board of that entity?

9 A. I have been a member of the vestry.

10 Q. And have you held any vice chairmanship or chairmanship
11 positions on the vestry of St. Philip's Church?

12 A. Junior warden and senior warden.

13 Q. And have you gotten yourself familiar generally with the
14 history of St. Philip's Church?

15 A. Yes, I have.

16 Q. To the extent that you needed to for helping me in this
17 lawsuit?

18 A. Yes, I have.

19 Q. And specifically Exhibits SPH 1 through 42, through SPH
20 42, that are in a binder --

21 A. Yes, sir.

22 Q. -- and SPH 43, are you specifically familiar with those
23 exhibits and those tendered stipulations?

24 A. I am.

25 Q. Do you mind if we cut the exam a little short and not go

1 through every single one of those items?

2 A. I'd be delighted.

3 Q. Mr. Harrington, what I'd like to do is cover less than a
4 handful of dates from the 18th and 17th centuries and then
5 less than a handful of dates for the 21st century.

6 When was St. Philip's Church formed?

7 A. In 1680.

8 Q. And when was its first building for worship constructed?

9 A. 1681-82 timeframe.

10 Q. And when St. Philip's moved from its original location,
11 when was it that it built on its present location?

12 A. Well, in 1723 it moved over to the corner of Meeting
13 Street and Broad Street.

14 Q. Moved from the corner?

15 A. Moved from that corner, excuse me, moved from that
16 corner to its present location at 142 Church Street.

17 Q. All right. Do you know of any parish in the Diocese of
18 South Carolina's churches that are older than St. Philip's
19 which, as you said, was formed in 1680?

20 A. No, I don't.

21 Q. Okay. Has St. Philip's Church continually served the
22 spiritual and religious needs of its parishioners in the
23 Charleston community since that time of 1680?

24 A. It has.

25 Q. Is St. Philip's Church on which you served the board and

1 chaired the board incorporated?

2 A. Yes, it is.

3 Q. When was it incorporated?

4 A. 1785.

5 Q. All right. Who was it or what entity was it that
6 incorporated St. Philip's Church?

7 A. It was the General Assembly of the legislature.

8 Q. Are you familiar with this name, the Protestant
9 Episcopal Church of the Parish of St. Philip in Charleston in
10 the State of South Carolina?

11 A. Yes. That was the name that the General Assembly
12 provided us when we were incorporated.

13 Q. And that was 1785?

14 A. 1785.

15 Q. And normally you and I and our congregation refer to the
16 church how?

17 A. St. Philip's Church.

18 Q. All right. Was the corporation which I think
19 incorporated St. Philip's Church, what we know as St.
20 Philip's Church and St. Michael's Church, was there another
21 incorporation by the General Assembly?

22 A. In 1791 the vestries of St. Michael's and St. Philip's
23 petitioned the General Assembly to split the two parishes so
24 there would be a parish of St. Michael's and St. Philip's.

25 Q. So the incorporation was originally what year?

1 A. 1785.

2 Q. And then the separate corporations were formed --

3 A. 1791.

4 Q. All right. And was the original incorporation of St.
5 Philip's accomplished before what we today refer to as the
6 national church?

7 A. That is correct. St. Philip's predates, of course, the
8 Diocese of South Carolina as well as the national church and
9 had a part in the formulation of the Diocese as well as the
10 national church.

11 Q. Did St. Philip's name, which includes the word
12 "Episcopal," predate either the Diocese that we have talked
13 about today or the national church?

14 A. Yes, it did.

15 Q. And is the official state-recognized name of St.
16 Philip's Church still the longer name, the Protestant
17 Episcopal Church of the Parish of St. Philip in Charleston in
18 the State of South Carolina?

19 A. It is.

20 Q. All right, sir. Tell us how many members of the church
21 there generally are today.

22 A. We have approximately 2,500 members.

23 Q. And over roughly 300 years, I think you said before 1730
24 and through the 20th century, has St. Philip's Church, as
25 we've referred to it, accumulated real property?

1 A. We have accumulated what I would call a city -- square
2 city block in downtown historic Charleston.

3 Q. And specifically do you know about how many deeds the
4 church right now holds?

5 A. I believe we have 13 deeds. We've got the church, we
6 have a chapel, we have a tea garden --

7 Q. I'll tell you what, slow it down on this part just so
8 Judge Goodstein will understand what it is that the church
9 owns downtown. The church is the one with the big steeple
10 that's brown, not white?

11 A. We are the church with the big steeple. We have a
12 historic chapel.

13 Q. Our steeple's the brown one, St. Michael's has the white
14 one; is that right?

15 A. That is correct.

16 Q. What else has St. Philip's got downtown in roughly a
17 square block?

18 A. We have two cemeteries, an east side and a west side, we
19 have a parking lot, we have a parish hall and Sunday school
20 building.

21 Q. Are those separate buildings?

22 A. They are separate buildings.

23 Q. All right, sir. Keep going.

24 A. Then we have a ministries hall, which is also our
25 administrative building. Behind it is what is called the tea

1 garden, which is another building.

2 Q. What's the tea garden, real quickly?

3 A. It is a meeting place where folks have Bible study and
4 you could go there and have meditation if you so desired in
5 the little garden there.

6 Q. Is that an old building, by the way?

7 A. It is an old building as well.

8 Q. Now continue.

9 A. And we also have a property over on State Street that
10 was the old Charleston Day School building which we purchased
11 in 1996.

12 Q. Is there a preschool operated there now?

13 A. Not -- no, sir.

14 Q. All right. And is the Charleston Day School property
15 that belongs now to St. Philip's Church adjacent to its
16 campus?

17 A. It is.

18 Q. What other worship building exists on the campus within
19 that square block besides the big sanctuary?

20 A. I mentioned the chapel.

21 Q. Chapel?

22 A. Yes, sir.

23 Q. That's a separate smaller church; is that right?

24 A. Right.

25 Q. Does it have any townhouse or residential property?

1 A. We have a rectory down on Church Street, I believe it's
2 92 Church Street.

3 Q. And who does the rectory house?

4 A. The rector, Haden McCormick.

5 Q. So Haden McCormick lives at the rectory?

6 A. Correct.

7 Q. Just in anticipation of a question, do you know what, at
8 least for purposes of property and casualty insurance and a
9 conservative balance sheet, the rough value of the real
10 property and what other items exist at St. Philip's is?

11 A. I do not have any idea what the real value of the total
12 of our property is. I do know, however, that we have it
13 insured for \$23.5 million.

14 Q. All right, sir. Let's move to the modern era, if you
15 please. In the last -- in the 21st century has St. Philip's
16 passed legislation and committed acts that bear on this
17 lawsuit and specifically were intended to protect St.
18 Philip's?

19 A. We have.

20 Q. All right. And were all of these things done within the
21 rights of St. Philip's as you understand?

22 A. They were all done in accordance with our bylaws.

23 Q. All right, sir. Now, tell us, tell Judge Goodstein,
24 please, what it was the church did in May of 2011 and how it
25 was that that was accomplished. And I mean by notices, by

1 votes, let's just give her a little bit of an idea of what
2 St. Philip's did in May of 2011.

3 A. In May of 2011 we had two congregational meetings for
4 the reading of a new and revised bylaws. Our previous bylaws
5 had not been updated in a major way in a considerable period
6 of time, about 40 years, and they needed major revision. So
7 we made major revisions to our bylaws. We notified the
8 parish by mail, first-class mail, as well as through
9 electronic means through our Inspire, which is also mailed
10 out, and from the pulpit of the meeting. We had two readings
11 in accordance with the bylaws before they were approved by
12 the congregation unanimously.

13 Q. All right, sir. You and I know what the Inspire is, but
14 Judge Goodstein and the rest of these folks don't what the
15 Inspire is.

16 A. The Inspire is the weekly bulletin that is sent out, a
17 notice to all parishioners of activities that are going on at
18 the church.

19 Q. Who receives the Inspire?

20 A. All members that we have the address for on our records.

21 Q. So at least two sets of written notice besides pulpit
22 notice, announcement notice, electronic notice, and
23 first-class mail notice was sent?

24 A. That is correct.

25 Q. And that was to amend bylaws?

1 A. Yes, sir.

2 Q. Who was it that investigated the changes needed? Did
3 you say 40 or 50 years' worth of old bylaws?

4 A. Well, the vestry initiated the change when they realized
5 how outdated the bylaws were. A committee was formed that
6 consisted of vestry members, the parish administrator, and
7 our chancellor, who reviewed the bylaws, presented them to
8 the vestry for approval. The vestry then, of course,
9 approved them and sent them to the congregation for the two
10 readings prior to their approval.

11 Q. And the congregation approved and you got new bylaws;
12 correct?

13 A. That is correct.

14 Q. So they're modernized, as you said; is that right?

15 A. That is correct.

16 Q. What was the other effect of the new bylaws?

17 A. We removed all reference to the national Episcopal
18 Church.

19 Q. And this was all finalized in May of 2011; correct?

20 A. That is correct.

21 Q. Were there ever any documents, to your knowledge, where
22 St. Philip's Church specifically acceded to the constitution
23 and canons of the national church?

24 A. That was not in the previous bylaws. The only reference
25 to the national church in the previous bylaws were that we

1 would follow the rites and ceremonies of the Episcopal
2 Church.

3 Q. And rite meaning R-I-T-E?

4 A. Right, R-I-T-E.

5 Q. What does that mean?

6 A. That is the liturgy.

7 Q. The form of worship?

8 A. Right. And that was removed from the new bylaws.

9 Q. Now, the second thing that I want to discuss I believe
10 was initiated or formally initiated in October of 2012, about
11 a year and a half later. Do you know what event that was,
12 sir?

13 A. That was a restatement of our articles of incorporation
14 that went back to 1987.

15 Q. And then before that?

16 A. And then 1785 and '91.

17 Q. Excuse me. Let me interrupt you. 1785 and 1791?

18 A. '91.

19 Q. Got it.

20 A. Correct.

21 Q. So they were restated or clarified in what year?

22 A. 1987.

23 Q. And then?

24 A. And we did that to go on record with the Secretary of
25 State's office that we were in fact an incorporated body

1 because, of course, the Secretary of State's office did not
2 exist in 1785 and 1791.

3 Q. All right. And then what was accomplished in October of
4 2012?

5 A. The restatement removed all reference to the national
6 Episcopal Church.

7 Q. All right. Now, as to that act that was filed, and I
8 really would like to call quick attention to it, Exhibit 31,
9 Mr. Harrington, what was it that the church did to make the
10 congregation aware of this restatement and what was it that
11 the church did to get buy in of this restatement?

12 A. We again, as we did with the bylaws, submitted letters
13 to the parish explaining what we were doing. It was
14 announced from the pulpit and I believe it was also in the
15 Inspire as well, the weekly bulletin, to make sure that we
16 were fully transparent to the congregation of what we were
17 doing.

18 Q. Then did the congregation meet, get an explanation, and
19 give a vote after the --

20 A. That is correct. We had a congregational meeting and
21 our chancellor briefed the congregation fully and
22 comprehensively on the document. And the vote was something
23 like 238 for, two against, and four abstained.

24 Q. All right. Very good. By way of backup review, we were
25 talking about May 2011 and it was actually Exhibit SPH 25

1 that I meant to show you just briefly. And is this SPH 25,
2 which is on your screen, Mr. Harrington, the set of amended
3 bylaws that you referred to?

4 A. They are indeed.

5 Q. Okay. And the ritual is the section that specifically
6 refers to the types of worship for the church; is that right?

7 A. That is correct.

8 Q. One other item I think that we've alluded to occurred,
9 Mr. Harrington, in November of 2012; is that correct?

10 A. That is correct.

11 Q. All right. Tell us what the church did in November of
12 2012. And I'll call your attention to Exhibit SPH 28, which
13 is already in evidence.

14 A. At that time the vestry took action to create a
15 resolution regarding the diocesan relationship, which
16 basically declared that we're no longer in a relationship
17 with TEC, nor are we in union with TEC, but that St. Philip's
18 Church remains affiliated with the Protestant Episcopal
19 Church in the Diocese of South Carolina, her locally elected
20 standing committee, and her rightful bishop, the Right
21 Reverend Mark J. Lawrence. By stating this we declare that
22 we fully support the Diocese of South Carolina disaffiliation
23 from TEC and that as God has sent Bishop Lawrence to be our
24 Bishop, only he has the authority to declare otherwise.

25 Q. All right. This Exhibit SPH 28, this was memorialized

1 in an action taken by what entity?

2 A. This was approved in November by the vestry and was
3 taken to the congregation at a special congregational meeting
4 on January 13th, 2013.

5 Q. And is that the same congregational meeting where the
6 restated articles of incorporation were discussed?

7 A. That is correct.

8 Q. What notice was provided about this resolution that the
9 vestry had made before that meeting?

10 A. Again, we sent out first-class mail to the congregation,
11 it was announced from the pulpit, I believe the chancellor
12 was even called on one Sunday to give a brief explanation of
13 it, and, of course, it was in the Inspire, so the word was
14 out.

15 Q. It was in the newsletter as well?

16 A. Absolutely.

17 Q. And who was the chancellor who would have made some --
18 discussed all this with the --

19 A. Mr. Foster Gaillard.

20 Q. Who's here with us; right?

21 A. Yes.

22 Q. Finally, I'm going to show you the last page of what's
23 been marked as SPH Exhibit 36, Mr. Harrington, and ask you
24 whether this colloquial name that you and I have used, St.
25 Philip's Church, versus the longer name that was in existence

1 since 1785 as given by the General Assembly, has ever been
2 registered as a trademark by the church?

3 A. It has been registered and the date of the first use was
4 July 1st, 1680, as St. Philip's Church.

5 Q. And just to go all the way back to the first part of
6 your testimony, what happened on July 1st, 1680?

7 A. That's when we were founded.

8 Q. So what was it that was registered? What name was
9 registered?

10 A. St. Philip's Church.

11 Q. All right, sir. And we've had a lot of questions during
12 this trial about signage. As long as you've been a part of
13 St. Philip's Church and your family for ten years, what has
14 the signage been?

15 A. It has just been St. Philip's Church.

16 Q. Okay. Did we ever have an "Episcopal Church Welcomes
17 You" sign in downtown Charleston?

18 A. Not to my knowledge.

19 Q. All right. Now, besides these four events that St.
20 Philip's Church did on its own initiative from 2011 forward,
21 what else was done by the diocese for the benefit of St.
22 Philip's Church?

23 A. We received a quitclaim from the diocese. We received
24 two of them. I believe the first one was the bishop, signed
25 by the bishop, and the president of the standing committee,

1 Jeffrey Miller, which I would believe they were relinquishing
2 any right they had to the property. And then we got a second
3 quitclaim which was signed by Paul Fuener which recognized
4 the diocese had no claim to any of St. Philip's property.

5 Q. Was the title owner on these 13 deeds that comprised, as
6 you said, almost a square block plus some parking, plus a
7 residence, the same entity that --

8 A. The St. Philip's Church.

9 Q. -- was incorporated in 1785?

10 A. Yes, sir.

11 Q. All right. Since the Episcopal Church in South Carolina
12 or TECSC that's been referred to that's one of our adverse
13 parties in this case has come into existence in October or
14 November of 2012, has St. Philip's Church had any part of it
15 to your knowledge?

16 A. No.

17 Q. All right. And has it ever authorized itself, for
18 instance, to be listed as a parish member of the Episcopal
19 Church in South Carolina or TECSC?

20 A. No.

21 Q. And does St. Philip's Church maintain any relationship
22 and has it since November of 2012 with the national church?

23 A. No.

24 Q. All right, sir. I want to take, finally, a look at just
25 a few photographs just so we all get a little bit better feel

1 for which one's St. Philip's versus St. Michael's and versus
2 these other places. These photographs I think are all marked
3 as Exhibit 42. What is this first picture?

4 A. That is the St. Philip's Church highlighting the
5 steeple.

6 Q. And I'm not going to ask you how many members show up
7 every Sunday, but how many members does it call as members of
8 the church?

9 A. We have approximately 2,500 members.

10 MR. PHILLIPS: All right, sir. Show us the next
11 photograph, please.

12 Q. Here's a little closer shot. Where is this, Mr.
13 Harrington?

14 A. This is at 142 Church Street showing the exterior of the
15 main church building.

16 Q. And that's on Church Street; correct?

17 A. Yes, sir.

18 Q. Do you see the building that's a little bit pinkish to
19 the rear, the right rear, of the church?

20 A. That is the ministries hall, which is our administrative
21 building.

22 Q. That's where the clergy have offices?

23 A. Clergy offices, the choir room, the vestry meeting is
24 there, and the staff is there as well.

25 Q. Let's take a look at the next photograph, also SPH

1 Exhibit 42. What is this?

2 A. This is the interior of our church.

3 Q. And, by the way, do you know about how many folks that
4 the church can hold on a packed-in service?

5 A. We could put in 1,200, but I think the safety level
6 would be about 850.

7 Q. All right, sir. And, if you please, the next photograph
8 in the series is SPH 42. I'm going to just call this
9 photograph by the 1974 date, if you would fill in the blanks
10 for us.

11 A. Well, this is by the Department of the Interior, which
12 has declared that St. Philip's Church has been designated a
13 national historic landmark because the site possesses
14 national significance in commemorating the history of the
15 United States of America.

16 Q. And back in 1974 what name was referred to by the United
17 States Department of Interior?

18 A. St. Philip's Church.

19 Q. All right. I'm going to ask for the next photo in SPH
20 Exhibit 42. Tell us what the Daughters of the Confederacy
21 declared by way of a nice-looking plaque I think in 1969.
22 And it might be the Daughters of the Revolution. I may have
23 misspoken. You'd better tell me.

