

VOLUME VIII

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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 17, 2014
ST. GEORGE, SC

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

Ruth L. Mott, RPR, CRR
Official Court Reporter

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E X H I B I T S

NO.	DESCRIPTION	ID	EVD
	PLAINTIFF DIOCESE EXHIBITS		
S-DSC67	10/22/12 LETTER	1503	
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- - -

1 THE COURT: Are the plaintiffs ready to proceed.

2 MR. RUNYAN: Yes, Your Honor.

3 THE COURT: Defense?

4 MR. TISDALE: Ready, Your Honor.

5 THE COURT: Wonderful.

6 MR. TISDALE: Your Honor, we would like to call the next
7 witness, if we may.

8 THE COURT: I'd be excited.

9 MR. TISDALE: Rebecca Lovelace.

10 REBECCA LOVELACE,
11 being first duly sworn, testified as follows:

12 THE COURT: If you would state your full name for the
13 record and spell your last name.

14 THE WITNESS: Rebecca Lovelace, L-O-V-E-L-A-C-E.

15 THE COURT: Thank you so much. Your witness,
16 Mr. Tisdale.

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

18 DIRECT EXAMINATION BY MR. TISDALE:

19 Q. Ms. Lovelace, where do you live?

20 A. Conway, South Carolina.

21 Q. And how long have you lived in Conway?

22 A. All of my life, except for I left for education and so
23 forth, but all of my life.

24 Q. All right. And in Conway, are you connected with a --
25 let me say, before the fall of 2012, were you connected, were

1 you a member or communicant of a parish in Conway?

2 A. St. Paul's Episcopal Church, all of my life, yes.

3 Q. All right. Ms. Lovelace, in addition to your
4 involvement at St. Paul's in Conway and subsequent to that,
5 have you been involved in the affairs of the Diocese of
6 South Carolina since leading up to the departure of
7 Bishop Lawrence?

8 A. I'm not sure.

9 MS. GOLDING: I object to the question. I don't know
10 what he's talking about "departure." I think that's a
11 confusing question.

12 MR. TISDALE: I don't think the witness is confused,
13 Your Honor.

14 MS. GOLDING: I think she's --

15 THE WITNESS: No, I am confused.

16 THE COURT: Well, there you have it. Sustained.

17 THE WITNESS: I was involved with diocesan conventions
18 from St. Paul's Episcopal Church as a delegate to quite a few
19 conventions, and then since that time, I've been involved
20 with the Episcopal Church in South Carolina.

21 Q. South Carolina.

22 A. Yes.

23 Q. Okay. Well, thank you for clarifying that. Now, were
24 you a member of a steering committee to reorganize the
25 Diocese of South Carolina in the fall of 2012?

1 A. Yes.

2 Q. All right. And what was the purpose of that group?

3 A. Our purpose was, since we were left without an
4 ecclesiastical authority, to reorganize, get a new bishop and
5 move on.

6 Q. Right. And was that achieved?

7 A. Yes.

8 Q. All right. And, Ms. Lovelace, since the Episcopal
9 Church in South Carolina got a new bishop, have you been
10 involved in the organization of that body?

11 A. Yes. I am on the standing committee.

12 Q. Standing committee of the Episcopal Church in South
13 Carolina?

14 A. Yes. Since January 2013 I have served on the standing
15 committee.

16 Q. And are still serving?

17 A. Yes.

18 Q. Now, with respect to St. Paul's in Conway, I think you
19 said you had been a communicant there and grew up there?

20 A. Yes.

21 Q. Pretty much all your life?

22 A. Yes.

23 Q. And were any other members in your family connected with
24 that parish?

25 A. My parents, my four -- my three siblings, my husband, my

1 children, yes.

2 Q. All right. How did it happen that you discovered that
3 it would not, beyond a certain point, be an Episcopal Church?

4 A. On the Sunday after it was made -- it was revealed that
5 the standing committee had passed a resolution that they
6 would -- that they would separate from the Episcopal Church,
7 on that Sunday when I went to church, the priest announced
8 that we were no longer in the Episcopal Church, and that's
9 how.

10 Q. Who was the priest?

11 A. Tripp Jeffords.

12 Q. And is he, just for identification purposes, the same
13 priest from St. Paul's who testified, I think, perhaps last
14 week?

15 A. Yes.

16 Q. All right. And he simply announced that you were no
17 longer an Episcopal Church?

18 A. Yes. And then we had -- he had a meeting, he had two
19 meetings after, the one that evening, and then at my request,
20 because I couldn't be there that evening, he met a second
21 time on Tuesday for questions and explanation; and, yeah, the
22 gist of it was we are no longer part of the Episcopal Church.

23 Q. Did the parish ever consider and take action on that
24 issue, or was it simply only the announcement made by the
25 priest?

1 A. The parish, that parish never had a congregational vote.

2 My assumption is but I don't understand --

3 MS. GOLDING: Your Honor, I would make an objection to
4 the assumptions.

5 THE WITNESS: I don't know if anybody ever voted. I
6 know the congregation did not vote.

7 Q. You did not vote?

8 A. No.

9 Q. Did anyone in your family know anything about a vote?

10 A. There wasn't one.

11 Q. There wasn't one.

12 A. Not a congregational vote.

13 Q. So, Ms. Lovelace, what did you do and others like you do
14 to continue if you wished to be an Episcopalian in Conway?

15 A. Organized a new church by -- within -- within five days
16 of the announcement -- well, actually within three days of
17 the priest's announcement, I had already lined up a priest to
18 do services for the group that wanted to remain aligned with
19 the national church.

20 Q. All right. And where did you begin to have such worship
21 services or meetings?

22 A. The first service that we held we held at St. Paul's in
23 the chapel. I had asked the priest if we could use that
24 chapel. And he -- and I met with the vestry, and they
25 approved the use of the chapel. But it came with so many

1 written conditions that we worshiped there once, and then we
2 left there and found space to worship in on the campus of
3 Coastal Carolina University. And that's where we still are.

4 Q. Now, without going into a lot of detail, what sort of
5 restrictions were placed on the use of the chapel?

6 A. Well, number one, it --

7 Q. At St. Paul's, excuse me.

8 A. It stated in the conditions that the vestry would review
9 the --

10 MS. GOLDING: Your Honor, if she's referring to anything
11 that was ever in writing, I think that that needs to be
12 presented to the Court. We haven't seen that, and obviously,
13 that would be the best evidence.

14 MR. TISDALE: Well, I certainly haven't seen it.

15 THE COURT: I understand. But the best evidence rule
16 would certainly dictate, if there is a writing, that that
17 writing be produced.

18 Q. Do you have such a writing, Ms. Lovelace?

19 A. I don't have it in my hand, but I see Mr. Shelton
20 passing something up. Is that it?

21 MR. TISDALE: Mr. Shelton, do you have a copy of it?

22 MR. SHELTON: A copy of what? I'm sorry.

23 MR. TISDALE: The writing she's talking about putting
24 restrictions on the use of the chapel at St. Paul's.

25 MR. SHELTON: Not in my possession.

1 MR. TISDALE: I'm simply trying to ask her to tell us a
2 couple of the restrictions that she remembers were put on
3 them for the use of the chapel.

4 THE WITNESS: Well, I will tell you that --

5 THE COURT: No, ma'am, when I'm handling an objection,
6 I've got to do my work, and you just relax.

7 If there is a writing and if there is a reference to a
8 writing and there is an objection with regards to the best
9 evidence rule, obviously -- it really is two. It really is
10 best evidence as well as hearsay because, obviously, it's at
11 least double if not triple hearsay.

12 MR. TISDALE: I understand, Your Honor.

13 THE COURT: Yes.

14 MR. TISDALE: Thank you.

15 MR. HOLMES: May I speak to that just very briefly?

16 THE COURT: Okay.

17 MR. HOLMES: Under Rule 801 --

18 THE COURT: Yes.

19 MR. HOLMES: -- she's testifying this was a document
20 that was created by a party and that the content --
21 therefore, the content of it is a statement by a party.
22 Under 801, it's not hearsay. At least that would be -- I
23 believe that's the rule.

24 THE COURT: Sure, it is. It's hearsay because it is in
25 a writing. That's the first level of hearsay. And as you

1 know, you must admit evidence, and you must satisfy each and
2 every level of hearsay. Minimally, minimally, it's double
3 hearsay. It very well may be triple hearsay, depending on
4 what is in the content of the letter. Number one, it's
5 hearsay because it's in a writing. Number two, you're
6 exactly correct, if we had the writing, it very well may be
7 admissible because it's an admission by a party opponent,
8 therefore, nonhearsay. But the first level is, it's hearsay.

9 MR. HOLMES: I understand.

10 THE COURT: Thank you.

11 MR. HOLMES: It was handed to her by a representative of
12 the party, so I think that takes it out of the rule.

13 THE COURT: I don't think so.

14 MR. TISDALE: Thank you very much. May I proceed, Your
15 Honor?

16 THE COURT: Yes, sir. Thank you, Mr. Tisdale.

17 Q. Ms. Lovelace, as a result of the restrictions -- without
18 saying what they are, but as a result of restrictions that
19 were placed upon your use of the chapel at St. Paul's, did
20 you move your worship activities to another location?

21 A. We did.

22 Q. And I think you testified earlier that was to -- where
23 were they moved to?

24 A. Lackey Chapel on the campus of Coastal Carolina
25 University, and that's where we still are today.

1 Q. All right. And approximately when did the new
2 organization begin using Lackey Chapel?

3 A. Early November.

4 Q. Of?

5 A. 2012.

6 Q. 2012?

7 A. Yes.

8 Q. And that's where you are today?

9 A. Yes.

10 Q. Now, approximately how many Episcopalians are connected
11 with that organization at Lackey Chapel?

12 A. I don't have an exact number but more than 100.

13 Q. All right. Ms. Lovelace, does the new organization of
14 continuing Episcopalians have a name?

15 A. St. Anne's Episcopal Church.

16 Q. And does it have a status in the Episcopal Church in
17 South Carolina?

18 A. Yes. We are a mission church admitted at the last
19 convention.

20 Q. Is St. Anne's Church in Conway in union with the
21 convention of the diocese of the Episcopal Church in South
22 Carolina?

23 A. Yes. And we're also in union with the national church,
24 yes.

25 Q. All right. Ms. Lovelace, before becoming and accepted

1 as a mission church at the convention, as you testified, what
2 was the organization, the form of the organization called?

3 A. Early on, we were the Conway worshiping group.

4 Q. That's what I -- worshiping group?

5 A. Correct.

6 Q. All right. And about when did it become St. Anne's,
7 growing out of the worshiping group?

8 A. I think maybe by April. I filed articles of
9 incorporation and by the time I did that, we were already --
10 we had adopted the name St. Anne's Episcopal. We were
11 incorporated as St. Anne's Episcopal Church.

12 Q. Okay. And who is the leadership of St. Anne's Church?

13 A. Dan Ennis is the senior warden, I am junior warden and
14 we have a vestry.

15 Q. Okay.

16 THE COURT: Mr. Tisdale, could she spell Ennis just for
17 our court reporter.

18 MR. TISDALE: E-N-N-I-S.

19 THE COURT: Is that it?

20 MR. TISDALE: Is that correct?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 Q. Is he a professor at the Coastal Carolina University?

24 A. He is the professor and dean of humanities.

25 Q. Okay. Dan Ennis. Thank you.

1 Ms. Lovelace, before Father Jeffords announced that you
2 were no longer Episcopalians or in the Episcopal Church, was
3 there any, were any presentations made or anything of that
4 nature to the congregation leading up to that event to
5 educate the congregation about what was going on?

6 A. We had many conversations over the years about the
7 national church and many representations that they were never
8 planning to leave the national church, because that's a
9 question I asked frequently, and the answer I always got was,
10 "We are never leaving."

11 Q. Right. Did your family, through the years and in
12 history, contribute financially to the parish of St. Paul's
13 Conway?

14 A. Significant contributions, yes.

15 Q. And did your parents, upon their demise --

16 MS. GOLDING: Your Honor, I'm going to make an
17 objection. That clearly is hearsay, what her parents did or
18 may have been bequeathed. I don't think that's appropriate.

19 THE COURT: If she knows of her own knowledge, and I
20 don't know at this point what relevance it may have, but it
21 may have some.

22 MR. TISDALE: Thank you very much.

23 Q. Did your parents, upon their demise, and their estates
24 make bequests to St. Paul's Conway?

25 A. \$358,000 was bequeathed to St. Paul's Episcopal Church

1 in my mother's will.

2 Q. Thank you.

3 Before it was announced that you were no longer going to
4 be an Episcopal Church, did you have any conversations with
5 Father Jeffords and perhaps Bishop Lawrence, if you did,
6 about fund-raising activities in the parish that they were
7 undertaking?

8 A. Well, there was a major capital campaign to build.

9 Q. When was that?

10 A. I'd say it was 1999, 2000, somewhere in there. 1999 --
11 we started a new church, building a new church, 2000, so yes.

12 Q. And were you involved in at least the solicitation for
13 that campaign, or your family?

14 A. Oh, yes.

15 Q. And who did you confer with from the parish management
16 about that?

17 A. I mean --

18 Q. I mean --

19 A. -- my husband was one of the major leaders of the
20 campaign.

21 Q. Okay. Were you given any assurances, in connection with
22 considering your contribution to that fund, as to what the
23 future of the parish would be with respect to the Episcopal
24 Church?

25 A. We had numerous discussions over the years, and always I

1 was told --

2 Q. By whom?

3 A. By the priest. And I've heard Bishop Lawrence also
4 assure the congregation on his visits to St. Paul's, and also
5 before him, Bishop Salmon's visits to St. Paul's, always, "We
6 are not leaving the Episcopal Church." In fact, one time the
7 statement was made, "We will never leave them. They might
8 leave us, but we're not going to leave them."

9 Q. Okay. And did your family make contributions to
10 whatever fund-raising campaigns were undertaken, including
11 the capital campaign?

12 A. Yes. Significant. They asked for sacrificial giving
13 and I gave sacrificially, yes.

14 MR. TISDALE: Okay. Thank you very much, Ms. Lovelace.
15 Answer any questions --

16 MS. GOLDING: I just have a few, Your Honor.

17 THE COURT: Yes, ma'am. Cross-examination. I should
18 first ask, national church, do you all have any?

19 MS. KOSTEL: No, Your Honor.

20 THE COURT: Very well. Yes, ma'am. Ms. Golding.

21 MS. GOLDING: Thank you.

22 CROSS-EXAMINATION BY MS. GOLDING:

23 Q. Now, Ms. Lovelace, isn't it a fact that in October 2012,
24 you and some other members in your worship group sent a
25 letter to the presiding bishop, to the national church

1 saying, "We don't want St. Paul's property. It's got too
2 much debt"?