24 A. No, I believe it is the Confederacy. No. I stand
25 corrected. It's the South Carolina Society Daughters of

1 American Colonists.

2 Q. What did the South Carolina Society of Daughters of
3 American Colonists recognize in a plaque?

4 A. They recognize two of our distinguished former past
5 members, Charles Pinckney, who was a signer of the United
6 States Constitution, and Edward Rutledge, who was a signer of
7 the Declaration of Independence.

8 Q. And to use the John Wayne pronunciation, where are those
9 two buried?

10 A. They're in St. Philip's cemetery.

11 Q. All right, sir. And what other distinguished person, if
12 any other person, that you're aware of that held national
13 significance?

14 A. John C. Calhoun, for example. And there are numerous
15 other citizens who have made great contributions to our
16 state, our nation, and certainly to our community that are
17 buried in St. Philip's.

18 Q. All right. And back in 1969 how was the church
19 addressed by name by this entity?

20 A. St. Philip's Church.

21 Q. All right. Next photograph on SPH 42. The first two
22 signs that we looked at, do those exist on the St. Philip's
23 Church campus?

24 A. They do, yes.

25 Q. All right. And how about this sign?

1 A. This is on the campus as well.

2 Q. Has this sign been there as long as you remember?

3 A. It's been there as long as I can remember.

4 Q. And just very quickly what entities are referred to and
5 what kind of worship is referred to?

6 A. St. Philip's Church, the Holy Communion, the Sunday
7 services, morning prayer using the 1928 prayer book, for
8 example, various other worship services.

9 Q. And, finally, let me see if we've got any photographs
10 left. We're about done.

11 This is another shot of the inside of the sanctuary?

12 A. Interior of the church.

13 Q. All right, sir. This view is from where?

14 A. This is looking north on Church Street at St. Philip's.

15 Q. And the building on the immediate right just before the
16 church?

17 A. Again, that is the ministries hall and the
18 administrative office building of the clergy and staff and
19 choir.

20 Q. And on the far side of the church which building exists?

21 A. That would be the parish hall and the Sunday school
22 building and the preschool.

23 Q. And the second church, the chapel, where does it exist?

24 A. It is on the north side of the main church.

25 Q. All right, sir. One more photograph. And this is --

1 A. Again, this is the steeple -- I'm not sure from what
2 direction it was taken -- again highlighting the cross. And
3 it's a national landmark in Charleston.

4 MR. PHILLIPS: All right, sir. Mr. Harrington, there
5 may be some questions from Mr. Runyan or from Ms. Golding and
6 then otherwise from the lawyers for either TEC or the
7 Episcopal Church South Carolina. Thank you.

8 THE COURT: Any other questions from the plaintiffs?

9 No. All right.

10 MR. TISDALE: Colonel Harrington, I'm glad to say due to
11 the thorough questioning of your counsel, I don't have any
12 questions.

13 THE COURT: Thank you, Mr. Tisdale.

14 Mr. Beers?

15 MR. BEERS: No, Your Honor.

16 THE COURT: No questions.

17 You may come down, sir. All right.

18 MR. GAILLARD: May it please the Court, Your Honor, I'm
19 Foster Gaillard, one of the attorneys for St. Philip's in
20 this matter, and I have got legible copies of St. Philip's
21 Exhibit 11, including this deed from Christopher Gadsden to
22 St. Philip's Church, and legible copies of St. Philip's
23 Exhibit 40 certified by the South Carolina Department of
24 Archives, so I'd like to substitute these.

25 THE COURT: Thank you, Mr. Gaillard. If you'll show it

1 to counsel let him take a look at it and then we will
2 certainly do that. Thank you so much.

3 (Plaintiff's Exhibits TED-1 through TED-19 premarked for
4 identification.)

5 JOHN CONRAD ZIMMERMAN, JR.,
6 being first duly sworn, testified as follows:

7 THE COURT: Please state your name again for our record.

8 THE WITNESS: John Conrad Zimmerman, Jr.

9 THE COURT: Very well. Your witness, Mr. Platte.

10 MR. PLATTE: Thank you, Your Honor. Andrew Platte on
11 behalf of Trinity Episcopal Church.

12 DIRECT EXAMINATION BY MR. PLATTE:

13 Q. Mr. Zimmerman, how old are you?

14 A. 70.

15 Q. Are you currently employed?

16 A. Yes.

17 Q. Where do you work?

18 A. Robert W. Baird & Company.

19 Q. What do they do?

20 A. They're investment advisers and brokers.

21 Q. Are you currently a member of a parish?

22 A. Yes.

23 Q. What parish is that?

24 A. Trinity Episcopal Church on Edisto Island.

25 Q. Where is that located on Edisto?

1 A. It's on Highway 174. I can't remember the number
2 exactly.

3 Q. How long have you been a member there?

4 A. Since 1989.

5 Q. What leadership positions have you held with Trinity?

6 A. I've served on the vestry as senior warden.

7 Q. How long has Trinity been in existence?

8 A. Trinity -- the land was given to Trinity by the Colonial
9 Assembly in 1770 and it was chartered or incorporated, as
10 they say, in 1793.

11 Q. Does Trinity currently have a -- did they receive a deed
12 for the land?

13 A. We have an act of the Colonial Assembly.

14 Q. How many members does Trinity have?

15 A. Currently I believe 137.

16 Q. What is the parish's board of directors?

17 A. We use the term "vestry" and it has nine members that
18 are elected to three-year terms. And among those are the
19 officers, which are the senior warden, junior warden,
20 secretary, and treasurer, and the rector is a member of the
21 vestry.

22 Q. Are you familiar with the history and the governance of
23 Trinity?

24 A. Pretty much.

25 Q. And are you familiar with the Exhibit TED 19? It's a

1 set of stipulations. Are you familiar with that document?

2 A. That's the 19 or so stipulations?

3 Q. Let me hand it to you and you can tell me if you've seen
4 this document before.

5 A. Yes, I have.

6 Q. And would that be your testimony today in terms of the
7 facts that are contained in these stipulations?

8 A. Yes, it would.

9 Q. Were all notices for all meetings at Trinity given
10 according to the bylaws?

11 A. Yes.

12 Q. Was there a quorum at all meetings?

13 A. Yes.

14 Q. Did all matters that were voted upon pass with a
15 required majority according to the bylaws?

16 A. Yes.

17 Q. How does Trinity disseminate the issues that they're
18 going to vote on at parish meetings specifically in
19 accordance with the bylaws, if there's any bylaw changes, how
20 is that information passed out to the parishioners?

21 A. Well, we notice the meeting and talk about it in the
22 sanctuary, during services, and in the bulletins, weekly
23 bulletins, but there is a missal called the Trinity Trumpet
24 which has all the activities of the ensuing month and that is
25 distributed to all members and friends of Trinity. Friends

1 are people who are not members but come often and in many
2 times pledge.

3 Q. Do friends have voting rights?

4 A. No.

5 Q. Does Trinity have any relationship with the defendant
6 TEC or the defendant TECSC?

7 A. They do not.

8 Q. Did Trinity send delegates to the defendant TECSC's
9 convention?

10 A. No.

11 Q. Is Trinity a parish of defendant TECSC?

12 A. It is not.

13 Q. Is defendant TECSC authorized to use Trinity's name or
14 likeness?

15 A. They are not.

16 Q. And are you aware of when the Protestant Episcopal
17 Church in the Diocese of South Carolina first decided to cut
18 off funding from the diocese to the Episcopal Church?

19 A. I believe it was 1960. My father was diocesan treasurer
20 under Gray Temple, who was bishop at that time.

21 MR. PLATTE: Your Honor, at this time we move to admit
22 into evidence Exhibit TED 1 through 19.

23 THE COURT: Any objection?

24 MS. KOSTEL: No objection.

25 MR. TISDALE: None, Your Honor, except No. 3 is

1 illegible; but other than that, we don't have any objection.

2 THE COURT: All right. You'll take a look at that, Mr.
3 Platte.

4 MR. PLATTE: We will.

5 THE COURT: Very well. 1 through 19 are admitted into
6 evidence. No. 3 will be attempted to be substituted,
7 certainly will be substituted with the most legible copy. If
8 there remains a problem, counsel will let me know.

9 MR. PLATTE: Thank you, Your Honor.

10 (Plaintiff's Exhibits TED-1 through TED-19 admitted into
11 evidence.)

12 THE COURT: Yes.

13 Cross-examination. Thank you, Mr. Beers.

14 CROSS-EXAMINATION BY MR. BEERS:

15 Q. Good morning, sir.

16 A. Good morning.

17 MR. TISDALE: Afternoon now.

18 THE WITNESS: Right, afternoon.

19 Q. As you may remember, I'm David Beers and I represent the
20 National Episcopal Church.

21 A. Yes, sir.

22 Q. I'm just going to ask you some things I forgot to ask
23 you on Sunday. Who are the officers of the corporation?

24 A. We have never referred to ourselves as a corporation but
25 as a vestry. And the officers are the rector, the senior

1 warden, the junior warden, the treasurer, and the secretary.

2 Q. But is there a corporation to which your parish is
3 attached?

4 A. Yes.

5 Q. And does it have officers?

6 A. It's the same thing.

7 Q. The same officers?

8 A. Same officers, we just refer to it as a vestry.

9 Q. I see. Thank you. Did you all ever use a vestry manual
10 or a vestry handbook?

11 A. I do remember seeing one. I can't recall the details
12 because it's been a number of years.

13 Q. You're not using it currently, you haven't used it in
14 the last five years?

15 A. I can't say that we have or haven't.

16 Q. Do you recall whether that was put out by the parish or
17 the diocese?

18 A. I believe it was by the diocese.

19 Q. Now, could you give us a quick rundown of what real
20 property the parish owns?

21 A. The parish owns 5.89 acres of land on Highway 174 and
22 there is a sanctuary, there is a parish hall and kitchen and
23 rector's office and then there's a separate building that is
24 primarily a classroom building. And then there's a fourth
25 building referred to as Thomas Hall that we lease to the

1 Charleston County Library for \$1 a year and it is used by the
2 Charleston County Library as a library on Edisto Island.

3 Q. Do you have any idea how much all of that property is
4 worth either from insurance documents or appraisals?

5 A. I have never seen an appraisal, sir. I believe we have
6 liability insurance and casualty insurance on the buildings
7 themselves and not the land for approximately \$2.5 million.

8 Q. And do you have any basis for estimating how much the
9 land is worth?

10 A. No.

11 Q. Can you tell us in rough numbers what the value is of
12 any other property, not real property and not silver or
13 contents of the buildings, but investments, bank accounts,
14 portfolios?

15 A. There's a \$7,000 fund called the Camp Children's Fund
16 and it's for the rector's children's education specifically.
17 And we have a cemetery fund where -- for the upkeep and
18 maintenance of the cemetery of about \$30,000.

19 Q. Do you have any investments?

20 A. Those monies are invested.

21 Q. Do you have any endowment?

22 A. None.

23 Q. Do you have any knowledge of any grants, loans, gifts or
24 other financial assistance that's been given to your parish
25 by the national church?

1 A. No.

2 MR. BEERS: Those are all the questions I have, Your
3 Honor.

4 THE COURT: All right. Mr. Tisdale?

5 CROSS-EXAMINATION BY MR. TISDALE:

6 Q. Mr. Zimmerman, good afternoon.

7 A. Good afternoon, sir.

8 Q. How are you?

9 A. Good.

10 Q. Just a couple of questions, few questions.

11 He asked about endowments, but do you have any trusts
12 set up that the parish is the beneficiary of?

13 A. No.

14 Q. And who is the rector of the parish now?

15 A. Weyman Camp.

16 Q. How long has he been there, roughly?

17 A. Since, I believe, 1991.

18 Q. And the signs outside the parish, what do they say to
19 identify it?

20 A. Trinity Episcopal Church.

21 Q. All right. You've decided not to take the word
22 "Episcopal" out of the name?

23 A. Well, we report to the bishop and so that's what
24 Episcopal means.

25 Q. So that's why it's up there?

1 A. Right.

2 Q. You're certainly not an Episcopal Church in the sense of
3 belonging to the Episcopal Church in the United States?

4 A. I believe there are four Episcopal Churches on Edisto
5 Island.

6 Q. I understand that. But I asked you whether you had any
7 connection with the national Episcopal Church.

8 A. No.

9 Q. Now, you all received one quitclaim deed, did you not?

10 A. That's correct.

11 Q. Do you know why you didn't get two like most of the
12 other parishes did?

13 A. We only have one piece of property.

14 Q. All right. And did you ask for that deed or was it just
15 a gratuitous thing?

16 A. We asked for it.

17 Q. You did?

18 A. Yes.

19 Q. When did you ask for it?

20 A. In 2011.

21 Q. And why did you ask for it?

22 A. Because our attorney was going through all of our
23 corporate documents to bring them up to speed and suggested
24 that we -- we knew that the diocese was making them available
25 and so we asked for ours.

1 Q. All right. So along with everybody else in the diocese
2 having them been made available to the other parishes, you
3 asked for yours?

4 A. Yes, sir.

5 Q. And got it?

6 A. Yes, sir.

7 Q. Now, you said you had a cemetery with an endowment of
8 about 30,000 to take care of the cemetery upkeep?

9 A. That's correct.

10 Q. Now, did some people, when whatever we want to call it
11 occurred in 2012, a division occurred, and I think we know
12 what I'm talking about, did some people who had been
13 Episcopalians who are still Episcopalians leave Trinity
14 Edisto to worship elsewhere?

15 A. You're asking me if some people left?

16 Q. To worship elsewhere as Episcopalians.

17 A. Yes.

18 Q. All right. And specifically what I wanted to ask you is
19 with regard to the cemetery situation, if some of those
20 people who left had arrangements to use the cemetery for
21 burial in the future, does the parish plan to honor those
22 agreements?

23 A. I have no specific knowledge of that. It never has come
24 up.

25 Q. All right. So you don't know what the answer is as to

1 whether people who had arranged to be buried in the cemetery
2 at Edisto, Trinity Edisto, but no longer belong to that
3 parish because they're worshipping as Episcopalians, whether
4 their agreement to be buried can be honored there? You don't
5 know?

6 A. That's a legal question I've never heard the answer to.

7 MR. TISDALE: I don't have any further questions. Thank
8 you, Your Honor.

9 Thank you, sir.

10 THE COURT: All right. Any redirect or anyone else on
11 behalf of plaintiffs?

12 MR. PLATTE: No, Your Honor.

13 THE COURT: Very well. Thank you. You may come down.
14 Call your next witness, please.

15 MR. WALL: Good afternoon, Your Honor. John Wall again
16 from Church of the Good Shepherd. I have one more exhibit
17 that I would like to introduce today. I did not have it
18 available yesterday. It's a matter of public record. It is
19 the deed of outconveyance of the property the defendants
20 wanted to admit into evidence yesterday I believe as
21 Defendant's Exhibit No. 8. And I would like to approach the
22 bench and pass it to you and pass it to them as well.

23 THE COURT: All right. Any objection?

24 MR. TISDALE: It just wasn't in the package yesterday?

25 MR. WALL: No, sir. It wasn't in the package and it was

1 not in the documents in the church. I actually went to the
2 Court yesterday to get a copy of that document yesterday
3 afternoon and got it myself and I'd like to admit it into
4 evidence.

5 MR. TISDALE: It was admitted by us for ID purposes
6 yesterday so, of course, we have no objection to this.

7 MS. KOSTEL: Correct.

8 THE COURT: All right. Very well. This document is in
9 evidence as Good Shepherd's Exhibit 19.

10 MR. WALL: Yes, ma'am.

11 THE COURT: Thank you, Mr. Wall. Anything further from
12 you?

13 MR. WALL: No, ma'am.

14 THE COURT: All right.

15 MR. RUNYAN: Your Honor, that concludes the testimony.
16 We have a few housekeeping exhibits that we would like to
17 offer and publish a few requests for admissions.

18 THE COURT: All right.

19 MR. RUNYAN: First of all, we would like to offer into
20 evidence all of the photographs that have been displayed.
21 They are marked with the prefix associated with the parish.
22 They do not have a number because we didn't know the
23 sequential number that would follow. And we'd be happy to
24 get copies.

25 MR. TISDALE: If you're just telling us that's what they

1 are and they were shown, thank you for the copies but we
2 don't object to them.

3 THE COURT: Very well. Photographs are in evidence
4 without objection. Is that true for the national church as
5 well?

6 MS. KOSTEL: Yes.

7 THE COURT: Thank you.

8 (Plaintiff's Exhibits AS-10, SAMP-30, SLP-18, HC-28,
9 RS-21, PCSH-34, SB-17, TMB-27, SMFM-19, SMI-28 marked for
10 identification.)

11 (Plaintiff's Exhibits AS-10, SAMP-30, SLP-18, HC-28,
12 RS-21, PCSH-34, SB-17, TMB-27, SMFM-19, SMI-28 admitted into
13 evidence.)

14 MR. RUNYAN: Secondly, I believe we would like to revisit
15 the issue of the transcription of the Constitution, First
16 Constitution, of the Protestant Episcopal Church in South
17 Carolina. And I believe we have an agreement that this is an
18 accurate rendition of that, so we would offer that as well as
19 the next diocese exhibit.

20 THE COURT: All right. And it is marked as Exhibit --
21 it's being substituted; is that correct?

22 MR. RUNYAN: No. It's being added.

23 THE COURT: It's being added?

24 MR. RUNYAN: Well, we marked the other one for
25 identification, so it would be substituted for that one, I

1 believe.

2 MR. TISDALE: It was a re-type to take out typos, as I
3 recall it.

4 MR. RUNYAN: That's correct.

5 MS. GOLDING: No. 41 is the original constitution.

6 THE COURT: So we'll mark that as 41A, since it is the
7 transcription.

8 (Plaintiff's Exhibit DSC-41A marked for identification.)

9 THE COURT: And, Ms. Kostel, have you had opportunity to
10 look now at the transcription?

11 MS. KOSTEL: We're satisfied with it, Your Honor.

12 THE COURT: Very well. Any objection, Mr. Tisdale?

13 MR. TISDALE: No objection.

14 (Plaintiff's Exhibit DSC-41A admitted into evidence.)

15 MR. RUNYAN: We also would offer into evidence the
16 Constitution of the State of South Carolina for the year
17 1778.

18 THE COURT: All right. And would that have an exhibit
19 number?

20 MR. RUNYAN: It would. That would be Exhibit 60.

21 (Plaintiff's Exhibit DSC-60 marked for identification.)

22 THE COURT: Have you passed a copy of it --

23 MR. RUNYAN: I gave them a copy, Your Honor.

24 THE COURT: Any objection?

25 MR. TISDALE: No objection.

1 MS. KOSTEL: No objection.

2 (Plaintiff's Exhibit DSC-60 admitted into evidence.)

3 MR. RUNYAN: And, finally, a copy of the Constitution of
4 the State of South Carolina from 1790 as Exhibit 61.

5 (Plaintiff's Exhibit DSC-61 marked for identification.)

6 THE COURT: Any objection?

7 MR. TISDALE: No objection.

8 MS. KOSTEL: No objection.

9 (Plaintiff's Exhibit DSC-61 admitted into evidence.)

10 MR. RUNYAN: Your Honor, I have copies of each of these
11 I'd like to pass up to the Court.

12 THE COURT: Hold on one second for me, please.

13 MR. RUNYAN: Your Honor, the particular provision in the
14 Constitution of 1778 would be Article 38 and in the
15 Constitution of 1770 would be Article 8, Section 2.

16 THE COURT: You mean 1790?

17 MR. RUNYAN: 1790, Article 8, Section 2.

18 THE COURT: Okay. Got it.

19 MR. RUNYAN: I'd also hand up photographs St. Philip's
20 that we've just seen, St. Philip's SPH-42.

21 THE COURT: Okay.

22 MR. RUNYAN: I publish from the defendant Episcopal
23 Church in South Carolina's responses to the Protestant
24 Episcopal Church in the Diocese of South Carolina's request
25 for admissions dated October 3, 2013.

1 No. 13: The Protestant Episcopal Church in the Diocese
2 of South Carolina registered the service marks described in
3 Paragraph 19 of the Second Amended Complaint.

4 Answer: Admitted as a mark in the State of South
5 Carolina.

6 No. 17: The ECSC has no signed writing by any plaintiff
7 parish creating a trust in real or personal property for the
8 benefit of the Episcopal Church or the Episcopal Church in
9 South Carolina.

10 Answer: Admitted. However, this defendant states such
11 property is subject to the provisions of the constitution and
12 canons of the Episcopal Church that contain a trust provision
13 and it is in writing.

14 No. 14: The Protestant Episcopal Church in the Diocese
15 of South Carolina is the fee simple owner of all real
16 property titled in its name.

17 Answer: Admitted. However, the real property
18 referenced in this request is subject to a trust interest
19 owned by the Episcopal Church.

20 The next publication is from the Episcopal Church's
21 response to the Church of Our Saviour of the Diocese of South
22 Carolina and nine other parishes listed first request for
23 admissions dated October 8, 2013.

24 MR. TISDALE: Who made the request, if I may ask, and
25 who responded?

1 MR. RUNYAN: The request is as follows: The
2 Episcopal -- the response is as follows: The Episcopal
3 Church's response to Church of Our Saviour of the Diocese of
4 SC, Church of the Cross, Inc., and Church of the Cross
5 Declaration of Trust, the Church of the Epiphany, St. David's
6 Church, the Vestry and Church Wardens of the Episcopal Church
7 of the Parish of St. Helena, and the Parish Church of St.
8 Helena Trust, Vestry and Church Wardens of the Episcopal
9 Church of the Parish of St. John's Charleston County, the
10 Vestry and Church Wardens of St. Jude's Church of Walterboro,
11 the Protestant Episcopal Church, the Parish of St. Michael in
12 Charleston in the State of South Carolina, and St. Michael's
13 Church Declaration of Trust, and Trinity Episcopal Church
14 Edisto Islands First Request for Admission.

15 Request for Admission No. 1: The Episcopal Church did
16 not exist as a civil entity in 1778.

17 Answer: Admitted.

18 Last, Your Honor, we would offer into evidence the
19 pictures that were used in the diocese testimony which would
20 be Diocese Exhibit 62.

21 (Plaintiff's Exhibit DSC-62 marked for identification.)

22 MR. TISDALE: We don't have any objection to these.

23 MS. KOSTEL: No objection.

24 THE COURT: All right. None on behalf of the national
25 church as well. All right.

1 (Plaintiff's Exhibit DSC-62 admitted into evidence.)

2 MR. RUNYAN: Your Honor, the plaintiffs rest.

3 MR. ORR: Larry Orr on behalf of St. John's Florence.

4 THE COURT: Almost.

5 MR. RUNYAN: Almost.

6 MR. ORR: There was an objection to Exhibit SJF-5 due to
7 the clarity. I've provided them with a clear copy yesterday
8 and they had withdrawn their objection. I've provided the
9 court reporter with a new original, provided them a copy, and
10 she also has a copy.

11 THE COURT: Thank you, Mr. Orr.

12 Is that correct, Mr. Tisdale?

13 MR. TISDALE: Correct, Your Honor.

14 THE COURT: All right. Very well. And Ms. Kostel?

15 MS. KOSTEL: Yes.

16 MR. ORR: Thank you, Your Honor.

17 THE COURT: Very well. All right. Now the plaintiffs
18 rest.

19 MR. RUNYAN: Now the plaintiffs rest, Your Honor.

20 THE COURT: Very well. All right. Good time for lunch.
21 We will reconvene at 2:00. And I will just ask, first from
22 the plaintiffs and the defendants, whether you anticipate
23 making motions at this time.

24 MR. RUNYAN: The plaintiffs do not.

25 THE COURT: All right.

1 MR. TISDALE: We won't have any motions now, Your Honor.

2 THE COURT: Very well. And will you be prepared to
3 proceed, defendants, at 2:00?

4 MR. TISDALE: We plan to proceed, yes.

5 THE COURT: Thank you. Thank you very much. All right.
6 See everyone at 2:00. Have a good lunch.

7 (Luncheon recess held.)

8 THE COURT: All right. And are the defendants ready to
9 proceed?

10 MR. TISDALE: Defendants are ready to proceed, Your
11 Honor.

12 THE COURT: Very well. Thank you. And if you'd be so
13 kind as to call your first witness.

14 MR. TISDALE: Your Honor, we would call to the stand
15 Armand Derfner.

16 THE COURT: All right.

17 ARMAND GEORGES DERFNER,
18 being first duly sworn, testified as follows:

19 THE COURT: If you would be so kind as to state your
20 full name for the record and spell your last name.

21 THE WITNESS: Armand Georges, with an S, Derfner,
22 D-E-R-F-N-E-R.

23 THE COURT: Thank you very much. Your witness, sir.

24 DIRECT EXAMINATION BY MR. TISDALE:

25 Q. Mr. Derfner, I first want to ask you some information

1 about your background and qualifications for what we plan to
2 ask you to give an opinion about in this particular matter.

3 First of all, where were you born?

4 A. I was born in Paris, France.

5 Q. And were there any unusual circumstances about that or
6 were your parents French?

7 A. My parents were escaping from the Nazis. They came from
8 Poland to France and then when I was 2 years old we left
9 France the night that Hitler came into Paris and we came to
10 this country.

11 Q. Came to this country?

12 A. Yes.

13 Q. And where in this country did you grow up?

14 A. Partly in New York and partly in Iowa.

15 Q. Partly in New York and partly in Iowa.

16 Now, did you finish a high school in one of those
17 places?

18 A. I finished high school in New York at Forest Hills High
19 School.

20 Q. Forest Hills High School. And did you go from high
21 school to college?

22 A. Yes, I have a Bachelor's degree from Princeton
23 University.

24 Q. And after that?

25 A. Yale Law School.

1 Q. Yale Law School?

2 A. Correct.

3 Q. What year did you finish Yale Law School?

4 A. 1963.

5 Q. Did you have anything to do with the publication of the
6 law journal at Yale?

7 A. I was a note and comment editor of the Yale Law Journal.

8 Q. And did you receive any award at Princeton,
9 fellowship-wise?

10 A. Yes. I had a Woodrow Wilson fellowship and a Koren
11 Prize in history.

12 Q. After law school did you pursue a career in law?

13 A. Yes. I clerked for a year for Judge David Bazelon, the
14 Chief Judge of the US Court of Appeals for the D.C. Circuit,
15 and then I went to work at Covington & Burling, a large firm
16 in Washington, D.C.

17 Q. After that what did you do?

18 A. Then I went to Mississippi as a civil rights lawyer, and
19 I've been something of that ever since. After Mississippi
20 went back to Washington, then came here in the early 1970s.
21 I've been here mostly ever since. And I have focused on
22 litigation, especially constitutional litigation.

23 Q. Can you give the Court a little bit of the background in
24 your experience and knowledge of constitutional law --

25 A. Well --

1 Q. -- United States constitutional law?

2 A. I've been active in Supreme Court cases since the
3 beginning of my career. In my first year of practice before
4 I was a member of the Supreme Court Bar I did the certiorari
5 petition and brief in a case that we won in the Supreme
6 Court, a case involving jury bias. And since that time I've
7 had a number of Supreme Court cases. I guess the case that
8 I've argued and filed briefs in, I've argued four or five
9 cases and I have filed briefs or been involved in filing
10 briefs, party briefs, amicus briefs, and probably 25 or 30
11 others. And I have taught constitutional law as a visiting
12 professor at American University and most recently as an
13 adjunct professor at Charleston School of Law. I've
14 published a number of articles on constitutional law.

15 Q. Throughout your career have you authored papers and
16 articles having to do with the subject of constitutional law?

17 A. Yes, I have.

18 Q. All right. Mr. Derfner, so as not to go into all of the
19 details of your resume but have them in the record, I would
20 like to present to you what's been marked as Defendant's
21 Exhibit 11 and ask you if that is a copy of your current
22 resume?

23 A. Yes, it is.

24 MR. TISDALE: Now, Your Honor, we would present him as
25 an expert witness to render an opinion on constitutional law

1 as it effects the facts of this case.

2 THE COURT: Let me ask you this question: First of all,
3 is there an objection to the -- are you moving to admit --

4 MR. TISDALE: Him as an expert.

5 THE COURT: -- the resume?

6 MR. TISDALE: And presenting him as -- the resume first.

7 THE COURT: Right. You're moving to admit the resume.

8 MR. TISDALE: Yes.

9 THE COURT: Very well. Any objection?

10 MR. RUNYAN: Yes, Your Honor. I don't think the resume
11 is independently admissible. If he can establish a
12 foundation --

13 THE COURT: It's cumulative.

14 MR. RUNYAN: And I think he has. It is cumulative, yes.

15 THE COURT: Very well, I sustain it. It's cumulative.

16 MR. TISDALE: Okay.

17 Q. Well, I'll just ask you a few more questions then about
18 your background, Mr. Derfner.

19 Have you engaged in litigation in major reported cases
20 having to do with constitutional law?

21 A. Yes, I have.

22 Q. Would you name a few of the highlights?

23 A. My -- the Supreme Court case that I mentioned earlier,
24 which was before I was a member of the Supreme Court Bar, was
25 a case called Parker versus Gladden. Then in 1969 I had the

1 case of Allen versus State Board of Elections, which was the
2 first major case involving preclearance provision of the
3 Voting Rights Act. I've had in 1971 a case called Perkins
4 versus Matthews in the Supreme Court, in 1975 City of
5 Richmond versus United States, and in '73 City of Petersburg
6 versus United States, in '78 I think Morris versus Gressette
7 in the Supreme Court, in 1982 --

8 Q. When you say "Supreme Court," are you referring --

9 A. Supreme Court of the United States.

10 Q. Okay.

11 A. In 1982 DuBose versus Blanding in the US Supreme Court,
12 in -- and other cases in the US Supreme Court.

13 Q. All right. Now, have you had an opportunity in your
14 career to study and opine on the matters of disputes that
15 involve First Amendment and religious disputes as opposed to
16 secular neutral principles of law issues?

17 A. Yes. I've been involved in a number of -- well, first
18 of all, I've taught the religion clauses of the First
19 Amendment in my common law classes. I've also been involved
20 in some cases -- most recently I worked on the amicus or an
21 amicus brief in a case called Hosanna-Tabor versus Lutheran
22 School, which was a Supreme Court case decided I think two
23 years ago.

24 And I've also been involved as a counsel or an adviser
25 in a number of other cases involving the religion clause, one

1 of them, for example, being the case in which Charleston, the
2 County Council, posted the Ten Commandments on the County
3 Council wall and that was ordered pulled down by Judge
4 Markley Dennis.

5 Q. Mr. Derfner, at our request have you had an opportunity
6 to examine the factual background involving the facts of this
7 case that we're in Court about today with the view towards
8 giving an opinion on how the law of the United States should
9 be applied where neutral principles of law are at issue with
10 issues of the First Amendment rights of the parties involved?

11 A. Yes, I have.

12 MR. TISDALE: Your Honor, I would submit him as an
13 expert to testify on that issue.

14 THE COURT: Let me hear it again. You're offering Mr.
15 Derfner as an expert --

16 MR. TISDALE: Witness.

17 THE COURT: -- witness.

18 MR. TISDALE: To testify concerning the issues, legal
19 issues, involved in the application of neutral principles of
20 law to the facts of this case as it relates to a proper
21 application of the First Amendment rights of the parties
22 involved.

23 THE COURT: Is there any objection?

24 MR. RUNYAN: Yes, Your Honor. I believe what Mr.
25 Derfner will be asked to opine on goes right to the heart of

1 what the Court does. And in this state, generally speaking,
2 expert testimony on issues of law is inadmissible.

3 THE COURT: And you took that from Vortex Sports and
4 Entertainment versus David Ware.

5 MR. TISDALE: Have it in my hand, Your Honor.

6 MR. RUNYAN: Actually took it from the South Carolina
7 Supreme Court opinion.

8 THE COURT: Dawkins versus Fields.

9 MR. RUNYAN: Yes, I did.

10 THE COURT: Okay.

11 MR. TISDALE: So we are offering him --

12 THE COURT: He's not finished.

13 MR. TISDALE: Excuse me. I'm sorry.

14 MR. RUNYAN: Recognizing that expert testimony might be
15 admissible when it's helpful to the finder of fact, which is
16 Your Honor, I think our objection is that's an issue for Your
17 Honor to decide. And we think that the Court doesn't need to
18 hear from an expert on constitutional law to resolve the
19 issues. The Court is more than able to do that.

20 THE COURT: Thank you. Yes, sir.

21 MR. TISDALE: Well, the Courts of South Carolina Court
22 of Appeals and Vortex has certainly said his testimony's
23 admissible to aid the trier of fact, and that is exactly why
24 he's being presented. And we think it would be helpful not
25 only to Your Honor but to the parties here to present the

1 evidence as we move through this very, very complicated and
2 complex case involving these constitutional issues.

3 THE COURT: Yes, sir. I will not allow Mr. Derfner to
4 testify with regards to what the law is. That's for the
5 Court. And I'll make that determination rightly or wrongly,
6 but that's for the Court, and much like I think you used when
7 we discussed this earlier when we talked about Professor
8 Freeman.

9 MR. TISDALE: Yes.

10 THE COURT: And Professor Freeman often testifies and he
11 will often testify with regards to whether or not certain
12 conduct is a breach of, say, fiduciary duties or whether or
13 not conduct meets a definition perhaps of one of the ethical
14 rules, but he does not tell the Judge, this is the law as it
15 relates to ethics, Judge, and this is how you've got to
16 interpret the law with regards to ethics.

17 Now, having said that, if Mr. Derfner has reviewed
18 certain conduct, certain of the constitutional provisions or
19 the bylaws and has an opinion with regards to those matters
20 and how they may relate in this case, I think that's a
21 different issue. I think he certainly very well may be able
22 to testify with regards to those items.

23 MR. TISDALE: Well, Your Honor, what I would propose to
24 do, with Your Honor's permission, is ask him what he has
25 done --

1 THE COURT: Okay. Sure.

2 MR. TISDALE: -- what he has an opinion to provide. And
3 if Your Honor will listen to it, we appreciate it. And if
4 there's anything that he is going to testify to that you
5 don't want to listen to, obviously you don't have to.

6 THE COURT: Well, why don't you do that, why don't you
7 ask him --

8 MR. TISDALE: What he's done.

9 THE COURT: -- what he's done and what opinions is he
10 prepared to give.

11 MR. TISDALE: Your Honor, that's exactly the way I would
12 proceed.

13 THE COURT: Thank you.

14 MS. GOLDING: Your Honor, if I understand that
15 instruction, he is not to render any opinions until he
16 establishes the foundation.

17 THE COURT: Right. That's what he's going to tell me,
18 in what areas he is prepared to render an opinion and to do
19 that what he's reviewed.

20 MR. TISDALE: Exactly.

21 THE COURT: And we'll take it from there.

22 MR. TISDALE: Exactly. Thank you very much.

23 THE COURT: Thank you, Mr. Tisdale.

24 Q. Mr. Derfner, with respect to your work in this matter,
25 what have you reviewed and what have you done to understand

1 the factual background of this case?

2 A. I have reviewed a number of the pleadings and I did a
3 report in which I listed some of the pleadings that I've
4 looked at. But my recollection is I've looked at the
5 Complaint, most recent Complaint, the Answer at least of the
6 South Carolina defendants, I've looked at some
7 Interrogatories of the South Carolina defendants, I've looked
8 at the motion for a temporary injunction filed by the
9 plaintiffs, I looked at a motion to add parties by the South
10 Carolina defendants and the order of the Court denying that
11 motion. Those are the main things that I've looked at.