3 A. I didn't send that letter, no.

4 Q. Well, didn't you sign that letter?

5 A. I don't believe I did.

6 Q. You don't think you did?

7 But isn't it a fact that in your group, your St. Anne's
8 group, your worship group, many sent a letter saying, "We
9 don't want St. Paul's."

10 MS. KOSTEL: Objection, Your Honor.

11 Q. "It's got too much debt"?

12 MS. KOSTEL: Objection, Your Honor. We're talking about
13 the best evidence rule. If there's a letter, let the letter
14 speak for itself if they want to put it into evidence.

15 THE COURT: In other words, I'm with you completely.
16 Yes, ma'am.

17 Q. Okay. Take a look.

18 A. Is my signature on that letter?

19 Q. Guess what, I get to ask you the questions.

20 MS. GOLDING: Can you please mark that as an exhibit?

21 (Plaintiff's Exhibit DSC67 marked for identification.)

22 Q. Let me give you Plaintiffs' 67 for identification
23 purposes, and you will see that this is a letter to the
24 presiding bishop of the defendant, national church, which
25 contains no signatures; is that correct?

1 A. That's correct. There are no signatures.

2 Q. And that's not the first time -- today is not the first
3 time you've seen that letter, is it, Ms. Lovelace?

4 A. First time I've seen it in this form.

5 Q. You've seen this type of letter before; have you not
6 seen this letter before?

7 A. I'm aware of the letter.

8 Q. Okay. Good.

9 A. I think you said something that I signed the letter. I
10 don't believe I ever did sign the letter.

11 Q. Okay. But you're not -- but there are a number of your
12 associates at St. Anne's that signed that letter?

13 A. I don't know who signed the letter. I've never seen the
14 letter with the signatures, so no.

15 Q. I'm not asking you --

16 A. I'm not through.

17 MR. TISDALE: Your Honor, please ask the witness to -- I
18 mean Ms. Golding not to interrupt the witness.

19 THE COURT: Let me just lay down some rules. If you
20 hear "objection" --

21 THE WITNESS: Shut my mouth. Okay.

22 THE COURT: No. I would just simply do like this
23 (indicating).

24 THE WITNESS: I can have a sip of water while I wait.

25 THE COURT: Indeed. And the reason for that is there

1 are matters of law that I have to handle.

2 THE WITNESS: I'm sorry.

3 THE COURT: That is absolutely not a problem.

4 MR. TISDALE: My objection was simply that I would -- I
5 object to her interrupting the witness while the witness was
6 answering a question.

7 THE COURT: I'm with you.

8 And, Ms. Golding, if you believe that she's being
9 nonresponsive, if you will direct that to me.

10 MS. GOLDING: I will, Your Honor.

11 THE COURT: I will handle that.

12 MS. GOLDING: I will. Thank you, Your Honor.

13 THE COURT: Very well. Absolutely. Now back to it.

14 Q. Okay. So what you're telling this Court is that even
15 though you were on the steering committee to form the
16 defendant diocese, right?

17 A. Yes, ma'am, I was.

18 Q. Okay. And even though you were the active member of
19 St. Anne's in putting it all together, right?

20 A. Correct.

21 Q. Okay. You did not sign this letter to the presiding
22 judge [sic] which said we don't want St. Paul's property?

23 A. I don't think I did sign it. I know that Dan Ennis
24 signed it, and I can't tell you who else signed it because I
25 never saw the signed copy; so I don't know who signed it.

1 MS. GOLDING: Okay. Thank you.

2 THE WITNESS: You're welcome.

3 THE COURT: And may I, for clarification purposes, since
4 this is a nonjury matter, Ms. Golding, you said "Did you send
5 it to the presiding judge?"

6 MS. GOLDING: Excuse me. Presiding bishop of the
7 defendant national church.

8 THE COURT: I just --

9 MS. GOLDING: I apologize.

10 THE COURT: I mean, ecclesiastically, there may be an
11 ecclesiastic judge. I don't know. Thank you. All right.
12 And that would conclude your cross?

13 MS. GOLDING: Yes, that is my cross. Thank you, Your
14 Honor.

15 THE COURT: Thank you.

16 MR. SHELTON: Your Honor, if it may please the Court,
17 Rob Shelton for St. Paul's Conway.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION BY MR. SHELTON:

20 Q. Good morning, Ms. Lovelace.

21 A. Good morning.

22 Q. You testified a moment ago that there was no
23 congregational meeting at St. Paul's?

24 A. I said not that I was ever made aware of.

25 Q. Okay. Are you aware of the meeting that took place

1 January 6, 2013?

2 A. No.

3 Q. So --

4 A. I was never sent a notice to be at the meeting.

5 Q. Are you aware -- are you familiar with the bylaws of
6 St. Paul's?

7 A. Yes.

8 Q. Is it not true the bylaws require notice be posted in
9 the narthex for two weeks prior to a parish meeting?

10 A. That I don't know.

11 Q. So you wouldn't know whether notice was properly posted
12 in the narthex during those two weeks. Then?

13 A. No, I would not.

14 Q. And, therefore, you wouldn't have been made aware of the
15 meeting?

16 A. No.

17 Q. Did you attend St. Paul's during the two weeks preceding
18 January 6?

19 A. Did I go to church there then?

20 Q. Yes.

21 A. No.

22 MR. SHELTON: Thank you, Ms. Lovelace. I have no
23 further questions.

24 THE COURT: Very well. Anyone else on behalf of the
25 plaintiffs? Cross-examination? No. Redirect.

1 MR. TISDALE: None, Your Honor.

2 THE COURT: Very well.

3 MR. TISDALE: Thank you, Ms. Lovelace.

4 THE COURT: Thank you so much, and you can come down.

5 If you could call your next witness.

6 MR. BEERS: Your Honor, the defendants call

7 Robert Klein.

8 MR. RUNYAN: Your Honor, before this witness comes and
9 probably the next one, we probably need to take a matter up
10 with the Court --

11 THE COURT: Okay.

12 MR. RUNYAN: -- to save some time.

13 THE COURT: Sure.

14 MR. RUNYAN: And I would ask, with the defendants'
15 consent, that Ms. Klein and Mrs. Lott, if she is in the
16 courtroom, be excused from the courtroom while we have this
17 discussion.

18 THE COURT: Be sequestered?

19 MR. RUNYAN: Sequestered.

20 THE COURT: You'd ask that they be sequestered? Okay.
21 I don't know. Any objection to the sequestration, first of
22 all?

23 MR. TISDALE: We don't know anything about the reason
24 for it, but I don't know any particular reason to object to
25 it.

1 THE COURT: Okay. All right.

2 MR. RUNYAN: It's just about the subject matter.

3 THE COURT: I understand.

4 MR. RUNYAN: Their anticipated testimony.

5 THE COURT: Okay. Any objection on behalf of the
6 national church?

7 MS. KOSTEL: No objection.

8 THE COURT: Okay. Very well.

9 (Witnesses exit the courtroom.)

10 THE COURT: I tell you what, Mr. Tisdale, if somebody
11 can maybe just walk out and help them know that, don't go
12 far -- we've got a conference room. Just let them know,
13 don't go far. We don't want to lose them.