12 Q. All right. And have you studied legal principles that
13 relate to the issues raised by the papers that you have
14 reviewed?

15 A. I have. I focused on some of the factual issues that
16 may come up or that either have or are likely to come up and
17 I analyzed how those factual issues would be treated under
18 the applicable legal principles. I have not -- I obviously
19 have not seen everything so I'm not prepared to offer
20 opinions that go to the ultimate determination of whether a
21 particular fact means this or that, but how that fact would
22 be treated under the applicable principles of law.

23 Q. Would you please inform the Court what issues you
24 believe are raised by what you have reviewed in this case and
25 how the applicable United States constitution law and neutral

1 principles of law apply to those issues?

2 A. Okay. The main types of issues that I've looked at --
3 and, as I say, I've gleaned something about the facts of the
4 case from the Complaint, the Answer, the Interrogatories
5 especially, and other pleadings -- I've looked at several
6 factual issues that I believe the defendants either have or
7 are likely -- I guess they haven't because they haven't put
8 on a case yet, but are likely to raise which are either
9 separate from or in addition to what might be called the
10 organic documents.

11 So, for example, I've looked at issues relating to oath,
12 an oath that Bishop Lawrence is supposed to have taken,
13 commitments that Bishop Lawrence is supposed to have made as
14 part of the process of being named bishop of this diocese,
15 issues about the possible intent of the incorporator when the
16 corporation was formed in 1973, issues like that, and what
17 I've done is analyze how those issues should be treated under
18 the doctrine of neutral principles.

19 And in particular the neutral principles say that you go
20 according to traditional state law. And what often comes up
21 as part of the neutral principle discussion is organic
22 documents, such as the constitution of in this case the
23 national church, the organic documents of the local church,
24 state corporation laws, deeds, property deeds, et cetera.
25 But, in addition, as I read the neutral principle doctrine,

1 the Court doesn't stop there, that if it stopped there, it
2 would not be treating a religious body or religious
3 organization the same way it would treat a secular
4 organization, which is what it's supposed to do under neutral
5 principles. And, therefore, what I've done is to look at how
6 these -- the neutral principles would treat the proffered
7 evidence relating to things like an oath or events or minutes
8 of the church and to see that these should be considered as
9 evidence, not simply the organic documents.

10 Q. And could you give the Court the benefit of what you
11 concluded regarding those issues? And you may concentrate on
12 the one about the oath since you brought it up.

13 A. Well, I conclude that an oath --

14 MR. RUNYAN: Excuse me, Mr. Derfner. I'm still not sure
15 that -- I guess I would renew my objection on the grounds
16 that he's offering testimony about what the law is as it
17 applies to the facts of this case constitutionally.

18 MS. GOLDING: And he specifically stated in his
19 testimony just now, Your Honor, that he is going to give you
20 an opinion of how you should apply the law. That's exactly
21 what he said.

22 MR. TISDALE: But not what the conclusion would be.

23 MR. RUNYAN: It's the same thing.

24 MR. TISDALE: What we are really talking about, as Mr.
25 Holmes pointed out to me, is what are the evidentiary

1 considerations to be considered by the Court in deciding
2 these issues.

3 MR. RUNYAN: That's clearly something for the Court to
4 decide only.

5 THE COURT: Well, let me say this: If Mr. Derfner's
6 opinion is, for example, how the Court in utilizing the
7 neutral principles ought to treat an oath or ought to treat
8 the minutes, that's not appropriate. It's just simply not.
9 Let me give you an example. If his testimony was to be that
10 I have reviewed minutes and, based upon my review of those
11 particular minutes, I believe that a particular parish under
12 the law of the State of South Carolina has in fact under
13 those minutes declared a trust -- and you can under South
14 Carolina law create a trust in one of two ways, you can have
15 a declaration of a trust, you can have transfer of
16 property -- I believe, based on my review of the minutes of
17 -- I'm going to pick one that we haven't had yet -- St.
18 Simon, that those minutes, as I have reviewed them for St.
19 Simon, are in fact a declaration of trust under the law of
20 the State of South Carolina.

21 Now, if that is what he would intend to do, I absolutely
22 believe that's appropriate. That is very much like Professor
23 Freeman when he would testify that I believe that
24 unfortunately when a lawyer has sexual intercourse with their
25 client, that that unfortunately is a violation of

1 such-and-such an ethical duty under the appellate rules, and
2 I would see it that way. So, for example, Professor Freeman
3 in the example would not be telling the Court that this rule,
4 Judge, means this; would then be opining whether or not
5 certain conduct is violative of a particular rule. The
6 Court's got to make a determination what in fact the law is.
7 So while it's very tempting, I'm afraid that that is not
8 contemplated under our rules. I think that's why, as they
9 say, I get paid the big bucks.

10 If, however, you would be offering Mr. Derfner to
11 testify, just as I have said, that certain conduct that he's
12 reviewed would have the type of relevance that I've just
13 discussed, but for Mr. Derfner to testify that I should
14 consider an oath under the neutral principles or that anyone,
15 any judicial officer, should consider an oath to operate
16 under the neutral principles in such a way is I think where
17 Courts are not allowed to allow expert testimony. And,
18 again, let me cite the Dawkins versus Fields case as well as
19 the Vortex Sports case. And, again, what it says is
20 generally expert testimony pertaining to issues of law is
21 inadmissible.

22 MR. TISDALE: Your Honor, I don't want to try to ask him
23 to say something that you don't want to hear, but what I
24 think is proposed perhaps is for him to testify that what is
25 his opinion on whether, say, the oaths taken by certain

1 people in a certain circumstance creates a fiduciary duty
2 under the neutral principles of law as applied to the facts
3 of this case.

4 THE COURT: All right. And that then takes us back to
5 the cause of action raised by the Defendants' number what?

6 MR. TISDALE: Well, it could apply to any number of
7 things. It's a breach of a contract really.

8 THE COURT: It would be a breach of contract. What
9 cause of action? It's got to be a breach of fiduciary duty.

10 MR. TISDALE: Breach of fiduciary duty.

11 THE COURT: I know. Have you got that? Is that one of
12 your causes of action? Because I don't think it's one of the
13 plaintiffs' causes of action. It might be a counterclaim.

14 MR. SMITH: Your Honor, it's our 19th defense.

15 THE COURT: Read that to me.

16 MR. SMITH: Plaintiffs are fiduciaries of and for each
17 of the defendants the claims asserted herein by the
18 plaintiffs are in flagrant breach of their fiduciary duties
19 and other duties owed them to defendants and plaintiffs have
20 no entitlement to invoke the aid of this Court in furtherance
21 of such wrongful conduct.

22 And, Your Honor, I would say that our pleading in this
23 case is quite long and given time I can identify other pieces
24 of this pleading that go to that point, but I would need a
25 few minutes.

1 THE COURT: But Bishop Lawrence, of course, is not an
2 individual -- well, I'll ask you to speak to it.

3 MR. RUNYAN: That's the heart of it, Your Honor. The
4 pleading he's referred to is drafted with the idea that they
5 would add individual defendants. And it's replete with those
6 kind of allegations. There are no individual defendants,
7 there are corporate defendants. And there's no allegation of
8 breach of corporate fiduciary duty. And I'm not really sure
9 what that defense is, but it's not a claim, it's a defense.
10 And it reads as if it relates to individual conduct on the
11 part of members of the plaintiff entities. And that
12 individual conduct, at least as to those individuals and
13 whether they breached some duty they owed, is just not
14 relevant.

15 MR. TISDALE: Well, obviously the corporation has to act
16 through the people who are acting for it and certainly they
17 have fiduciary responsibilities.

18 THE COURT: And so what you're telling me is that Mr.
19 Derfner is prepared to testify regarding the fiduciary duties
20 attendant to the plaintiffs, which are corporations, all of
21 them, and fiduciary duties to the defendant.

22 MR. TISDALE: Correct. Responsibilities, duties.

23 THE COURT: No, not responsibilities. Fiduciary duty.

24 MR. TISDALE: Well, yes, duty.

25 THE COURT: Let me see. Becky, I need you to pass me,

1 if you could, the Answer just to take a look at it.

2 MR. PLATTE: Your Honor, if I could be of assistance to
3 the Court.

4 THE COURT: Yes.

5 MR. PLATTE: There's six paragraphs that speak to
6 fiduciary duty.

7 THE COURT: I just found the second one.

8 MR. PLATTE: Paragraphs 523, 578, 588 --

9 THE COURT: All right.

10 MR. PLATTE: -- 606 --

11 THE COURT: Okay.

12 MR. PLATTE: -- and 622 and 623.

13 THE COURT: Okay. So you would offer Mr. Derfner to
14 testify regarding the breach of fiduciary duties of the
15 plaintiffs; yes?

16 MR. TISDALE: Yes.

17 THE COURT: Okay. And what else?

18 MR. TISDALE: Well, he could probably say what it is
19 better than I, but --

20 THE COURT: Okay.

21 MR. TISDALE: -- he will testify about the intent of an
22 incorporator of a corporation formed in 1973.

23 THE COURT: How could he possibly do that?

24 MR. TISDALE: Well, I think if we could hear it, we
25 would know. In other words, what he's going to testify to,

1 Your Honor, is the constitutional requirement that a
2 religious corporation be treated the same as a corporation
3 who's not a religious corporation.

4 THE COURT: Doesn't need to do that. I got that.

5 MR. TISDALE: And that, for example, the oath that we've
6 been talking about in the context that it was made needs to
7 be considered in considering that. We can ask him very
8 quickly the issues that he intends.

9 THE COURT: Yes, ask him that.

10 Understanding that I'm not going to let you tell me what
11 the law is. Are you with me?

12 THE WITNESS: Okay.

13 Q. In addition to the oath issue that we've been talking
14 about and the fiduciary responsibility, what other aspects of
15 this matter would you give an opinion about?

16 THE COURT: We all think maybe you should have been here
17 instead of there, see what I'm saying, but understanding that
18 you're there instead of here.

19 THE WITNESS: And you are here.

20 THE COURT: And I'm here. And while you very well could
21 do it better than I, you're there and I'm here. Now, one day
22 maybe we'll swap, but today we are where we are. So tell me,
23 for example, we just talked about fiduciary duties, you
24 opined with regards to fiduciary duties and those that were
25 owed, and Mr. Tisdale would like to know what other opinions

1 would you offer, understanding that I don't believe that the
2 law allows me to have benefit of sitting in your classroom
3 and hearing no doubt what would be a magnificent and
4 scintillating lecture with regards to constitutional law.
5 But certainly there are things such as fiduciary duties,
6 they've raised breaches of fiduciary duties. Certainly with
7 regards to those I think you absolutely could testify with
8 regards to that. And Mr. Tisdale would want you to tell me
9 what other things such as that would you be prepared to
10 testify.

11 MR. TISDALE: Exactly.

12 THE COURT: See what I'm saying?

13 THE WITNESS: Well, another example -- and maybe I can
14 do it best by starting with fiduciary duty.

15 THE COURT: Sure.

16 THE WITNESS: Because my understanding is that Bishop
17 Lawrence took an oath which was a condition for his -- and
18 part of the process for his becoming the bishop of this
19 diocese. And part of that oath was to abide by the
20 discipline. There was also an oath to, I think, abide by the
21 doctrine and the worship, but part of it was to abide by the
22 discipline. And as I read it, that would be an enforceable
23 oath and that could give rise to a breach of fiduciary duty
24 if he violates that oath.

25 Now I will say I've not read all the exhibits, I've

1 obviously not read all the documents, and there may be other
2 facts there that change the situation. But that is an oath
3 that, as I read it, is enforceable, would give rise to a
4 breach of fiduciary duty. And one of the places I looked for
5 that is in the very case of Jones versus Wolf, where the
6 decisive issue dealt with the United Methodist Church's book
7 of discipline. So the oath to abide by the discipline of the
8 national church is something that I think would be -- would
9 give rise to a breach of fiduciary duty, an enforceable
10 condition, if you will. Now, as I say, I haven't read all
11 the exhibits and I don't know what else happened, so it could
12 be that other facts come into play; but that fact standing
13 alone would be as I see it.

14 THE COURT: Okay. Because you know he's not a party;
15 right?

16 THE WITNESS: Yes, I do.

17 THE COURT: Okay. So I guess --

18 THE WITNESS: So one of the issues that the Court would
19 have to decide -- I'm not opining on this -- is to what
20 extent does a breach of that condition by Bishop Lawrence, to
21 what extent does that affect the rights and liabilities of
22 the plaintiff and defendant here, which are not the bishop at
23 this point.

24 THE COURT: Right.

25 THE WITNESS: So I'm not trying to step into your august

1 position and I understand very well that that's a decision
2 for you to make.

3 Q. Any other issues other than the oath, Mr. Derfner?

4 A. Well, the same thing would apply to the issue of the
5 intent of the incorporator and if the incorporator had --
6 and, again, I don't know -- I don't know what the intent was
7 except insofar as the incorporator was the duly ordained
8 bishop of the diocese of the national -- the diocese of the
9 national church at that point and, therefore, his intent
10 would be admissible to establish what the purpose of the
11 corporation was, which would bear on whether it was competent
12 for a later bishop or later official to seek to change that,
13 to amend the corporation or amend the charter.

14 Q. All right, sir. Any other issues that you considered?

15 A. Let me take a look. This is a report that I wrote,
16 which I think everybody has. I'm going to glance at it.

17 Q. They do.

18 A. Well, yes. The issue of good standing; in other words,
19 to the extent that the officials who took actions, whether
20 those actions were the amendment of the corporate charter or
21 whether they were issuing quitclaim deeds or anything else,
22 to the extent that they may or may not have been in good
23 standing at the time, which is a decision of the national
24 church to have made, that also would bear on whether their
25 changes were effective or not. And good standing, again, was

1 something that was focused on by the South Carolina Supreme
2 Court in the All Saints Church when it said -- it said there
3 was no indication in that case that the people -- that either
4 the directors or the members of All Saints Church were not in
5 good standing at the time they took the action to amend and
6 approve the amendment to the charter of that church. I think
7 those are the ones that I've focused on.

8 THE COURT: Got it. Okay. Yes, sir.

9 MR. RUNYAN: Well, it's different than what his
10 testimony was, summary of his testimony.

11 MR. TISDALE: You mean his report?

12 MR. RUNYAN: His report. I'll just quote -- I believe
13 Mr. Derfner would agree with me -- he says: I address only
14 the question whether the source of the evidence, if it is a
15 religious source, constitutionally disqualifies it from
16 admissibility. So he's not testifying to merits, he's not
17 testifying about whether fiduciary duty was breached, a vow
18 was taken, how it was taken, whether it might be a breach of
19 it. That's not in here. What's in here is if it comes from
20 a religious source, by definition that does not make it
21 constitutionally infirm for evidentiary purposes. That's
22 what's in his summary of testimony.

23 MR. TISDALE: Perhaps he would like to comment on what
24 Mr. --

25 THE COURT: No. That's not fair to put anybody in that

1 position. I have not seen this document.

2 MR. RUNYAN: Would you like a copy of the report?

3 THE COURT: And I gather this is the report that was
4 provided counsel?

5 MR. TISDALE: Well, if he says it is, I don't have any
6 doubt. But we have one that we can give you right now.

7 THE COURT: You want to give me the report?

8 MR. TISDALE: This is it. We've marked it as
9 Defendant's 12.

10 THE COURT: Or we can mark it as a Court's Exhibit,
11 either way.

12 MR. TISDALE: That will be good. I'll give you this
13 one.

14 THE COURT: Thank you. And we'll mark it as that. Let
15 me take a look.

16 Okay. Very well. Your Defendant's 12, I'm just going
17 to mark through that, and this is the Court's 3. And, as I
18 understand it, this is Mr. Derfner's opinion and there are
19 four areas that he would propose to testify. One is the vows
20 or the promises; the capacity to convey property; what, if
21 any, effect good standing may or may not have on the
22 underlying votes; and the intent of the incorporator I'm a
23 little less clear about. But those are certainly not, would
24 not be, lectures with regards to the law, but he could
25 certainly opine as to the effect that those particular

1 matters may have and I would receive the testimony with
2 regards to those areas.

3 (The Court's Exhibit 3 marked for identification.)

4 MR. TISDALE: Your Honor, as reflected in his report.

5 THE COURT: Yes.

6 MR. TISDALE: Okay. I think that pretty well covers it.

7 THE COURT: Yes. So you may proceed in that regard. Of
8 course, I expect plaintiffs, if they believe that he goes
9 beyond that and goes into the effect of the law, that they're
10 going to -- they're not going anywhere.

11 MR. TISDALE: So may I question him then in the areas
12 that Your Honor just noted?

13 THE COURT: Yes.

14 MR. TISDALE: And he may refer to his report if it's
15 helpful to his testimony?

16 THE COURT: Sure.

17 Q. Mr. Derfner, as you have heard, your report has been
18 marked as a Court's Exhibit. So would you, without further
19 ado, render what your opinions would be regarding the matters
20 that the Court has indicated you are allowed to do?

21 A. Okay. Without going into detail, the basis for the
22 conclusions is that these matters, which are circumstances
23 that can affect the facts or the outcome but are not part of
24 the organic documents are -- should be admissible to the same
25 extent in a religious dispute as they would be in a secular

1 dispute. And so based on that, as I said a few minutes ago,
2 the oath that the bishop is supposed to have taken, which
3 included an oath to abide by the discipline of the national
4 church, can be, in the absence of other countervailing
5 factors, the basis for an enforceable promise and can also be
6 the basis for a breach of fiduciary duty, at least on his
7 part. Now, other factors would bear on whether that amounts
8 to a violation by the diocese, but at least in terms of his
9 conduct an oath to abide by the discipline would be
10 enforceable to the same extent as a similar oath or promise
11 in a secular issue.

12 As far as his good standing, the actions which are taken
13 by officials have to be taken with them in good standing.
14 And it would be up to the -- as the -- as the Supreme Court,
15 our Supreme Court, said in the All Saints case, certain
16 actions have to be taken by people who are in good standing.
17 That good standing would depend on in this case what the
18 national church decided about whether they were in good
19 standing or not. And that would be supported also by our
20 Court's case of Pearson versus Church of God, where the
21 minister was defrocked and the Supreme Court said it was up
22 to the higher church to give an authoritative opinion about
23 whether that defrocking was proper, which they had.

24 As far as the intent of the incorporator, there again,
25 if that intent were relevant in a secular corporation

1 situation, it would be equally relevant and probative in the
2 case of a religious organization.

3 Q. Now, how about in a case of the capacity to convey
4 property?

5 A. That too, in the sense that the officers or those who
6 are entitled to act, whether as a director of a corporation,
7 they have to have the capacity to convey property or take
8 certain acts. And that capacity also likely -- well, would
9 be as relevant in the case of a religious organization as it
10 is in a secular organization.

11 Q. All right. Is that the opinion that you came here today
12 to offer in this matter for the benefit of the Court?

13 A. Yes, sir.

14 MR. TISDALE: All right. Thank you very much for
15 listening to this, Your Honor. We appreciate it.

16 Answer any questions other counsel have, Mr. Derfner.

17 THE COURT: All right. Thank you. Yes.

18 CROSS-EXAMINATION BY MR. RUNYAN:

19 Q. Good afternoon, Mr. Derfner.

20 A. Yes, sir.

21 Q. Would you pull that statement out, if you have a copy of
22 it?

23 A. Yes.

24 Q. Turn to Page 3, second paragraph.

25 A. Page 3, second paragraph.

1 Q. Last sentence, second paragraph, would you read that out
2 loud?

3 MR. TISDALE: He has a sight problem so it will take him
4 a minute, as you can tell.

5 THE COURT: He's got his glasses with him. He's good to
6 go.

7 THE WITNESS: "I address only the question," is that the
8 sentence?

9 Q. Yes, sir.

10 A. "I address only the question whether the source of the
11 evidence, if it is religious, if it is a religious source,
12 constitutionally disqualifies it from admissibility."

13 Q. And that is the essence of your testimony here today; is
14 that correct?

15 A. Yes, sir.

16 Q. Nothing more, nothing less?

17 A. I think what I testified to is part of -- is consistent
18 with that statement.

19 Q. Okay. So the issue of whether it's ultimately relevant
20 is for the Court?

21 A. Yes.

22 Q. The issue of how exactly to apply Pearson and All Saints
23 and Jones v. Wolfe is for the Court as well?

24 A. Yes.

25 Q. Would you agree with me that Jones v. Wolfe involved a

1 Presbyterian church, not a United Methodist church?

2 A. Yes. And, in fact, I do want to correct one thing: The
3 reference to the Book of Discipline in Jones versus Wolf had
4 to do with a discussion of another Georgia case, I think it
5 was the Carnes case, where the US Supreme Court in Jones
6 versus Wolf talked about the decision in Carnes being rested
7 on the United Methodist Church's Book of Discipline.

8 MR. RUNYAN: Thank you, sir.

9 THE COURT: Anything further from plaintiffs?

10 MS. GOLDING: Nothing further.

11 THE COURT: Very well.

12 Any redirect or any questions from the national church?

13 MR. BEERS: No, Your Honor.

14 MS. KOSTEL: No, Your Honor.

15 THE COURT: Very well. Thank you so much for being
16 here.

17 THE WITNESS: Thank you, Your Honor. Always a pleasure.

18 THE COURT: All right. Call your next witness, please.

19 MR. TISDALE: Warren Mersereau.

20 WARREN WILDER MERSEREAU,
21 being first duly sworn, testified as follows:

22 THE COURT: And if you would state your full name for
23 the record for us and spell your last name.

24 THE WITNESS: Warren Wilder Mersereau,

25 M-E-R-S-E-R-E-A-U.

1 THE COURT: Thank you.

2 Your witness.

3 DIRECT EXAMINATION BY MR. TISDALE:

4 Q. Mr. Mersereau, tell us a little bit about your
5 background, where you were born and grew up and your
6 educational background.

7 A. I was born in New York City, grew up in New Jersey, went
8 to college and graduate school in Massachusetts, and moved to
9 South Carolina in 1972.

10 Q. Where in South Carolina did you take up residence?

11 A. Originally Greenville, South Carolina.

12 Q. All right. And after that where did you live?

13 A. After that my wife and family and I moved to New Jersey
14 for a couple of years. We then moved back to Greenville,
15 South Carolina. We then moved to Europe for four years. And
16 we moved to Charleston in 2000 and we've lived in the
17 Charleston area ever since.

18 Q. Now, were you a communicant of the Episcopal Church
19 while living in the Charleston area?

20 A. Yes, sir. When we arrived back in the United States in
21 Charleston, we looked for an Episcopal Church to join and we
22 initially joined St. Michael's downtown.

23 Q. And after that did you remain a communicant at St.
24 Michael's until now? What happened in your history?

25 A. When our boys graduated from college and were on their

1 own, my wife and I moved to Kiawah Island, where we had
2 vacationed for 25 years or more, and we became members at
3 Church of Our Saviour on Johns Island.

4 Q. And is that one of the parishes involved in this
5 lawsuit?

6 A. Yes, sir.

7 Q. Mr. Mersereau, beginning at the end and then going back
8 to the beginning, are you still a communicant of the Church
9 of Our Saviour in Seabrook Island or Johns Island?

10 A. No, I'm not. I was removed from their rolls.

11 Q. Why were you removed from their rolls?

12 A. Because the rector, Mike Clarkson, said that I had
13 denounced my membership, which was not true, but he removed
14 me from the rolls.

15 Q. When did that happen?

16 A. That happened in the -- January or February of 2013.

17 Q. '13. Now, what I would like you to do, would you like
18 some -- do you have some water?

19 A. Yes. I'm just getting over the flu.

20 Q. There's some right behind you if you need more. Just
21 let us know and we can get you some more.

22 A. No problem.

23 Q. So what I would like you to do is take us through the
24 process of how you ended up getting removed from the rolls
25 against -- was it against your will?

1 A. Yes, sir.

2 MS. GOLDING: Your Honor, I'm going to make an
3 objection. I don't see the relevancy of this testimony with
4 respect to the rolls of a church, and that's on behalf of the
5 parishes. We're here before this Court on corporate matters
6 with regard to the parishes and not an individual discontent
7 person that may have been a member. That's not raised in any
8 of the defenses or counterclaims.

9 MR. TISDALE: Your Honor --

10 THE COURT: I got it.

11 MR. TISDALE: Excuse me. I'm sorry.

12 MR. RUNYAN: I would just join on behalf of the diocese
13 on the issue of whether corporate control is vested in the
14 entities that presently control the diocese. I don't
15 understand the relevance of this testimony to that issue, so
16 I'd also base it on that grounds as well, irrelevant.

17 MR. TISDALE: Your Honor, first of all, we don't know
18 whether it's relevant until we hear what he's got to say.
19 But these parishes are substantial constituents of the
20 diocese.

21 THE COURT: Substantial what now?

22 MR. TISDALE: Constituents of the diocese, the parishes
23 are. The whole thing here is the manner, whether it was
24 lawful, wrong or not, of how the people who left left the
25 diocese and departed the diocese and how they handled the

1 corporate affairs of the diocese. And what happened in these
2 parishes all across the diocese is relevant to how that
3 happened and it's part of the whole story.

4 MS. GOLDING: Your Honor, I'm sorry, but, Mr. Tisdale,
5 the witness, Your Honor, was never a member of the diocese
6 with respect -- this witness can testify as to the corporate
7 actions that the diocese may have taken to amend its bylaws
8 and things of that nature, but outside of that there is
9 absolutely no relevancy.

10 MR. RUNYAN: In addition to that, Your Honor, if we
11 assume that he was improperly removed from the rolls of
12 Church of Our Saviour, it's got nothing to do with the
13 diocese following the appropriate corporate procedure in
14 South Carolina, removed itself from the Episcopal Church,
15 it's just not relevant to that issue.

16 MR. TISDALE: Your Honor, these people have been
17 deprived of the beneficial use of the property that they
18 helped pay for over many years. And we are certainly
19 entitled to ascertain from the evidence and testimony whether
20 or not that deprivation of this beneficial use of that
21 property was done properly or not done properly, and that's
22 what his testimony goes to.

23 MR. RUNYAN: There's not a claim in the case involving
24 this issue at all.

25 MS. GOLDING: No.

1 MR. TISDALE: Well, the corporate manipulation is
2 certainly at issue in this case by the whole arrangement was
3 a manipulation, and that's what the evidence is going to
4 show, a wrongful manipulation.

5 THE COURT: Let me tell you what my concern is. My
6 concern is that for these types of issues Pearson dictates.
7 And what Pearson says is that when you have ecclesiastic
8 determinations which are made, it is the highest degree of
9 that ecclesiastic determination, whoever made that. I'm
10 hearing at this moment that it was made by the parish. No
11 doubt there is an appellate process ecclesiastically.
12 Whether there is or there isn't is not for me. It is the
13 ecclesiastic determination with regards to this individual
14 that Pearson says that I must accept, that I cannot change,
15 that I am bound by. So if the highest determination
16 ecclesiastically was made of this gentleman, whether I agree
17 or disagree is of no moment. Pearson says I must accept it,
18 I cannot touch it. And that is where the separation of
19 church and state enters into it. Now, the fact of whether I
20 think it was a good thing or a bad thing is not for me to
21 determine. Pearson says that very clearly. And I would
22 presume that he appealed it ecclesiastically. If he chose
23 not to appeal it ecclesiastically, then the determination
24 that was made by this particular parish is the one to which I
25 am bound.

1 MR. TISDALE: So I will not pursue why he was dropped
2 from the rolls of the parish in this interrogation.

3 THE COURT: You understand Pearson says --

4 MR. TISDALE: I understand that.

5 THE COURT: -- that's not for me, that is an
6 ecclesiastic determination, and I am bound to accept it.

7 MR. TISDALE: I accept that. With respectful objection
8 I accept it.

9 THE COURT: I understand.

10 MR. TISDALE: But I will go down another road for his
11 testimony.

12 THE COURT: Okay.

13 (Attorneys confer.)

14 MR. TISDALE: Your Honor, what we are dealing with in
15 this case, and it's been evident from some of the parish
16 testimony, is a pattern of conduct by the people who
17 separated, and that is a pattern throughout. And so setting
18 aside why he was dropped from the roll, although we believe
19 that's part of the pattern, I will pursue another line of
20 testimony with him. And it will be generally what happened
21 at the Church of Our Saviour leading to the disaffiliation
22 from the Episcopal Church and how it happened. That's what I
23 intend to pursue.

24 THE COURT: Okay.

25 MR. TISDALE: Thank you.

1 Q. Mr. Mersereau, when did you first realize that there
2 were any issues at the Church of Our Saviour concerning its
3 relationship with the Episcopal Church?

4 A. Sometime, I believe it would be, in late 2008 or 2009.

5 Q. And would you please describe for the Court how that was
6 exhibited or how it came to your attention?

7 A. Yes. In the vestry minutes and then at the annual
8 parish meeting it was announced that the bylaws of Church of
9 Our Saviour had been suspended.

10 MS. GOLDING: Your Honor, I'm going to make an
11 objection. I think that if you're going to refer to any
12 bylaws or minutes, I think that those need to be brought into
13 evidence because those speak for themselves and not the
14 witness' determination.

15 THE COURT: You're talking about the best evidence rule?

16 MS. GOLDING: Correct, Your Honor.

17 MR. TISDALE: They have already been testified to by the
18 Church of Our Saviour yesterday.

19 THE COURT: I understand that. But there's been an
20 objection with regards to the best evidence rule and --

21 MR. TISDALE: I'm not going to ask him about that except
22 that it happened and I'm not going into it.

23 MS. GOLDING: Your Honor, the witness testified that
24 these were suspended.

25 THE COURT: Yes, ma'am.

1 MS. GOLDING: That's an interpretation that he's made
2 he's not permitted to make.

3 THE COURT: I understand that.

4 MS. GOLDING: Thank you, Your Honor.

5 THE COURT: Best evidence rule.

6 Q. Did someone tell you that the bylaws had been suspended?

7 MS. GOLDING: Your Honor, that's hearsay.

8 THE COURT: Yes, ma'am.

9 Yes, sir. Sustained.

10 MR. TISDALE: The Church of Our Saviour's a party.

11 THE COURT: I know. I understand that. So you have to
12 lay the foundation.

13 Q. As a result of the information about the bylaws, what,
14 if anything, did you do?

15 A. I became greatly concerned as an Episcopalian in an
16 Episcopal Church that we had now suspended our bylaws.

17 MS. GOLDING: Your Honor, I want to move to strike the
18 testimony, his interpretation.

19 THE COURT: Yes, ma'am. Sustained.

20 Q. Did you have any conversations with anyone in the parish
21 about what they were doing regarding its relationship with
22 the Episcopal Church?

23 A. Yes. I had multiple conversations both with members of
24 the congregation and also with the rector.

25 Q. Let's concentrate a minute on conversations you had with

1 the rector, who was a witness in this case I think yesterday.

2 And give us the sequence of those conversations, if you will.

3 A. Well, in 2009 the rector had a couple of informational

4 meetings about the relationship of the church, the diocese,

5 and the national church, and those informational sessions

6 featured -- one session featured Kendall Harmon as the

7 featured speaker and the next session featured Reverend

8 Clarkson.

9 THE COURT: I'm sorry. Reverend?

10 THE WITNESS: Clarkson.

11 MR. TISDALE: Michael Clarkson, who testified yesterday,

12 Your Honor.

13 THE COURT: Now, let me ask you this question, though:

14 I need to know the rector's name, if you'd be so kind.

15 THE WITNESS: I'm sorry. It's Reverend Michael

16 Clarkson, who testified yesterday.

17 THE COURT: The rector that you first mentioned. You

18 said you had a conversation with the rector.

19 THE WITNESS: I'm sorry. I should have said Reverend

20 Clarkson. He is the rector.

21 THE COURT: He was the rector of the church where you

22 were.

23 THE WITNESS: Yes, ma'am.

24 Q. 2009?

25 A. Yes.

1 THE COURT: Thank you.

2 MR. TISDALE: Church of Our Saviour, Johns Island.

3 THE COURT: Got it.

4 THE WITNESS: So in those initial conversations one of
5 the issues that I raised was that of fairness or balanced
6 approach in terms of providing information to the
7 congregation. And I suggested it would be helpful if
8 somebody who was in support of the Episcopal Church was
9 allowed to speak. And Reverend Clarkson denied that request,
10 saying he did not want a debate and that Kendall Harmon would
11 fairly represent the nature of the relationships, which I
12 didn't think was an appropriate response, given that Kendall
13 Harmon was directly associated with the leadership of the
14 diocese that at that point had started to take actions to
15 separate itself from the Episcopal Church.

16 Q. All right. And what did you do in furtherance of your
17 concerns as a result of that meeting?

18 A. Well, we continued -- some members of the congregation
19 who had similar concerns, we continued a dialogue. We asked
20 if we could have an open meeting to discuss the issues
21 related to the church. And we kept trying to be good members
22 of Church of Our Saviour while still being in support of the
23 Episcopal Church.

24 Q. Did you desire that result?

25 A. Yes. It was our intent, my intent, that I stated

1 multiple times, including a letter to the congregation, that
2 although I was not necessarily in agreement with the
3 direction being taken by Reverend Clarkson and the vestry,
4 that I did want to remain a member of Church of Our Saviour.

5 Q. And did you pursue that course of action to remain a
6 member of Church of Our Saviour?

7 A. Yes, I did. I attended the -- attended church services
8 on a regular basis meeting the requirements of the bylaws,
9 contributed annually to the Church of Our Saviour, and tried
10 to be an active participant in church activities.

11 Q. Did you do anything to publish your views concerning the
12 idea of separating from the Episcopal Church, your views, to
13 other members of the congregation?

14 A. Yes. Eventually I expressed my views in writing to
15 members of the congregation. In the beginning of 2010 there
16 was a meeting at the Harbour Club in downtown Charleston
17 sponsored by the Episcopal forum in which Reverend Frank Wade
18 spoke. Eight of us from Church of Our Saviour attended this
19 meeting. Reverend Frank Wade is a distinguished Episcopal
20 minister, graduated from The Citadel, the Virginia
21 Theological Seminary, and for 20 years as a rector of St.
22 Albans on the National Cathedral grounds, and given that this
23 was an activity that a number of us from the congregation
24 participated in, I wrote up a summary of Frank Wade's
25 comments and I submitted it to the Church of Our Saviour

1 newsletter.

2 Q. How was it received?

3 A. Initially I got no response. After multiple
4 communications I was told that it would not be published.
5 And I met with the junior warden, who was the editor of the
6 church newsletter, to have a discussion about why this
7 article that involved members of the congregation would not
8 be published.

9 Q. Mr. Mersereau, were you allowed to use the facilities of
10 the parish, list of members and so forth, to espouse views
11 that you thought needed to be given to members?

12 A. Well, we on a periodic basis were issued a church
13 directory and, as is common these days, emails went back and
14 forth from members of the congregation over a wide variety of
15 matters, from church-related activities to birthdays,
16 inspirational messages, political statements. There was a
17 directory available and it was used by church members to
18 communicate. There were no guidelines or rules associated
19 with the directory, it was there for us to communicate
20 amongst ourselves. And ultimately I used some of those
21 addresses to communicate.