14 MR. TISDALE: I'm certain they won't, Your Honor.

15 THE COURT: They won't. Great.

16 All right. Now, the two witnesses -- let me catch up
17 now. Mr. Runyan, the two witnesses' names again?

18 MR. RUNYAN: Bob or Robert Klein.

19 THE COURT: Mr. Klein.

20 MR. RUNYAN: And I cannot remember Ms. Lott's first
21 name.

22 THE COURT: That's okay.

23 MR. TISDALE: Leslie.

24 MR. RUNYAN: Leslie.

25 THE COURT: Ms. Lott is fine.

1 All right. Now. Tell me what your concern is.

2 MR. RUNYAN: Well, there are multiple issues here.

3 THE COURT: Okay.

4 MR. RUNYAN: But I'm going to let Ms. -- since Mr. Klein
5 was listed first I'm going to let Ms. Golding speak to that
6 issue. I'm more prepared on the broader issues, but I think
7 there's a simpler issue with Mr. Klein.

8 THE COURT: Okay.

9 MS. GOLDING: With respect to Mr. Klein, Your Honor, as
10 the Court knows, the defendants never responded to the
11 plaintiffs' expert witness questions. And as a result of
12 that, we moved to exclude any potential expert witnesses.

13 The Court denied that motion but did set parameters of
14 disclosure of experts, with the Court stating that the
15 experts needed to be disclosed and that the disclosures need
16 to be made -- and after the disclosures, then the reports
17 need to be made within certain time periods, 72 hours before
18 each deposition.

19 The Court's order of June 9, 2014, identified the expert
20 witnesses on the part of the defendants, and Mr. Klein was
21 never identified as an expert witness prior to the court
22 order of June 9, 2014.

23 Further, Your Honor, there was a parameter as to when
24 depositions can be taken. Let me back up.

25 He was identified as an expert after June 9, 2014, but

1 because he was not timely identified, not within the order,
2 he should not be permitted.

3 Then when they did identify him, they presented -- they
4 said he's available for a deposition, but the date of his
5 availability was beyond the time period permitted by the
6 court order for depositions. We did not take his deposition
7 because he was never identified in answers to
8 interrogatories, not identified pursuant to the court order
9 and not made available pursuant to the court order for any
10 deposition. Therefore, on those bases, we would move to
11 exclude his testimony today.

12 MR. RUNYAN: I have an issue that covers him as well.

13 THE COURT: Okay.

14 MR. RUNYAN: But maybe we should speak to this first.

15 THE COURT: Okay.

16 MR. RUNYAN: And I will just address one point: Your
17 Honor's court order was June the 9th. Mr. Klein was working
18 busily on June 6th on his work. So he was in the midst of
19 his work, and he was not mentioned to the Court, and he was
20 not included in the court order.

21 THE COURT: Okay. Mr. Smith.

22 MR. SMITH: Thank you, Your Honor. I'll start by saying
23 that when they sent discovery requests back in the beginning
24 of this case, we did not yet know who our experts would be
25 and, therefore, could not answer that question. As soon as

1 we knew that Mr. Klein was going to be an expert in the case
2 we identified him.

3 On June 4th we identified that we would have a survey
4 expert. We didn't yet know who exactly that would be. Your
5 Honor ruled on June 5th that their motion to exclude our
6 experts should be denied.

7 Thereafter, we met and conferred about how we would go
8 about taking the depositions of the experts that have been --
9 that were going to testify, and Your Honor had denied their
10 motion. They suggested a very tight schedule in which they
11 would be within a Monday-to-Thursday range of a week in June.

12 We told them at the time that Mr. Klein was out of the
13 country. He'd be returning early the following week, and we
14 said we could make him available that Tuesday. We also
15 offered them his expert report at the same time we gave them
16 all the other expert reports. And I would add that his
17 expert report is very detailed. It's a very thick document.

18 The other point, Your Honor, is that we have
19 accommodated scheduling of depositions of their witnesses.
20 They've had a few folks that have been out of the country and
21 we've taken depositions as late as last weekend. So we made
22 him available as soon as we could. He's been available since
23 then, and, Your Honor, we think that this is intentional,
24 that their plan all along is to try to exclude him, knowing
25 that they've had plenty of time to take his deposition.

1 THE COURT: Let me ask you this question, Mr. Smith: As
2 an officer of the Court, please tell me when, when, the date,
3 that Mr. Klein was retained as an expert. What is the date?

4 MR. SMITH: I can tell you that I personally spoke with
5 Mr. Klein and a number of other survey experts. We did not
6 decide who we were going to use until the day that we let
7 them know.

8 THE COURT: Okay. Because you realize that counsel just
9 made a representation that he was actually at work on the 6th
10 of June -- or, yes, doing his work on the 6th of June.

11 MR. SMITH: Your Honor, can I just say that, yes, we
12 spoke with him, and, yes, he may have been doing work, but at
13 that point, we didn't know whether we were going to name him
14 at trial. And there's a big difference between a consulting
15 expert and a trial witness -- or a trial expert.

16 THE COURT: Yes, there is. Okay. I need to see that
17 order. Who's got it handy? Thank you.

18 (Brief pause.)

19 THE COURT: Anything you want to add? Because I have a
20 couple questions.

21 MR. SMITH: Yes, Your Honor, I'll just add that prior to
22 the June 5th hearing, we had supplemented defendants'
23 supplemental answers to interrogatories.

24 THE COURT: Okay.

25 MR. SMITH: And in those -- it might be helpful for me

1 just to read a short paragraph.

2 THE COURT: May I see them.

3 MR. SMITH: Yes.

4 THE COURT: Let me just -- for your purposes, I am
5 reviewing what is defendants' supplemental answers to
6 interrogatories, it is dated June the 4th, 2014. So you
7 would have probably not received it until after the hearing
8 that was on the 5th, I would think.

9 MR. SMITH: Your Honor, I believe we would have emailed
10 that to them.

11 THE COURT: Oh, did you email it? Okay.

12 MR. SMITH: Or did we hand deliver it?

13 THE COURT: Or hand delivered?

14 MR. SMITH: Before the hearing.

15 THE COURT: Okay. I'll ask that in a moment. Okay.
16 Now, yes, I've got this.

17 MR. SMITH: Okay.

18 THE COURT: Let me ask you this question: Tell me what
19 sort of expert Mr. Klein -- what sort of expert is Mr. Klein?

20 MR. SMITH: He's an expert in survey research. He
21 conducts surveys, in particular in this case, a trademark
22 survey where he assesses the likelihood of confusion among
23 the public by conducting a scientific survey. And these
24 types of surveys are highly probative in trademark cases,
25 Your Honor.

1 THE COURT: Okay. May I ask this question, because
2 during the hearing -- I didn't make up the names of the
3 experts. Can you tell me why I wasn't provided the name of
4 this particular expert during the hearing? Because you all
5 were -- you know, you gave me the list of experts so that I
6 could deal with the issue.

7 MR. SMITH: Right. Again, Your Honor, we hadn't picked
8 one yet.

9 THE COURT: But you had, see.

10 MR. SMITH: Your Honor, I was talking with numerous
11 people on the phone.

12 THE COURT: Yes.

13 MR. SMITH: And he was one of those, and I would say he
14 was a consulting expert -- to the extent he was working with
15 us, he was a consulting expert at the time. We weren't sure
16 if we wanted to identify him for trial.

17 THE COURT: Let's hold on a minute. You just handed me
18 the defendants' supplemental answers to interrogatories --

19 MR. SMITH: Right.

20 THE COURT: -- dated June the 4th.

21 MR. SMITH: Right.

22 THE COURT: The hearing was June the 5th.

23 MR. SMITH: That's right.

24 THE COURT: Okay. And in your answers -- okay. So
25 you're saying -- what you're telling me is that on June the

1 4th, with the supplemental interrogatories, when you say, "We
2 reserve the right to designate an expert."