22 Q. Was that received well by the management of the parish?

23 MS. GOLDING: Your Honor, I'm going to make an
24 objection. This witness doesn't know how anything was
25 received by another entity.

1 THE COURT: I'm sorry?

2 MS. GOLDING: This witness is not competent to testify
3 as to how another entity received something.

4 Q. Did the management of the parish react in any way to
5 your sending out your newsletter to members?

6 THE COURT: Okay. Now, is there an objection to that?

7 MS. GOLDING: No, Your Honor, there is not.

8 THE COURT: Okay.

9 MR. TISDALE: Thank you.

10 THE WITNESS: Yes. In my discussion with the junior
11 warden, who was in charge of communications, he said he would
12 not publish the summary of the article, of the activity that
13 eight of us had attended, but I could publish it on my own,
14 which I then did. And I distributed it both via email and
15 regular letter. It was a very simple one page, printed both
16 sides with two articles on it. One article was the summary
17 of Reverend Frank Wade's presentation and the second page,
18 second article, was the description of the Episcopal flag
19 which was in the sanctuary of Church of Our Saviour. After
20 that was disseminated, I received an email from Reverend
21 Michael Clarkson to meet with him and the junior and senior
22 wardens about my position with the church.

23 Q. All right. Did there come a time that you had a meeting
24 with Father Clarkson, the rector of the parish, that you were
25 summoned to by him?

1 A. Yes. A meeting took place, I would have to look it up
2 in my notes, but I believe it was early April 2010. Reverend
3 Clarkson invited the junior and senior wardens. Because I
4 was not sure of the nature of what was going to happen in
5 that meeting, I invited my wife to accompany me and a member
6 in good standing of Church of Our Saviour. When the meeting
7 began, I asked what the purpose of the meeting was and would
8 I be asked to do something or would something be done to me
9 or what was the intent, and the answer was that it was to
10 have a discussion, which ultimately did not prove to be the
11 case.

12 Reverend Clarkson objected to my distribution of
13 materials related to the Episcopal Church. He said the
14 policy of Church of Our Saviour, even though it was an
15 Episcopal Church, was not to promote the Episcopal Church.

16 I said that as an Episcopalian in an Episcopal Church in
17 which the Episcopal flag is still used, I didn't think there
18 was anything objectionable to speaking about things that were
19 Episcopal.

20 He again reiterated that that was not in the -- not the
21 policy of the church. Although I went back ten years in
22 reading vestry minutes, there is no written policy about not
23 promoting the Episcopal Church. That must have been Reverend
24 Clarkson's personal opinion or his opinion with the vestry.
25 At any rate, we reached a point in the discussion in which he

1 told me that the vestry had voted to put me under
2 disciplinary action and he pulled out his Bible and read --

3 MS. GOLDING: Your Honor, the witness is now going into
4 areas in which this Court cannot go into under the Pearson
5 decision by the South Carolina Supreme Court.

6 MR. TISDALE: We're not going to go into that. He just
7 said that he was threatened by it. I'm not going to pursue
8 that.

9 THE COURT: Okay. Ask him another question.

10 Q. You were threatened by disciplinary action. And what
11 else were you told at this meeting?

12 A. I was threatened with ultimately excommunication and I
13 did not --

14 MS. GOLDING: Your Honor, I move to strike that. That's
15 certainly clearly not proper in this proceeding.

16 MR. TISDALE: We're not going into what happened
17 resulting from the threats, just that the threats occurred.

18 THE COURT: I understand that. Again, Pearson does not
19 allow me to enter into those determinations. Whatever the
20 ultimate determination was, it was. And those are
21 ecclesiastic determinations and I'm not allowed to
22 participate in those.

23 MR. TISDALE: Your Honor, we have no intention of going
24 into whether or not that threat was carried out, just simply
25 the fact that it occurred, that's all.

1 MS. GOLDING: That in and of itself goes beyond the
2 boundaries of what can be presented.

3 MR. HOLMES: Your Honor, may I speak to that briefly as
4 well? Nobody's asking you to reverse the decision of
5 excommunication, just simply it happened. It's as if in the
6 Supreme Court cases where the bishop got defrocked by the
7 church, it therefore didn't have the power, the Serbian
8 bishop. It's just a fact. It's an ecclesiastical fact.
9 Nobody's trying to appeal it or ask you to examine it, it
10 just happened.

11 THE COURT: Well, then it becomes irrelevant. And so
12 the fact that it becomes irrelevant is then we need to move
13 on to other issues because it's been --

14 MR. HOLMES: Well, I don't think it's irrelevant in that
15 it demonstrates a motive on the part of the parish, as Your
16 Honor's heard extensive testimony about very similar
17 activities among these parishes, which, frankly, were
18 disputes over religious doctrine with the national church.
19 And these -- the way they resolve these disputes, which
20 were -- could have been resolved by the authority of the
21 Episcopal Church, was to avoid -- well, do the things they
22 did. So we think it goes to motive.

23 MR. TISDALE: But, Your Honor, the point here is, that
24 I've been trying to say, I don't intend to ask him after the
25 threat was he charged, did this happen, did that happen. I

1 just simply want to know what was said to him at the meeting.
2 That's all. And I don't see anything objectionable about
3 that, despite Mr. Holmes thinks that it would be okay to
4 pursue it. But I don't plan to pursue it is what I'm trying
5 to say.

6 MR. HOLMES: We're not on the same page. That's okay.

7 MR. TISDALE: So may I move on?

8 THE COURT: Yes, move on.

9 Q. Okay. Now, at this meeting you've already told us one
10 thing that happened. Did the issue of whether or not you
11 could attend vestry meetings come up?

12 A. Yes, it did. I asked -- per the diocese vestry handbook
13 vestry meetings are supposed to be open. I asked if I could
14 attend vestry meetings, the answer was no.

15 Q. All right. The matter of whether or not Bible study,
16 Episcopal Church-oriented Bible study, could be conducted in
17 the parish, did that come up?

18 A. Yes. The church has a number of small groups that are
19 in Bible study, there's a men's group, a women's group, and
20 many other groups. I asked if it would be possible for those
21 of us who wanted to have a Bible study group with a focus
22 around the liturgy, et cetera, of the Episcopal Church, if we
23 could do that, all people would be welcome, obviously, and
24 the answer was not only no to that but, no, I would not be
25 allowed to have any leadership position in the church

1 whatsoever.

2 Q. All right, sir. Now, Mr. Mersereau, did you become
3 aware at some point that Episcopalians in the diocese --
4 excuse me -- everybody in the diocese at that point was
5 Episcopalian, but did you become aware at some point that
6 some people in the diocese, of course Episcopal, filed a
7 complaint against Bishop Lawrence claiming misconduct?

8 A. Yes, I did.

9 MR. RUNYAN: Irrelevant. It's irrelevant to the case.

10 MS. GOLDING: Completely.

11 MR. RUNYAN: File a complaint, it's irrelevant.

12 THE COURT: Let me ask you this question: There are two
13 issues. Number one, is it fair to go into this testimony,
14 this presentation, when I have heard any number of parishes
15 say that they made the decision to leave because of the
16 treatment of Bishop Lawrence. That's the first issue. And
17 I'll yield, I don't know what relevance it even had or when
18 it came up, to be quite frank with you, but it did. And so
19 in the interest of fairness, ought they be allowed to go into
20 to some extent some of that discussion. That's the first
21 issue. And, again, again hear me, the reason on this basis
22 that I would hear any of it is only because it was raised
23 repeatedly by parish members as the reason why they had
24 chosen to disassociate. Now, that's the first question.

25 The second question is and would go to the capacity --

1 and remember where I am, I'm at the beginning of this part of
2 the process -- whether or not it has any relevance regarding
3 the capacity to have executed quitclaim deeds. Speak to it.
4 Those are the two areas that I see potentiality for this
5 evidence to be relevant.

6 MR. RUNYAN: First of all, there's testimony there was a
7 complaint. I think that's already in the testimony in the
8 record. That's an issue that may or may not be related to
9 good standing, but that's in the record. That doesn't have
10 anything to do -- I mean, once we get into the details of
11 this, we're going to be all the way in. And we're not
12 unpleased to go there, but it's going to occupy a whole lot
13 of time on something that just doesn't have any relevance.
14 There was a complaint, there was action taken by the national
15 church, and the diocese acted as a result of that.

16 What's underneath the surface in all of that is a lot of
17 information. And it doesn't have any bearing on the issues
18 of capacity because that's already joined on the fact that
19 there was a complaint and on the fact that there was action.
20 And I don't -- I don't know what it adds from a relevance
21 point of view. And I think it's going to carry us down a
22 path which, like individual parishioners' dissatisfaction
23 with how their management operated, doesn't have anything to
24 do with the merits of the claims in this case, both ours and
25 theirs.

1 THE COURT: I understand. Ms. Golding?

2 MS. GOLDING: Nothing additional, Your Honor.

3 MS. KOSTEL: Could I speak to that, Your Honor? As Your
4 Honor points out, one of the reasons that we've heard again
5 and again about why the parish has decided to disassociate
6 themselves from the Episcopal Church was because of the way
7 their bishop was treated. Now, if the bishop is treated a
8 particular way by the national church and it's via the
9 church's own disciplinary process, which we can prove or deal
10 with, then the proper way to deal with that is through the
11 church's disciplinary process and through the church's
12 system.

13 But what's happened in this case and what we're trying
14 to elicit further evidence on is that this particular issue
15 is one of the ecclesiastical issues -- disputes that's
16 actually at the heart of this dispute about corporation,
17 corporate control, and control of property, that what's
18 really going on here is a dispute over an issue that is
19 properly resolved by the church. And so if the discomfort
20 with what happened to the bishop were a secular kind of
21 complaint with the way the church treated the bishop, that
22 might be some sort of different issue. But we believe that
23 the evidence will show that the discomfort with the way the
24 bishop was treated was a discomfort about the way the church
25 was undertaking its disciplinary process, which is a purely

1 ecclesiastical matter which is right at the core of this
2 dispute.

3 THE COURT: And doesn't Pearson say that I don't look at
4 the sausage being made, ecclesiastically speaking, but
5 whatever the determination was ultimately by the highest
6 level of the church I accept?

7 MS. KOSTEL: Yes, it does say that.

8 THE COURT: That's another reason why the fact that a
9 complaint was made is really of no moment. What the result
10 was very well may be. Do you see the difference?

11 MS. KOSTEL: I certainly do.

12 THE COURT: And so that's why I'm inclined not to hear
13 the fact that the complaint was made even though I get that
14 some of the parishes chose to leave because they were unhappy
15 about that. That's not for me either, any more than the fact
16 that this gentleman has obviously great concerns about his
17 treatment at this particular parish. I have to accept that.
18 If that was the ultimate deciding entity, if it wasn't
19 appealed ecclesiastically and that was as high as it went, I
20 must accept it under Pearson. The same is true with the
21 bishop. Do you understand what I'm saying?

22 MS. KOSTEL: I certainly understand what Your Honor is
23 saying.

24 THE COURT: And I think that that's what Pearson says.
25 Whatever it was, it was so -- whatever it was, it was. So I

1 don't think that, there was a complaint made and what
2 happened with the complaint and who showed up and, you know,
3 the old who shot Cock Robin, if you will, is really not for
4 me because I think Pearson says assuming there's relevance --
5 I don't know that there's relevance, I really don't at this
6 point -- assuming that there's relevance, it is what it is.
7 That I've got to accept. I don't play there. That's done.
8 I accept whatever that determination is I think. So I don't
9 think I hear the complaint.

10 MR. HOLMES: Special indulgence in that it probably
11 won't take him long, and it can't take much longer than it
12 did for us to see the slides of John C. Calhoun's tomb, so I
13 would ask just special indulgence to let him testify about
14 these facts even if the Court's going to exclude them. It
15 won't take four minutes.

16 THE COURT: Not going to do it.

17 MR. TISDALE: Your Honor, I simply intend -- we're
18 talking about how he was treated at his parish. We've been
19 told repeatedly, as Your Honor pointed out yesterday, that a
20 lot of these parishes left, a lot of them said they did,
21 because the bishop has been attacked. So all I am asking him
22 is whether or not he signed the complaint complaining against
23 Bishop Lawrence's conduct, period. And I'm not going into
24 anything about the nature of the complaint other than that.
25 That's all. I just want to ask him that question, then we'll

1 move on. And that shows perhaps a motive for the treatment
2 he received in his parish. It is certainly relevant to that
3 issue.

4 THE COURT: If you all were asking that question, it
5 could go to bias. That's where my head is: Why are they
6 asking that?

7 MR. RUNYAN: That question I don't have a problem with,
8 if that's the answer.

9 MR. TISDALE: That's all I was going to ask.

10 MR. RUNYAN: I do think the bias of the parish is still
11 irrelevant to the issues of the case.

12 THE COURT: No, not bias as to the parish, bias as to
13 the witness.

14 MR. RUNYAN: Okay.

15 THE COURT: See what I'm saying?

16 MR. RUNYAN: Understand.

17 THE COURT: That's where my head goes. That question I
18 would allow.

19 MR. TISDALE: Thank you.

20 THE COURT: Because it goes to bias of the witness and I
21 need to be clear.

22 MR. TISDALE: I'm sorry it went into this interesting
23 discussion, but that's what I intended to ask.

24 THE COURT: Okay. In other words, everybody just needs
25 to hush up.

1 MR. TISDALE: I will not say that to you, Your Honor,
2 never.

3 THE COURT: It wouldn't do any good anyway.

4 Q. Now, Mr. Mersereau, did there come a time that you
5 became aware that a group of people in the diocese were
6 preparing a Complaint against Bishop Lawrence?

7 A. Yes, sir. And I signed it.

8 Q. You signed it?

9 A. Yes, sir.

10 Q. That's what I was getting ready to ask you.

11 Now, are you still a member of -- I think you said you
12 weren't at the beginning. Are you a member now of Church of
13 Our Saviour?

14 A. No, I am not.

15 Q. Are you still an Episcopalian?

16 A. I am.

17 Q. What parish, if any, are you a communicant of now?

18 A. I recently joined St. Stephen's Episcopal Church in
19 downtown Charleston.

20 Q. Is that a church that -- well, I won't go into that.
21 You're still an Episcopalian?

22 A. I am.

23 MR. TISDALE: Excuse me just one minute, Your Honor.

24 THE COURT: Sure.

25 MR. TISDALE: Your Honor, thank you for your indulgence

1 on this conversation. And I would like to ask him to answer
2 any questions other counsel have.

3 THE COURT: All right.

4 Cross-examination, sir.

5 MR. RUNYAN: And I would like to say, Mr. Mersereau,
6 that I have none.

7 MS. GOLDING: No questions.

8 THE COURT: Very well. Thank you so much.

9 Call your next witness, please.

10 MR. TISDALE: Your Honor, we don't have an afternoon
11 break, I take it?

12 THE COURT: Well, if you need one now. We'll take our
13 afternoon break. We'll take 15 minutes. It's five minutes
14 until 4:00. We'll be back at ten after 4:00.

15 (Recess held.)

16 MS. KOSTEL: Your Honor, before we get started with
17 witnesses or witness, I guess --

18 THE COURT: The next witness, yes.

19 MS. KOSTEL: -- we have a number of exhibits that we're
20 going to move into evidence tomorrow. They're on a hard
21 drive. And I have got two sets to give to the plaintiffs to
22 look at tonight just to keep things moving.

23 THE COURT: Great.

24 MS. KOSTEL: I don't have exhibit numbers on everything
25 yet, but I do have a list. But tomorrow morning we'll

1 provide you all with a list that actually has exhibit
2 numbers, but the descriptions and everything are here.

3 To be clear, this is the bulk of our exhibits, but there
4 are some things that were produced later and are not going to
5 make it onto the hard drive.

6 MS. GOLDING: These are exhibits, my understanding, of
7 just the national church or all the defendants?

8 MS. KOSTEL: Both defendants.

9 MS. GOLDING: Okay. Thank you.

10 THE COURT: All right. Yes, sir.

11 MR. TISDALE: Your Honor, we would call the Reverend Dow
12 Sanderson.

13 MARSHALL DOW SANDERSON,
14 being first duly sworn, testified as follows:

15 THE COURT: Would you please state your full name for
16 the record, and I'm going to ask you to spell all your names.

17 THE WITNESS: Marshall Dow, D-O-W, Sanderson,
18 S-A-N-D-E-R-S-O-N.

19 THE COURT: Thank you. Your witness.

20 DIRECT EXAMINATION BY MR. TISDALE:

21 Q. Father Sanderson, what is your current position in the
22 Episcopal Church?

23 A. I am the rector of the Church of the Holy Communion in
24 Charleston.

25 Q. Now, where were you born and grew up?

1 A. I grew up in Conway, South Carolina. And I went to the
2 College of Charleston and studied theology at Virginia.

3 Q. And subsequent to your theological education, where were
4 you ordained?

5 A. Where was I ordained?

6 Q. First to the diaconate.

7 A. I was ordained a priest at the Cathedral of St. Luke and
8 St. Paul and I was ordained to priest at the Church of the
9 Holy Communion, the parish I currently serve.

10 Q. And what bishop or bishops ordained you?

11 A. Bishop Allison at both ordinations.

12 Q. Father Sanderson, during the course of your career as a
13 priest where have you served?

14 A. I served as the vicar of St. Alban's in Kingstree. I
15 was the assistant to the rector at St. Andrew's Church in
16 Arlington, Virginia. I was the assistant to the rector at
17 Holy Comforter in Sumter. I was the rector of Church of the
18 Redeemer in Orangeburg until coming to Charleston in 2001.

19 Q. Now, have you had any roles in the leadership of the
20 Diocese of South Carolina? Let's take it first prior to
21 departure of Bishop Lawrence but say up to the fall of 2012.