3 MR. SMITH: That's right.

4 THE COURT: I gotcha. And you hadn't decided on --
5 gotcha.

6 MR. SMITH: Right.

7 THE COURT: Okay. So when you came to Court, and I was
8 dealing with the issue of the experts and the issue -- and
9 what we were going to be doing regarding the experts, you
10 just hadn't made up your mind at that point?

11 MR. SMITH: That's right.

12 THE COURT: Okay. So you couldn't tell me.

13 MR. SMITH: Right.

14 THE COURT: And you didn't tell me.

15 MR. SMITH: We knew we were going to name a survey
16 expert, but we didn't know who.

17 THE COURT: Can I ask this question?

18 MR. SMITH: Sure.

19 THE COURT: Why didn't you all tell me that?

20 MR. SMITH: Your Honor, I'd have to look back at the
21 transcript. I don't remember.

22 THE COURT: I gotcha. Yes. You've got the transcript?

23 MR. RUNYAN: We do. The word "survey" is not in there.
24 It was not mentioned. It was not brought up at all. In
25 fact, just to add some additional facts to this, we had, as

1 Your Honor will recall, an extensive discussion about
2 experts. That evening I sent out a list of the persons named
3 in that order with dates and times and places.

4 The next day we discussed those names, times and places.
5 And at 3 p.m. we had a conference call with the Court where
6 we again discussed it. Still no survey expert. And it
7 wasn't -- and that afternoon --

8 MR. SMITH: Your Honor, I would say that that's not
9 true.

10 MR. RUNYAN: Well, pull the record out that shows that.

11 MR. SMITH: Of our meeting --

12 THE COURT: Stop. Let him speak and then you respond.

13 MR. RUNYAN: That afternoon we got, I think, at least
14 one, maybe two emails complaining about the order.

15 THE COURT: Right.

16 MR. RUNYAN: But not saying why and not mentioning a
17 survey expert. The first time that we -- I want to make sure
18 I get this right. We had two email objections, June 8 and
19 June 9, neither of which mentioned a survey expert. June the
20 10th --

21 THE COURT: I'm on the phone --

22 MR. RUNYAN: -- we got the name of --

23 THE COURT: No. I'm on the phone when?

24 MR. RUNYAN: You're on the phone on June 6th.

25 THE COURT: Okay.

1 MR. RUNYAN: June 10, we get a name.

2 MR. SMITH: Your Honor, that's when we decided we would
3 use him at trial.

4 MR. RUNYAN: And the expert received his first Internet
5 survey response on June 6.

6 MR. SMITH: But, I mean, still at that point, he's a
7 consultant, Your Honor.

8 THE COURT: I'm going to take a little break. I'll see
9 you all in 15 minutes.

10 (Recess held.)

11 THE COURT: All right. I'm going to, first of all, deal
12 with the issue of Mr. Klein, who I understand now is being
13 offered as a witness. And let me say that our law says that
14 the exclusion of a witness is a severe sanction under our
15 law. And the Court should not enter into that kind of
16 determination lightly, and that is precisely why I just took
17 the break that I took.

18 Our case law is a little bit like baseball in this
19 regard. If you review our case law, you will find that the
20 decisions where a witness has been excluded, there has been
21 multiple, multiple violations of a court order prior to the
22 Court excluding a witness.

23 That has occurred in this instance. And let me be
24 clear, there have been two scheduling orders in this case,
25 and those scheduling orders have failed to be complied with

1 by the defendants with regards to the provision of the expert
2 witnesses' names.

3 Most importantly to me, because I took the time, the
4 energy and the effort to have an extensive hearing on the
5 issue of the exclusion of witnesses, which I denied. And in
6 doing so, did two things: I formulated a process by which I
7 wouldn't need to exclude the expert witnesses of the
8 defendants because, quite frankly, I didn't want to do that,
9 knowing that that is an extraordinary sanction. I didn't
10 want to do it. I didn't want to do that to the defendants;
11 so I did a couple of things.

12 I, first of all, wanted to know who their experts were.
13 That's the first thing I wanted to know. I didn't come up
14 with this list on my own. They were represented to me to be
15 the experts of the defense.

16 And then I went on and made some other provisions,
17 knowing full well the burden that that places on the other
18 side to prepare to depose expert witnesses. I gave them 72
19 hours to prepare. That's not a lot of time. And I did that.
20 I put that burden on the plaintiffs because I didn't want to
21 exclude the expert witnesses; so I burdened the plaintiffs
22 and basically said, "Deal with it." And they did.

23 But that wasn't sufficient, this order that I've signed
24 on June the 9th, 2014. I held a telephone conference to
25 assist counsel in coming up with the times and the dates that

1 these experts would be deposed.

2 It is to me unbelievably remarkable that the defendants
3 chose not to give me the names of all of their experts, if,
4 in fact, they had them out there on the hearing date, which
5 was June the 5th, or, as an absolute outside time, when I had
6 the telephone conference.

7 Defendants, you did that to your own peril, because
8 that's the third -- it's like baseball. That was your third
9 order that you violated by adding an additional expert. So
10 if there are any experts other than the ones that you gave
11 me, to which I included in this order, they're excluded.

12 Now, talk to me about the other person.

13 MR. RUNYAN: Your Honor, the other witness is an
14 attorney from Florida. Broadly stated, her expertise is in
15 the area of trademarks. Our objection to her, broadly
16 stated, is a relevance ground. And I'll speak to the
17 elements of that.

18 I think there is one area where her testimony might be
19 relevant, but on that area, I would contend that it's not
20 useful to the Court because of the limited area that it is
21 relevant to.

22 We'll start with the Episcopal Church's complaint --
23 answer, amended answer and counterclaim. There is, as far as
24 I can tell, no allegation in here relating to marks or
25 service marks and allegations that the Episcopal Church's

1 marks have been misused, that the national church's marks
2 have been misused by the diocese or by the parishes.

3 The allegations are they set this complaint up to sue
4 individuals whom they allege were in control of the plaintiff
5 entities. And so all of their allegations on trademark are
6 made against individuals who are not parties to this case.
7 Count 2, 3, 4, 5, 6 are their trademark counts. Every one of
8 them are against individuals who are not parties to this
9 lawsuit.

10 Their declaratory judgment count, which is Count 7, and
11 I'll just read this, Page 61 states, Paragraph 29, "An actual
12 controversy, therefore, exists between the church and the
13 individual counterclaim defendants as to the interests of the
14 church and the Episcopal Church Diocese in the real and
15 personal property of the parish."

16 So the parish claims are likewise declaratory judgment
17 claims made against individuals who are not parties to the
18 lawsuit. We have covered this issue a bit before, not quite
19 at the depth that I just went into, and I have that portion
20 of the transcript in rough draft to hand to the Court in just
21 a moment.

22 As to the defendant, the Episcopal Church in South
23 Carolina, and this goes to what the Court indicated on
24 July the 9th, there is a defense, No. 14, and I'm sort of
25 paraphrasing, but it essentially says that the rights and

1 interests claimed by the plaintiffs in the marks, that is our
2 service marks, were derived wholly from and through the
3 defendants and, therefore, are invalid.

4 The Court confronted this issue on July the 9th, and
5 I'll hand this up, if the Court desires, in which when that
6 paragraph was read, the Court responded, "Okay. That's it.
7 That claim would encompass it. Okay. Yes."

8 The Court essentially found that there was relevance to
9 the claim with respect to the defense, but that is a defense
10 of -- that is related to our service marks and their origin.
11 It's not related to the Episcopal Church proving we've
12 misused their marks. It's not related to anything requiring
13 technical testimony. It's something that can be factually
14 dealt with. And the -- I think the issue's really quite
15 simple, and that is did we take or get something of their
16 marks and use it in ours.

17 Now, there are only two marks that they've even
18 mentioned: One is the Episcopal Church. Well, it wasn't
19 registered until 1967. The second mark, the Protestant
20 Episcopal Church in the United States of America, according
21 to their registration, was in 1836. Our mark, Protestant
22 Episcopal Church in the Diocese of South Carolina, has a
23 first-use date of 1821, 15 years before that.

24 So just on the face of the paper, I think there's a
25 basis to say there's a lack of relevance. But supposing that

1 there might be some more relevance to that, A, I don't think
2 that expert testimony is needed from a lawyer on that point,
3 and B, I will turn this over to Ms. Golding to talk about the
4 scope of her disclosure and her testimony. She admitted in
5 her deposition she was not an expert in linguistics. She was
6 not a historian. And my impression, although I plead
7 somewhat lacking in federal trademark issues, was that that
8 was her strength. Well, there are no federal trademark
9 claims in this case against the parties.

10 MS. GOLDING: With respect to Ms. Lott, the scope of her
11 opinions, she sets forth essentially 12 opinions in her
12 report, but those opinions are based upon the Lanham Act,
13 which, of course, is not against any of the defendants in
14 this lawsuit. And, therefore, as a result, you know, she has
15 no basis to testify. But more important than that is she is
16 testifying as to legal matters which are only within the
17 providence of the Court, Your Honor.

18 And I note that Ms. Lott had prepared an expert report
19 at a seminar in 2006. In this seminar material that she had
20 prepared she stated (reading): Trademark law experts are
21 subject to unique challenges that do not affect other types
22 of experts, as they are called to testify as to the law and
23 thus risk invading the providence of the Court. Such an
24 objection may be overcome by limiting testimony to areas
25 which are not strictly questions of law.

1 And they are, one, Patent and Trademark Office practices
2 and procedures in the prosecution of a trademark application.
3 That's not within her scope. She did not give any opinions
4 on that matter.

5 Two, trademark trial and appeal board practices and
6 procedures in opposition and cancellation matters. That's
7 not before this Court in any issue, nor in her report.

8 Three, Patent and Trademark Office policies, training,
9 personnel, structure, departments. Also not within her
10 report.

11 Four, standard practices in licensing, settlement or
12 other transactional matters.

13 THE COURT: Say that one more time.

14 MS. GOLDING: Certainly. Standard practices in
15 licensing, settlement or other transactional matters. Also
16 not within her report.

17 And the fifth, foreign law and procedural issues or
18 other matters that would not normally be within the knowledge
19 and experience of a sitting judge. Again, not part of these
20 matters.

21 So by Ms. Lott's own seminar material that she published
22 in -- that was at a seminar in October 19, 20, 2006, she
23 stated that she's not -- she's not competent to testify,
24 because what she will testify will only be as to legal issues
25 which are solely within the province of the Court.

1 I would like to hand this seminar material to the Court.

2 THE COURT: Has counsel seen it?

3 MS. GOLDING: Page 11, I'll be glad to provide counsel a
4 copy. I'll have to give him my copy. I only have one, Your
5 Honor. I apologize. I will give them mine. And it's on
6 Page 11 of this document, Your Honor.

7 THE COURT: Okay.

8 MS. GOLDING: Thank you, Your Honor.

9 MR. HOLMES: Your Honor, just curious to the basis for
10 the admissibility of that document.

11 THE COURT: I think that, as I understand it, it would
12 simply be a statement by the witness, by the witness's own
13 voice, in another -- obviously, clearly in another place,
14 that she has concerns about the admissibility of her own
15 testimony in these particular matters.

16 MR. HOLMES: To be available for impeachment, I gather.

17 THE COURT: Well, as I understand it, their position,
18 there is a statement -- she's given a statement, which I've
19 not seen yet, of what her expert opinion would be, her
20 report. And as I understand what Ms. Golding is saying, if
21 you take her report and what she says in her report, it flies
22 in the face of what she has lectured about in terms of her
23 ability to testify. Now, you understand I'm just -- that's
24 what I heard.

25 MR. HOLMES: I appreciate it. Thank you.

1 THE COURT: That's what I heard. I don't know. I just
2 got here.

3 MR. TISDALE: Your Honor, it certainly wouldn't be
4 related to this case in any way, shape or form, and it was
5 eight years ago in some seminar, apparently.

6 THE COURT: I understand.

7 MR. HOLMES: I appreciate what Your Honor says. It
8 seems to me it's just a -- you know, it's impeachment.

9 THE COURT REPORTER: I'm sorry, sir, I can't hear you.

10 MR. TISDALE: The court reporter couldn't hear you,
11 Allan.

12 MR. HOLMES: She didn't miss anything.

13 THE COURT: I think she did.

14 All right. Now, I'd like to see the expert -- her
15 report. Let me look at the report.

16 MS. GOLDING: I'll present that to the Court, Your
17 Honor.

18 THE COURT: Thank you.

19 MR. SMITH: Your Honor, the one she handed you looked a
20 little bit thinner than the one that we submitted.

21 THE COURT: Wow, yeah.

22 MR. RUNYAN: I think the difference is that that has
23 Mr. Klein's report attached to it.

24 THE COURT: It does.

25 MR. SMITH: Your Honor, here's her CV. Thank you.

1 THE COURT: Okay. Hold on, because Mr. Runyan is
2 correct that Mr. Klein -- it looks like Mr. Klein's report is
3 attached, because it's -- I'm looking at, like, Appendix C,
4 "Survey Data Listing." Is that his stuff?

5 MR. SMITH: Your Honor, that -- Bob Klein's report is
6 part of the materials that she relied upon as an expert. I
7 think she's allowed to do that regardless of whether
8 Mr. Klein testifies.

9 MR. RUNYAN: Well, I think the factual problem with that
10 is in the deposition, she said she formulated her opinion
11 before getting the report.

12 MR. SMITH: Your Honor, at her deposition, she said that
13 the report further supported her opinion; so they've been
14 aware of that for a long time. And, Your Honor, she did rely
15 on it in her report. That's why it's attached to the report.

16 Your Honor, Paragraph No. 11 of Section A of her report
17 states "Surveys have been conducted in this case that
18 resulted in substantial confusion of the public in highly
19 significant percentages, and it's attached as an appendix to
20 this report."

21 MR. RUNYAN: The substantive problem, Your Honor, with
22 that is confusion is not an issue in this case on their side.

23 MR. SMITH: Your Honor, I'm happy to --

24 MR. RUNYAN: The Lanham Act claims are --

25 THE COURT: Let me be real -- I don't know how to be any

1 clearer, Mr. Smith. I'm going to try once more. When you
2 violate the Court's order three times, and a witness is
3 excluded, they're excluded. Their testimony is excluded.
4 Their work product is excluded. Do you understand me?

5 MR. SMITH: Yes, Your Honor.

6 THE COURT: Do you understand that this witness's
7 testimony, this witness's work product will not be brought
8 into this Court?

9 MR. SMITH: Yes, Your Honor.

10 THE COURT: Why are you having difficulty with that,
11 Mr. Smith? I told you just a moment ago that the defendants
12 have violated this Court's order three times with regards to
13 experts. I excluded him, and now you think you're going to
14 bring in his testimony through the back door; is that what
15 you think?