22 A. Sure. I was for more than 20 years on the Examining
23 Chaplains and chairman of that group. I have served on three
24 different occasions on the standing committee and one term as
25 its president. I served on the Commission on Ministry and

1 other things from time to time.

2 Q. Just very briefly what is the role of the examining
3 chaplain?

4 A. The Examining Chaplains certify the academic competence
5 of recently graduated seminarians.

6 Q. Who seek to become --

7 A. Who seek to be ordained.

8 Q. And would the same be true generally of the Commission
9 on the Ministry that you said you were on?

10 A. The Commission on Ministry more or less to discern
11 vocation. One is a front-end process, one is after the
12 academic process.

13 Q. Please let the Court and the rest of us know when you
14 were involved in the standing committee as a member and its
15 president?

16 A. The first time would have been in the late 1980's before
17 I left to go back to the diocese of Virginia. I served again
18 in the early 2000s, 2003, through the election of Bishop
19 Lawrence when my term ended. And then I was re-elected a
20 third term I suppose sometime around 2009, 2010, I'm not
21 exactly clear but in that timeframe.

22 Q. All right. Do you serve in any diocesan role presently
23 in the Episcopal Church in South Carolina?

24 A. Yes. I am, again, on the Commission on Ministry and its
25 chairman in the Episcopal Church in South Carolina.

1 Q. Now, I think you just said that you were serving on the
2 standing committee and its president during the time of
3 Bishop Salmon's retirement, Edward Salmon?

4 A. Correct.

5 Q. And through the installation of Bishop Lawrence?

6 A. Not through the installation. I was only on standing
7 committee through the election process. My term ended before
8 the consent process was completed.

9 Q. The election process. And what I'd like you to do is
10 explain to the Court what with regard to -- what happens when
11 a bishop retires in a diocese. First of all, does the
12 standing committee and you, particularly as president, take
13 on any additional responsibilities?

14 A. Yes. We had a consultant from the Episcopal Church, the
15 Right Reverend Clay Matthews, who came to Charleston and
16 walked through with us as a standing committee the protocols
17 that were usually used and gave us advice and the timeframe.
18 We procured the services of the Reverend Jim Simons as our
19 chaplain, who came and led a retreat for us at Camp St.
20 Christopher. And we appointed, with the help of Bishop
21 Salmon, a nominating committee that would be representative
22 of the various contingencies of the diocese to search for the
23 next bishop and turned the work of the search over to the
24 nominating committee.

25 Q. All right. And was the search committee formed under

1 your tutelage as president of the committee?

2 A. I was president of the committee when the search
3 committee was formed.

4 Q. Right. And was such a search conducted?

5 A. Yes, it was.

6 Q. And were you involved in it?

7 A. I was not involved in the search in any way.

8 Q. During the course of the work of the search committee to
9 find a successor to Bishop Salmon, were you informed of the
10 progress of the committee as it proceeded?

11 A. Just that they were interviewing candidates, but because
12 of the need for confidentiality I myself did not know the
13 names nor identities of those who were being vetted, as it
14 were.

15 Q. Now, when it came time to have an election for bishop,
16 again to succeed Bishop Salmon, were you president of the
17 standing committee?

18 A. I was.

19 Q. Did you have any responsibility in connection with the
20 conduct of the special -- was there a special convention to
21 elect the bishop?

22 A. There was. On two successive Saturdays I presided over
23 what is known as the walkabout, wherein the potential
24 candidates or the candidates tell something about themselves
25 in a prepared statement and then answer questions from the

1 delegates who have been elected for that electing convention.
2 And then subsequent to that I presided over the convention
3 that elected in fact Mark Lawrence as bishop of South
4 Carolina.

5 Q. All right. Now, Father Sanderson, as it turned out, did
6 the search committee report at the appropriate time on the
7 persons who had been nominated to become bishop?

8 A. Yes, they did.

9 Q. To offer for election?

10 A. That is correct.

11 Q. And how many candidates were on the final nomination?

12 A. There were three candidates on the final nomination.

13 Q. And who were they?

14 A. The Reverend Ellis Brust, the Reverend Steve Wood, and
15 then Father Mark Lawrence.

16 Q. The special convention, do you remember when it was?

17 A. It was in September, I suppose, of 2006.

18 Q. Now, let me ask you this: Did the standing committee
19 meet during the course of the process leading up to the
20 special convention from time to time?

21 A. Certainly.

22 Q. And were there any members of the standing committee in
23 your presence, of course, at the meetings who at that period
24 of time, before the election, abdicated that the Diocese of
25 South Carolina depart from the Episcopal Church?

1 A. There were individuals both on and off the standing
2 committee who would voice that as their personal concern, but
3 there was never any standing committee action in that
4 direction.

5 Q. Of course. I was meaning personally in favor of
6 considering a departure from the Episcopal Church.

7 A. Yes, that is the case. That was the case from the time
8 that Bishop Lawrence was elected through his episcopate.

9 Q. That there were such people --

10 A. Sure.

11 Q. -- advocating departure from the Episcopal Church?

12 A. He heard it from them the moment that he landed on the
13 ground, so...

14 Q. All right. And would it be possible, do you recall who
15 some of those people were?

16 A. I recall that some of the priests who were more inclined
17 in that direction would have been perhaps Father Jeff Miller,
18 who became the president of the standing committee two terms
19 later.

20 Q. Okay.

21 A. There was Father Zadig perhaps, the rector of St.
22 Michael's. There were several people who voiced their
23 concern that we leave the Episcopal Church.

24 Q. Now, after -- I mean at the election, what was the
25 result of the election?

1 A. Bishop Lawrence was elected overwhelmingly on the first
2 ballot.

3 Q. And did you inform Bishop Lawrence of his election?

4 A. I was in the sacristy when that call was made. We
5 wanted to call the candidates who were not elected, one of
6 whom was present, one was not. We wanted to make sure they
7 knew that before it started getting out on the blogs and
8 other news. So we called the others first, and then we
9 called Father Lawrence. And Bishop Salmon actually spoke to
10 him directly I think that day.

11 Q. All right. Father Sanderson, explain to the Court,
12 please, what the process is after a candidate who is elected
13 indicates that he or she would accept the position.

14 A. Right.

15 Q. First of all, did Bishop Lawrence agree to accept the
16 election as bishop?

17 A. He did.

18 Q. All right. And what happens after that in the church
19 procedure?

20 A. There are two things that have to take place before a
21 consecration date can be set. There has to be a
22 psychological exam, which I think Father Lawrence actually
23 was subjected to two of them. He did one locally and then it
24 was required that he do another in California, where he was
25 then living. And we were required to receive the consents of

1 all -- a majority of the bishops in the Episcopal Church and
2 a majority of the standing committees. And I prepared the
3 forms to send out to seek those consents. And then my term
4 ended and I didn't oversee the reception of those consents.

5 Q. So you are saying that separate consents must be
6 obtained from a majority of bishops?

7 A. Correct, because it has always been the intention of the
8 Episcopal Church that a bishop is never elected solely for
9 the diocese but for the whole church, therefore consents from
10 the whole church must be given.

11 Q. And in this case would the whole church be the Episcopal
12 Church?

13 A. That is correct.

14 Q. So-called national church?

15 A. Correct.

16 Q. Approximately, if you know, how many dioceses comprise
17 the whole church?

18 A. There are some 112, including missionary districts,
19 something along -- I don't know exactly, but...

20 Q. Excuse me. Mr. Beers was speaking to me. What did you
21 say?

22 A. I think there are over 100 dioceses.

23 Q. Right. And those consents are actually required of
24 bishops with diocesan jurisdiction, are they not?

25 A. That's correct.

1 Q. So other kinds of bishops like --

2 A. Suffragans.

3 Q. -- what came up in the record the other day,

4 S-U-F-F-R-A-G-A-N, I guess.

5 A. Right, suffragan.

6 Q. They sometimes call it suffering, don't they?

7 A. That's right.

8 Q. But, anyway, those kind of bishops, which are below the

9 bishop with jurisdiction, do not vote in this consent

10 process; is that right?

11 A. That is correct.

12 Q. And as far as the standing committees go, would that be

13 the standing committee prescribed for every diocese in the

14 church?

15 A. That is correct. Every diocese in the Episcopal Church

16 is requested to submit vote.

17 Q. And so it must be a consent of a majority of,

18 separately, bishops and standing committees?

19 A. That is correct.

20 Q. And you said you prepared the forms to ask for those

21 consents?

22 A. Correct.

23 Q. Were the sufficient number of consents received?

24 A. No.

25 Q. All right. And just roughly how long did it take to

1 determine after the election that those consents were not
2 sufficient?

3 A. Oh, goodness, I think it must have been up until
4 February, I think.

5 Q. And the election had been when?

6 A. September.

7 Q. September. So a period of about six months?

8 A. Right.

9 Q. So what happened after that? Are you still on the
10 standing committee?

11 A. I was not.

12 Q. You were not. Can you tell us what happened after that,
13 based upon your knowledge and experience as a diocese --

14 A. Just as my memory as a parish priest participating in
15 the process, the standing committee called for a second
16 election at which Father Lawrence was the sole candidate.
17 And he was then re-elected and the consent process was
18 started again.

19 Q. So another special convention was called. Did you
20 attend it?

21 A. I did.

22 Q. And was Bishop Lawrence elected a second time?

23 A. He was.

24 Q. And were all the consents sent out again?

25 A. That is correct. I think Father Haden McCormick would

1 have been in charge of sending them out the second time as
2 the new president of the standing committee.

3 Q. President of the standing committee, rector of St.
4 Philip's?

5 A. Correct.

6 Q. Were sufficient consents obtained on that occasion?

7 A. Yes, they were.

8 Q. And did Bishop Lawrence become the Bishop of South
9 Carolina?

10 A. He did indeed.

11 Q. Do you remember when that occurred?

12 A. That was in March of 2008, I suppose.

13 Q. All right. Now, without going into a lot of detail, did
14 the ordination for bishop occur in South Carolina?

15 A. Yes. The ordination occurred in South Carolina at the
16 Cathedral Church of St. Luke and St. Paul.

17 Q. And so at that time following the ordination did Bishop
18 Lawrence undertake his duties as bishop of the diocese?

19 A. Yes, he did.

20 Q. Now, you mentioned a few minutes ago that there had been
21 people before this process who had advocated a desire to
22 depart from the Episcopal Church.

23 A. That's correct.

24 Q. And you mentioned one of them as Father Jeffrey Miller;
25 is that right?

1 A. That is correct.

2 Q. Did there ever come a time that you received a telephone
3 call from Father Miller respecting -- well, just let me ask
4 you this: Do you recall a telephone call from Bishop Miller
5 about Bishop Lawrence?

6 A. From Father Miller?

7 Q. Father Miller about Bishop Lawrence.

8 A. I do.

9 Q. Would you please give the Court the benefit of that
10 conversation?

11 MR. RUNYAN: Your Honor, before he does that, if the
12 purpose of this is to elicit something on behalf of the
13 diocese, I'd like you to establish a little bit more
14 foundation. If it's not, then we'll deal with that.

15 Q. Did Father Miller call you about matters in the diocese?

16 A. He did.

17 Q. And where were you when he called?

18 A. In the diocesan house parking lot leaving the bishop's
19 office, about to drive away in my car.

20 Q. What was the occasion for your being there then?

21 A. I was at a committee meeting of some sort, I suppose.

22 Q. What did Father Miller call you about?

23 MR. RUNYAN: Objection. This would be hearsay as it
24 presently stands.

25 Q. Was Father Miller president of the standing committee at

1 the time?

2 A. No, he was not.

3 Q. Was he on the standing committee?

4 A. I do not think so at the time.

5 MR. TISDALE: Your Honor, his parish is a party to this
6 litigation, he's been president of the standing committee,
7 Father Miller, and I don't see why he can't testify as to
8 what he told him. He's involved in the affairs of the
9 diocese.

10 THE COURT: The fact that he was the chairman of the
11 standing committee and was not at this point does not make
12 him a managing agent, but you said he is currently --

13 MR. TISDALE: He had been --

14 Q. Had he been president of the standing committee?

15 A. He had not yet. He would subsequently become president
16 of the standing committee, but he was not at the time.

17 THE COURT: So at the time of this communication you're
18 saying he was the rector of one of the plaintiffs?

19 MR. TISDALE: He was.

20 THE COURT: Okay. At the time of this communication.

21 MR. TISDALE: He was.

22 THE COURT: Okay. Well, ask him that.

23 Q. He was rector of St. Helena's Church, was he not?

24 A. That is correct.

25 THE COURT: Okay.

1 Q. What did he say to you in this conversation?

2 MS. GOLDING: Your Honor, I'm going to object.

3 Mr. Tisdale has stated that his communication was with
4 respect to diocesan matters, not with respect to St. Helena's
5 Church.

6 THE COURT: Okay. More foundation. In other words, at
7 this point he's not a managing agent of the diocese, he's a
8 managing agent for a parish.

9 Q. What was the purpose of the call?

10 A. Father Miller called me to express his frustration that
11 Bishop Lawrence was not moving quickly to take the Diocese of
12 South Carolina --

13 MS. GOLDING: Your Honor, I'll make an objection. That
14 clearly is inappropriate and is hearsay.

15 MR. TISDALE: It goes to the core of what this whole
16 thing is about.

17 THE COURT: It doesn't matter. That doesn't make
18 hearsay admissible. It is hearsay.

19 MR. TISDALE: What if I say that we're not offering for
20 the truth of what he said but the fact that he said it,
21 that's an exception to the hearsay rule.

22 MR. HOLMES: Your Honor, if he's speaking on behalf of
23 his parish with regard to its concern about what Bishop
24 Lawrence is not doing --

25 MR. TISDALE: Sounds that way to me.

1 MR. HOLMES: -- that's an admission against the parish.
2 When I say "admission," statements made by a representative
3 or an agent of the parish under Rule 801 I think.

4 MR. TISDALE: Clearly.

5 MR. RUNYAN: He's purporting to quote the bishop or
6 concerns expressed to the bishop.

7 MR. TISDALE: He's not quoting the bishop.

8 MR. HOLMES: Even if he is, the bishop is making a
9 statement on behalf of the diocese, if this gentleman's
10 making it on behalf of the parish, attach the two together.

11 MR. TISDALE: If he answers the question I'm asking,
12 he's not quoting the bishop.

13 MR. RUNYAN: It's still hearsay, Your Honor. He's
14 offering it for the truth of what he said and he's quoting
15 from a person who has no -- at this point no responsibility
16 for the Diocese of South Carolina. And I haven't heard the
17 foundation yet as to St. Helena other than he is the rector.
18 St. Helena's not a member of the Episcopal Church. St.
19 Helena didn't leave, the diocese left, and they left with it.
20 It's all directed to diocesan conduct.

21 MR. HOLMES: Your Honor, if he didn't have an interest
22 in terms of his position as rector of the parish, he wouldn't
23 be speaking. He doesn't have any other interest in this
24 except for the fact that he's a rector of the Episcopal
25 Church. In that parish he's a representative of it,

1 obviously he has some concern about what's going or not going
2 on with regard to the parish. At least that's a reasonable
3 interpretation for purposes of foundation. Maybe it won't --
4 maybe his testimony will be I just called up because I just
5 felt like doing it, the weather was nice for a phone call.
6 But generally in terms of foundation it seems to us that
7 should be sufficient to allow you to decide whether or not
8 whatever he says is admissible or inadmissible. Haven't
9 gotten to what he said yet.

10 MR. TISDALE: You can just put whatever weight on it.
11 Your Honor is the trier of fact in this case.

12 THE COURT: At the time of the conversation this
13 witness' position was what?

14 MR. TISDALE: Rector of St. Helena's Parish.

15 THE COURT: No, no, no. This witness.

16 MR. TISDALE: Oh, this witness.

17 Q. What was your role at the time this call came in from
18 Father Miller?

19 A. I was just a priest in the Diocese of South Carolina.
20 My term on the standing committee had ended. This would have
21 been in 2009.

22 THE COURT: Okay. And we can assume that Reverend
23 Miller is the rector of St. Helena, which is a managing agent
24 in the confines of St. Helena?

25 MR. TISDALE: He's rector of St. Helena's Church, a

1 party to this case, the chief officer of the parish. They
2 would say head of the board of directors.

3 THE COURT: Okay. I will hear it for the purpose of the
4 opinion of the Parish of St. Helena.

5 MR. TISDALE: Thank you.

6 THE COURT: It will be limited to that exception.

7 MR. TISDALE: Thank you.

8 THE COURT: Okay.

9 Q. Father Sanderson, let's go back. Did you get a
10 telephone call from Father Miller?

11 A. I did. May I just proceed and describe the nature of
12 that conversation and what followed?

13 Q. I would like you to tell the Court, please, about the
14 conversation.

15 A. Sure. Jeff was concerned that Bishop Lawrence was not
16 moving quickly to take the Diocese of South Carolina out of
17 the Episcopal Church. The 2009 general convention had just
18 concluded and the sort of impetus to start that conversation
19 anew was very heated. There followed a diocesan clergy day
20 at St. James Church on James Island.

21 Shall I continue?

22 Q. Please.

23 THE COURT: This is not responsive. You asked him about
24 the conversation.

25 Q. Tell us about the phone conversation and then you can

1 give us the background that I think you intended to do that
2 led to the phone call.

3 A. Right, the only point --

4 Q. Can you do that? I think the -- is the clergy day that
5 you mentioned leading up to the phone call?

6 A. The clergy day came after the phone call.

7 Q. Okay. Go ahead with the phone call first.

8 A. All right. The phone call was simply Jeff's concern.
9 He just called to express his displeasure. And it's
10 memorable because I addressed this conversation in a letter
11 with Bishop Lawrence so it stuck in my mind. I just remember
12 it.

13 Q. Do you remember what he said?

14 A. We elected -- don't you remember we elected him to take
15 us out of the Episcopal Church.

16 Q. Bishop Lawrence?

17 A. Correct.

18 Q. All right. Now, you were getting ready to explain what
19 happened at a clergy day at James Island related to this
20 issue.

21 A. The reason that I went directly to the clergy day is
22 that Father Miller's passion was not his alone, it was shared
23 by many at that clergy day. There was a --

24 Q. And that was when?

25 A. That was in late summer of 2009.

1 Q. Okay. Go ahead.

2 A. And I think because the general convention had just
3 happened there was some expectation perhaps that Bishop
4 Lawrence would then --

5 MS. GOLDING: Your Honor, I'm going to -- he's referring
6 to expectations of others, he's referring to Reverend Miller
7 not being alone and all of this. You know, he's making
8 generalizations which are completely contrary to the hearsay
9 rule and I would move to strike those comments.

10 THE COURT: Yes, sir, let me hear from you.

11 MR. TISDALE: Well, we're asking him what happened at a
12 meeting of the clergy of the diocese.

13 THE COURT: Yes, sir. I understand that you may have
14 asked him that, but he is talking about other people's
15 expectations, which are unknown people, that's their state of
16 mind and to others which are statements that could be
17 hearsay.

18 MR. TISDALE: Can he say what was expressed at the
19 meeting?

20 THE COURT: No, not unless they're by managing agents.

21 MR. TISDALE: Okay. Well, in that case we'll move on.

22 Q. Now, Father Sanderson, there's been testimony in this
23 case that the standing committee also serves as a board of
24 directors of a corporation called the Protestant Episcopal
25 Church in the Diocese of South Carolina, I believe.

1 A. Right.

2 Q. In your experience in the Episcopal Church, your
3 knowledge of the constitution and canons of the diocese and
4 the national church, do you know of any situation that
5 authorizes a standing committee that prescribes as its duties
6 to be board of directors of a corporation?

7 MS. GOLDING: Your Honor, I'm going to make an
8 objection. He's seeking an opinion, number one, he's seeking
9 a legal opinion.

10 THE COURT: Sustained.

11 MS. GOLDING: Thank you, Your Honor.

12 MR. TISDALE: I can't ask him whether he knows about it.

13 THE COURT: If you want to qualify him as an expert, you
14 certainly may do that.

15 MR. TISDALE: I will not. He would like me, but I will
16 not.

17 THE COURT: Okay.

18 Q. Do you recall being in a meeting -- and tell me whether
19 it was standing committee or another meeting -- where it was
20 discussed among leadership of the diocese to change bank
21 accounts?

22 A. I do recall that. I think it was the last standing
23 committee meeting I ever attended.

24 Q. All right. Were you president of the standing committee
25 or president (sic)?

1 A. I was not president of the standing committee at the
2 time, I was simply a member-at-large.

3 Q. Member of the standing committee. And when would this
4 have been?

5 A. You know, I think probably sometime in 2011. I'm not
6 certain.

7 Q. 2011?

8 A. Right.

9 Q. So can you relate for the benefit of the Court, please,
10 the nature of the conversation concerning changing bank
11 accounts?

12 A. Yes. There was a concern that if any disciplinary
13 action against Bishop Lawrence would be taken, that the
14 assets of the diocese -- and there perhaps I think had been a
15 precedent for this -- would be frozen. And so there was
16 conversation about finding friendly bankers in South Carolina
17 who would give us assurances that that would not happen.

18 Q. And did in fact the committee decide to change banks?

19 A. As I said, that was my last standing committee meeting.
20 It was discussed at that meeting, but I believe that that
21 subsequently did happen.

22 Q. And do you know which bank the diocese was using prior
23 to this meeting or at the time of the meeting?

24 A. I know that all of their investments were being managed
25 by Wachovia Securities.

1 Q. Do you know whether those accounts were changed to
2 another bank?

3 A. Yes, they were changed.

4 Q. Do you know what bank it was changed to?

5 A. I do not.

6 Q. Was that announced to anyone?

7 A. I'm certain it was, I just don't recall.

8 MR. TISDALE: Your Honor, bear with me just one second.

9 THE COURT: Of course.

10 MR. TISDALE: Father Sanderson, thank you very much for
11 your time here today. And I would ask you to answer any
12 questions any other counsel here have for you.

13 THE WITNESS: Certainly.

14 THE COURT: Cross-examination?

15 MS. GOLDING: Indulge the Court for just a moment, Your
16 Honor.

17 THE COURT: Sure.

18 MR. RUNYAN: Sorry, Father, as we get our ducks in a row
19 here.

20 THE WITNESS: That's all right, Alan.

21 CROSS-EXAMINATION BY MR. RUNYAN:

22 Q. Father, do you recall asking for a quitclaim deed?

23 A. I received a quitclaim deed; yes.

24 Q. Do you recall, who is Patrick Allen?

25 A. Patrick Allen was my assistant at the time.

1 Q. Do you recall if Patrick Allen asked to get a quitclaim
2 deed?

3 A. No, I don't think so.

4 Q. Don't recall. Okay.

5 A. He wouldn't have had any reason to, he was never rector
6 of the parish.

7 Q. Okay. But you don't know if he asked on your -- you
8 don't recall him asking on your behalf?

9 A. I do not.

10 Q. Okay. Thank you. Have you ever heard the phrase
11 "intact and in TEC"?

12 A. I was going to use that phrase a moment ago before I was
13 not allowed to answer the question. But yes, I do recall
14 that.

15 Q. Who coined that phrase?

16 A. Mark Lawrence.

17 Q. What's your understanding of the meaning of that phrase?

18 A. I think, if I may address it within the context of the
19 very clergy day that I just was referencing, it was Bishop
20 Lawrence who said that that's what he wished to do, to remain
21 intact as a diocese and in TEC.

22 Q. This conversation about freezing accounts, do you recall
23 being provided a copy of a letter that Mr. Beers wrote to an
24 institution in Illinois directly without involving the Court
25 and that being discussed at the standing committee?

1 A. Mr. Runyan, I believe I remember that actually.

2 Q. Okay.

3 THE COURT: I'm sorry?

4 THE WITNESS: The answer is yes.

5 THE COURT: Okay.

6 Q. Just one other thing, Mr. Sanderson -- Father Sanderson,
7 excuse me.

8 (Plaintiff Diocese Exhibit 63 marked for
9 identification.)

10 Q. Father Sanderson --

11 MR. RUNYAN: May I approach the witness, Your Honor?

12 THE COURT: You may.

13 Q. -- I'm going to show you what's been marked as Diocese
14 63 for identification. Did you author that letter?

15 A. Let me read it first. It's got my name on it. I
16 suppose I did.

17 Yes, I did.

18 Q. With respect to the second full paragraph, were there
19 some questions raised about Father, then Father, Lawrence's
20 willingness to stay in the Episcopal Church?

21 A. Yes, there were.

22 Q. And he is the one that coined the phrase "intact and in
23 TEC"?

24 A. He did.

25 Q. Would you read the response that you gave on February 9,

1 2007, to that question?

2 A. Yes, I will. Are you talking about the -- which of the
3 responses do you mean, Mr. Runyan?

4 Q. The one that has to do with whether he was willing to
5 try to remain in the Episcopal Church.

6 A. Is that the one that begins "The Diocese of South
7 Carolina has faithfully" --

8 Q. Yes, that is the one.

9 A. "The Diocese of South Carolina has operated faithfully
10 within the canons of the Episcopal Church TEC since 1795 and
11 continues to do so. The Reverend Mark Lawrence signed the
12 oath of conformity at his ordination as priest and has
13 faithfully lived within the canons of the church for 26
14 years. When asked directly during our election process if he
15 would be able to sign the oath of conformity as a bishop, he
16 responded yes. Present behavior is the best indicator we
17 have of the future. Statistics released at the last general
18 convention reveal that the Diocese of South Carolina was
19 first in all categories of percentages of growth: Average
20 Sunday attendance, financial growth, and baptized membership.
21 Recent official church statistics show that we are the only
22 diocese that has grown faster than its surrounding
23 population. The tree is known by its fruit."

24 Q. Father Sanderson, how many years was it after this
25 letter that the diocese actually disaffiliated with the

1 Episcopal Church?

2 A. Six or so years more.

3 Q. And the comments by Father Miller that you refer to,
4 those happened in 2009?

5 A. That is correct.

6 MR. RUNYAN: Thank you, sir.

7 CROSS-EXAMINATION BY MS. GOLDING:

8 Q. How are you doing?

9 A. I'm fine. Thank you.

10 Q. Thank you. You've been present today at the trial?

11 A. I have, all day.

12 Q. Very good.

13 A. It's been a trial.

14 Q. Now, we've heard some testimony in this courtroom on
15 previous days about the Book of Common Prayer --

16 A. Yes.

17 Q. -- which I'm confident you are familiar with; is that
18 correct?

19 A. I am.

20 Q. Okay. And isn't it a fact that as the rector of your
21 church, your parish, you have not used the Book of Common
22 Prayer since the late 1990s?

23 A. My predecessor began to use a book that is called The
24 Anglican Service Book, but it is authorized by a rubric of
25 the 1979 Book of Common Prayer, which continues to be the

1 theological standard of our parish.

2 Q. So is that correct that you and your parish have not
3 used the Book of Common Prayer since at least the 1990s?

4 A. We use --

5 Q. Is that a yes or a no?

6 A. We do not use the 1979 Book of Common Prayer as it is
7 printed between the red cover pages, no.

8 Q. Okay. Thank you. With respect to your personal
9 association with the plaintiff diocese, you've testified on
10 direct examination that you have served on the standing
11 committee a number of times; is that correct?

12 A. Correct.

13 Q. And isn't it correct that the plaintiff diocese has a
14 constitution and canons that are the governing documents of
15 this entity?

16 A. That is correct.

17 Q. Okay. And the first constitution of the plaintiff
18 diocese was enacted, I believe it was, 1786; is that correct?

19 A. I believe that is correct.

20 Q. Okay. And over the years, since 1786 to the present,
21 there have been a number of amendments and changes to the
22 plaintiff diocese constitution; is that correct?

23 A. That is also correct.

24 Q. And in all of these changes over the years that have
25 occurred you have no knowledge that the diocese ever went to

1 the plaintiff national church and said plaintiff national
2 church, can I get this amended in our constitution?

3 A. I'm not sure I follow the question.

4 Q. I apologize. It's probably poorly stated. To your
5 knowledge has the plaintiff diocese in undertaking any
6 amendments to its constitution and canons ever submitted
7 those proposed amendments before they were ever presented in
8 an annual convention and submitted it to the national church
9 and said, can we do this?

10 A. There was always the understanding that parish bylaws
11 and diocesan --

12 Q. I'm sorry.

13 A. -- diocesan --

14 MS. GOLDING: I'm sorry. Can you ask the witness --

15 MR. TISDALE: Please let him answer the question.

16 THE COURT: I will. But he must be responsive. I'm
17 going to ask you to listen carefully to the question. If you
18 don't understand the question, that's fine.

19 THE WITNESS: I understood the question perfectly the
20 second time.

21 THE COURT: Okay.

22 MS. GOLDING: Your Honor, can you instruct the witness
23 to answer the question and then he may explain?

24 THE COURT: And that is correct. If it is a yes or no
25 question and you can answer it yes or no, I would ask that

1 you do that and then you certainly, absolutely may explain.

2 THE WITNESS: Would you repeat the question?

3 Q. Certainly, Father. With respect to any proposed
4 amendments to the plaintiff diocese constitution or canons,
5 to your knowledge, the plaintiff diocese has never submitted
6 those proposed amendments to the defendant national church
7 prior to submittal of those amendments to the plaintiff
8 diocese annual or special convention for approval?

9 A. That is correct.

10 Q. Okay.

11 A. May I continue?

12 Q. You may answer. You may explain.

13 A. The reason that that is correct is that the canons and
14 constitutions of any local diocese cannot contradict the
15 national canons, so there is no need to have them approved
16 because it's implicit.

17 Q. Would you agree that the canons, the plaintiff diocese
18 canons, are sometimes perceived as rules and regulations of
19 the plaintiff diocese?

20 A. Sure.

21 Q. You have attended some of the plaintiff diocese
22 conventions, have you not?

23 A. All of them until I was no longer a part of that
24 diocese.

25 Q. And I understand that in attending those plaintiff

1 diocese conventions you had a vote as a clergyman; is that
2 correct?

3 A. That is correct.

4 Q. And the individuals that are eligible to vote are set
5 forth in the constitution of the plaintiff diocese; is that
6 correct?

7 A. Correct.

8 Q. Okay. And only members at the convention are entitled
9 to vote; is that correct?

10 A. That is correct.

11 Q. Now, with the South Carolina corporation, the plaintiff
12 diocese, you understand that's a South Carolina nonprofit
13 corporation, do you not?

14 A. Yes, I do.

15 Q. Okay.

16 A. I think that's in my deposition as well.

17 Q. Okay. And you also understand that this South Carolina
18 corporation existed and has been existing since sometime in
19 the 1770s but not as a corporation?

20 A. Correct.

21 Q. It's been in existence for many, many years; is that
22 correct?

23 A. Yes.

24 Q. And at some point in time in 1973 the plaintiff diocese
25 decided to incorporate under South Carolina law?

1 A. I believe that's correct.

2 Q. Okay. Now, there's been discussion in this trial about
3 the Church Pension Group. Now, the Church Pension Group is
4 an independent entity; is that correct?

5 A. It is managed independently, yes, it is, that is
6 correct.

7 Q. And it's an independent entity from the national church,
8 the defendant national church?

9 A. It is governed separately, but it is not separate from
10 the Episcopal Church, it is a part of the Episcopal Church.

11 Q. And this entity, this Church Pension Group, has a CEO
12 and a president; is that right?

13 A. That is correct.

14 Q. And that CEO and president is not the presiding bishop
15 for the defendant national church, is it?

16 A. That is correct.

17 Q. And this Church Pension Group provides benefits for
18 clergy and lay employees; is that correct?

19 A. That is correct.

20 Q. And that's similar to such like a corporation like
21 Boeing, it provides employment benefits to its employees; is
22 that correct?

23 A. That is correct.

24 Q. And if you were an employee at Boeing, when you left,
25 you wouldn't expect to continue to receive benefits that are

1 not vested, would you?

2 A. No.

3 Q. Okay.

4 A. But there are those who have left who continue to
5 receive benefits.

6 Q. And if they're vested, they're entitled to those; is
7 that correct?

8 A. That is correct.

9 Q. Now, with respect to church insurance, that also is part
10 of a separate, distinct entity from the defendant national
11 church, is it not?

12 A. That is correct.

13 Q. Okay. And the church insurance, if a diocese -- no,
14 let's not say diocese. If a parish doesn't pay premiums,
15 does that parish continue to have church insurance?

16 A. No, it would lapse like any other policy.

17 MS. GOLDING: Thank you. No further questions. Thank
18 you, Your Honor.

19 THE COURT: Yes. Any other plaintiffs,
20 cross-examination.

21 Very well. Redirect.

22 MS. GOLDING: Your Honor, I would object to the
23 defendant national church having any redirect in light of the
24 fact that this defendant national church did not have any
25 direct, so I don't believe it's proper that there be

1 redirect.

2 MS. KOSTEL: Everybody's been standing up and talking on
3 both sides of the aisle through the whole case, Your Honor.

4 MR. HOLMES: That's not a legitimate objection.

5 THE COURT: This would be my position about that: While
6 there may have been nothing raised on direct, there may have
7 been something raised on cross that would concern the
8 national church and I would allow the national church
9 redirect.

10 MS. KOSTEL: Thank you.

11 THE COURT: Yes.

12 MS. KOSTEL: Just a couple questions.

13 THE COURT: Yes. But you understand with regards only
14 to what was brought up on cross.

15 MS. KOSTEL: Yes, of course.

16 REDIRECT EXAMINATION BY MS. KOSTEL:

17 Q. Just to clarify a couple of things, first of all, the
18 Church Pension Group, Father Sanderson, the trustees are
19 elected by the general convention, are they not?

20 A. That is correct.

21 Q. And that's the general convention of the national
22 church?

23 A. That is correct.

24 Q. Okay. And the Church Insurance Corporation is actually
25 part of the Church Pension Group; isn't that correct?

1 A. That is correct, under the umbrella.

2 Q. And I believe you testified that in an explanation to a
3 question Ms. Golding asked you that the diocese's
4 constitution and canons are required to be consistent with --

5 MS. GOLDING: Your Honor, I'm going to object. She's
6 leading the witness. I think it's completely improper in her
7 leading the witness.

8 MS. KOSTEL: Okay. Let me try something else.

9 Q. Ms. Golding asked you if governing documents included
10 the constitution and canons of the Diocese.

11 A. Right.

12 MS. GOLDING: Your Honor, I did not ask that question.
13 I asked the question if the diocese -- if the constitution
14 and canons of the diocese are the diocese-governing
15 documents, and he said yes.

16 Q. Okay. Let's go with that. Are there other governing
17 documents? Are there other documents that govern the
18 diocese?

19 A. Sure. The national church canons also come to bear on
20 each diocese.

21 Q. And the constitution?

22 A. That's correct.

23 MS. KOSTEL: Thank you. Nothing else.

24 THE COURT: Okay. Mr. Tisdale, nothing further?

25 MR. TISDALE: Thank you very much, Father Sanderson. I

1 have no further questions.

2 THE COURT: Thank you, sir. And you may come down.

3 And it is 5:00. Now, we will reconvene in the morning
4 at 9:30. And those of you that need to or wish to depart are
5 certainly able to do that. I needed to talk to counsel,
6 though, about scheduling. And we can go off the record to do
7 that unless anyone is concerned about that.

8 (Discussion off the record.)

9 (Trial of the case adjourned for the day.)

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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the First Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 15th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 August 14, 2014

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17 Ruth L. Mott

18 Official Court Reporter

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