16 MR. SMITH: Your Honor, that was not my intent.

17 THE COURT: Apparently it was, Mr. Smith, because you
18 testified that Ms. Lott would use it because she relied on
19 it, as experts are entitled to rely on that sort of
20 testimony. Let me be clear: He's excluded, Mr. Smith,
21 because the defendants failed to comply with three of this
22 Court's orders, three, with regards to expert testimony.

23 This is not a game. Court orders, sir, are to be
24 followed. You are an officer of the Court. I trust we'll
25 not have any more discussion about this expert witness and

1 anything he might have to do with these proceedings. Do you
2 understand?

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: Very well.

5 MR. SMITH: Your Honor, if I could address some of the
6 other points that Mr. Runyan and Ms. Golding --

7 THE COURT: I will ask you a very, very simple question,
8 and I want you to focus with me, because relevance, you see,
9 is really a simple issue. I'm going to read the rule:
10 "Evidence is relevant if it has a tendency to make a fact
11 more or less probable than it would have been without the
12 evidence and the fact is of consequence in determining the
13 action."

14 Clearly the marks are an issue in this case, right?
15 Yes?

16 MR. SMITH: Yes, Your Honor.

17 THE COURT: And you would offer Ms. Lott for the purpose
18 of having some discussion regarding those marks; is that
19 correct?

20 MR. SMITH: That's correct. I can elaborate if you
21 wish.

22 THE COURT: You don't need to, because I think,
23 Mr. Smith, it's better to take it as it comes. In other
24 words, I don't believe that I can function in a vacuum. And
25 I think I'm going to have to -- we'll begin the testimony,

1 and if there's an objection, I'll take it from there.

2 MR. SMITH: Okay.

3 THE COURT: Yes?

4 MR. SMITH: Very good, Your Honor.

5 THE COURT: Very well. Thank you, Mr. Smith.

6 Now, you do understand, and before she testifies, I want
7 you to get real clear with her that the Judge doesn't take
8 blood pressure medicine yet, but I might have to resort to
9 taking blood pressure medicine if I hear anything about the
10 excluded witness, okay? So you all might want to have a
11 little time to do that.

12 MR. TISDALE: Your Honor, may I?

13 THE COURT: Yes.

14 MR. TISDALE: Given the Court's ruling to exclude
15 Mr. Klein --

16 THE COURT: Yes.

17 MR. TISDALE: -- and given the severity of the order as
18 you have yourself articulated --

19 THE COURT: Yes.

20 MR. TISDALE: -- we believe that we need to proffer his
21 testimony for preservation purposes.

22 THE COURT: You don't, and let me tell you why you
23 don't: Because it doesn't matter whether or not it makes any
24 difference because I am excluding his testimony. Not for
25 relevance. I'm excluding his testimony because of the

1 defendants' failure to comply with three of this Court's
2 orders. So what he has to say, you can presume that it is
3 earth shattering. It's huge. Because I don't care.

4 MR. TISDALE: Well, Your Honor, given your ruling that
5 we -- which, of course, we disagree with, respectfully, that
6 we cannot proffer his testimony, we offer his report as an
7 offer of proof in this case, and we would like to file it
8 accordingly.

9 THE COURT: Yes, sir. Here's the problem with that:
10 It's excluded. The testimony is excluded. If I have
11 committed an abuse of discretion, then I have committed an
12 abuse of discretion in excluding the witness. I don't
13 believe, for appellate purposes, that the Court would even
14 get into the discussion about whether or not the testimony
15 mattered or not.

16 In other words, for your protection, I would want the
17 Court to presume it would have been helpful. Do you see what
18 I'm saying?

19 MR. TISDALE: Yes, Your Honor.

20 THE COURT: If you make that proffer, Mr. Tisdale, then
21 the Court perhaps would be inclined to go into that secondary
22 analysis. I don't want that for you. I want the Court to
23 presume that I have done what I have done for the reasons
24 that I have done it. Not that it isn't relevant, not that it
25 wouldn't be important, but for the mere fact that the

1 defendants failed to comply with not one, not two, but three
2 of this Court's orders, and that is the reason for the
3 exclusion.

4 My concern is that that's the reason. And in fairness
5 to the defendants, I want it to stand that way. And I'm
6 afraid -- and if you want to proffer it, I will allow you to
7 do that, but my concern is that I want it to be what it is.
8 And if it's an abuse of discretion, I want the Court to
9 consider it was a big deal.

10 MR. TISDALE: Well, I will take you up on your offer to
11 be allowed to proffer it, Your Honor.

12 THE COURT: Sure. Absolutely. Put in his report.

13 MR. TISDALE: Well, to do what?

14 THE COURT: You can put in his report as a proffer.

15 MR. TISDALE: In the report?

16 THE COURT: Yes, just put his report in as a proffer.

17 MR. TISDALE: Offer of proof, not as a witness on the
18 stand.

19 THE COURT: Right.

20 MR. TISDALE: Okay. I misunderstood. I'm sorry.

21 THE COURT: Absolutely.

22 MR. TISDALE: So we certainly will file the report.

23 THE COURT: Sure.

24 MR. TISDALE: As a proffer, offer of proof.

25 THE COURT: Absolutely.

1 MR. TISDALE: Thank you.

2 THE COURT: But, again, I want the record to be clear.
3 In other words, I don't want -- it would be my intention that
4 if there's error, that whether or not it would have helped or
5 not helped --

6 MR. TISDALE: I understand your ruling. We feel like,
7 given the nature of the matter, that we need to make an offer
8 of proof --

9 THE COURT: Sure.

10 MR. TISDALE: -- so that another Court, if it ever looks
11 at it, will have it.

12 THE COURT: Sure. That's fine with me.

13 MR. TISDALE: Thank you very much.

14 MS. KOSTEL: Your Honor, if I could just read one --
15 just to protect our position on appeal.

16 THE COURT: Sure.

17 MS. KOSTEL: Just make note of the Teseniar case,
18 T-E-S-E-N-I-A-R, handed down by the South Carolina Court of
19 Appeals in January of this year, discussing exclusion of
20 expert testimony.

21 THE COURT: Yes.

22 MS. KOSTEL: And just a couple of notes that the Court
23 said (reading): A failure to weigh the required factors
24 demonstrates a failure to exercise discretion and amounts to
25 an abuse of discretion. And the Court goes on to set out

1 five factors the trial court is required to consider. I'm
2 certain Your Honor is familiar with those factors. We want
3 to just put into the record --

4 THE COURT: Put them on the record and let me be sure
5 I've covered them all. Go right ahead.

6 MS. KOSTEL: Okay. The type of witness involved.

7 THE COURT: Yes.

8 MS. KOSTEL: The content of the evidence emanating from
9 the proffered witness.

10 THE COURT: Yes.

11 MS. KOSTEL: The nature of the failure or neglect or
12 refusal to furnish the witness's name.

13 THE COURT: Yes.

14 MS. KOSTEL: The degree of surprise to the other party,
15 including the prior knowledge of the name of the witness.

16 THE COURT: Okay.

17 MS. KOSTEL: And the prejudice to the opposing party.

18 THE COURT: Very well.

19 MS. KOSTEL: And let's just remind the Court that the
20 other side has had that report for over a month. The witness
21 has been available for deposition for that month, that, at
22 the Court's direction, we deposed 34 plaintiffs' 30(b)(6)
23 witnesses -- actually 32 on last Monday, and then two of them
24 were not available; so we deposed the remaining two this past
25 weekend, just to get that in the record. Thank you.

1 THE COURT: Thank you so much. Yes. And just to be
2 absolutely certain with regards to that decision, as a
3 general observation, it has been most difficult to obtain
4 compliance with court orders by the defendants in this case,
5 in general, as a general observation.

6 I feel that the plaintiffs were well grounded in their
7 motion to exclude expert witnesses. And as a general
8 observation -- and I think I've made it before, as a general
9 observation, defendants have spent much effort in what I
10 believe to be an attempt to postpone and delay these
11 proceedings, to include an email that I've had privy to in
12 April of this year, which I am satisfied indicates that delay
13 of this trial has been a tactical decision on behalf of the
14 defendants, which continued, I might note, I believe, up to
15 Friday before the trial was to begin on Monday.

16 Therefore, when the plaintiffs came to the Court in
17 June, hat in hand, begging for assistance from the Court to
18 obtain compliance with two schedule orders which had been
19 entered into by consent and after meeting and conference and
20 they found themselves up against the wall with trying to, A,
21 just give me the names, please, of the experts, and let me
22 know what they're going to say, it fell on deaf ears so far
23 as the Court was concerned. I told them "no," wouldn't do
24 it, wouldn't exclude the witnesses, wasn't going to exclude
25 the witnesses.

1 It was at that point that I believe that the case law
2 was complied with, because it was at that moment, again, on
3 the backs of the plaintiffs that I allowed the expert
4 testimony to be taken. I put in the order every expert that
5 you all mentioned. All you had to do was give me another
6 name. Give me five more names. You could have given me ten
7 more names, and I would still have caused the plaintiffs to
8 have accomplished the work, and you chose not to.

9 This is the consequence to that act. Because, you see,
10 at some point, if we're going to have an ordered society,
11 there must be order. There must be compliance with the
12 Court's orders. There must be. And that was the reason,
13 that was the reasoning behind my order directing that the
14 expert depositions and expert reports be given.

15 It is an extraordinary thing to give counsel a mere 72
16 hours to prepare to depose an expert and to do them all
17 within the course of a matter of days. That was the -- if
18 there was an abuse of discretion, I must tell you I think
19 that is wherein it lies in this case is to have burdened them
20 and put it on their backs.

21 But, yet, I did that, and I did that for the purpose of
22 not excluding experts that the defendants told me that they
23 wanted, despite the fact that they have repeatedly failed to
24 comply with this Court's orders. And all you had to do, all
25 you had to do was just give me the names.

1 You know, and it really comes so close to Rule 3.3. If
2 you had a name and you thought you were going to need that
3 expert, to withhold that information at that time
4 approximates a violation, in my mind, of Rule 3.3. And then
5 to come now and to complain is most disturbing to me.

6 So the only remedy that is left to the Court, in order
7 for this Court to have any ability to control these
8 proceedings and to control this trial, the Court has to, in
9 its humble opinion, take the extraordinary action to exclude
10 a witness, which I have no desire to do, and you leave me no
11 choice.

12 I'm finished with that issue. I would like to move on.
13 All right. Call your next witness.

14 MR. HOLMES: Thank you, Your Honor.

15 MR. TISDALE: Your Honor, just give us five minutes to
16 advise the witnesses what your ruling is.

17 THE COURT: Sure. Absolutely.

18 (Recess held.)

19 MR. TISDALE: Your Honor, we would call Leslie Lott.

20 LESLIE JEAN LOTT,
21 being first duly sworn, testified as follows:

22 THE COURT: If you would state your name again please
23 and spell your last name.

24 THE WITNESS: Leslie Jean Lott, L-O-T-T.

25 THE COURT: Your witness.

1 MR. SMITH: Thank you, Your Honor.

2 DIRECT EXAMINATION BY MR. SMITH - VOIR DIRE:

3 Q. Ms. Lott, can you start by giving us basic personal
4 information: When you were born, where you grew up.

5 A. Okay. I was born in Louisville, Kentucky. Grew up in
6 north Florida and currently reside in Miami.

7 Q. Can you take us through your educational years?

8 A. Sure. I went to school at -- went to school in a small
9 town in north Florida, Perry, Florida; went to college at the
10 University of Florida; went to law school at the University
11 of Florida; and then attended some post graduate courses at
12 Georgetown in Washington, D.C. after law school.

13 Q. Can you give us the dates of graduation from each of
14 those?

15 A. I'm not sure. Graduation from high school was '68;
16 undergrad, '72; law school, '74; and post grad courses would
17 have been '75.

18 Q. And what were those? What was that post grad work?

19 A. I don't even remember, but they were courses on
20 trademark law. I was working with the Patent and Trademark
21 Office in Washington at the time.

22 Q. Okay.

23 A. And they were advanced courses on trademark law issues.

24 Q. Okay. So you started your career after those post
25 graduate courses. Can you take us through the early years of

1 your career?

2 A. Sure. After graduation my first job out of law school
3 was with the United States Patent and Trademark Office as a
4 trademark examiner. And there were -- there was a training
5 program there on the practices and procedures of the Patent
6 and Trademark Office and the examination of trademarks and
7 the evaluation of likelihood of confusion and things like
8 that; so there was training within the Patent and Trademark
9 Office.

10 Q. And how long were you there?

11 A. I was there for two years.

12 Q. Okay.

13 A. In 1976 I went to New York to an international
14 intellectual property firm, Pennie & Edmonds, and worked
15 there for several years during which I took a leave of
16 absence and worked overseas in the Kingdom of Saudi Arabia
17 for almost two years, just under two years, and then returned
18 to New York in 1980 for the calendar year of 1980 and then to
19 the same firm, to Pennie & Edmonds, and then moved to Miami
20 at the end of 1980.

21 Q. Can you describe your practice while at Pennie &
22 Edmonds?

23 A. Sure. It was trademark prosecution, which means filing
24 and obtaining trademark registrations throughout the world.
25 It involved inter partes proceedings within various patent

1 and trademark offices, disputes about trademarks, some
2 litigation, a fair amount of licensing, counseling clients on
3 clearance and selection of marks, business counseling, what
4 marks are available for use, why, what factual matters you
5 look at to determine whether a mark is available, what
6 factors are involved in licensing trademarks or brands, what
7 makes a valid license, what marks -- the use of the mark of
8 another, basically, in terms of licensing.

9 Q. I know this is a difficult question, but can you
10 estimate about how many trademarks you may have been involved
11 in registering in your career?

12 A. Oh, my gosh. I have been doing this for 40 years. No,
13 I really can't. It really is a tremendous number, a great
14 number.

15 Q. Okay. So I believe in your spectrum of your career, we
16 left off you were back in New York with Pennie, the Pennie
17 law firm.

18 A. Pennie & Edmonds in 1980. And at the end of 1980, I
19 moved to Miami and took a job with a litigation firm, general
20 litigation firm in Miami. And then in 1983, I opened my own
21 practice, which is exclusively an intellectual property
22 practice and ultimately evolved to the same practice I have
23 today.

24 Q. Okay. Can you talk about your involvement in
25 trademark-related organizations over the years?

1 A. Oh, yes. The International Trademark Association is, as
2 the name implies, it's a global organization of, I believe,
3 something like 5,000 regular members who are the major brand
4 owners worldwide, major corporations and major brand owners.
5 Outside attorneys like myself can also join the organization
6 but only as associate members. It's primarily directed to
7 brand owners.

8 So the International Trademark Association I've been
9 very actively involved with since the 70s. The American Bar
10 Association, the American Intellectual Property Law
11 Association, the Florida Bar Intellectual Property Law
12 Committee, a number of different organizations on the
13 international, national and local level.

14 Q. What about involvement in committees or organizations
15 related to the United States Patent and Trademark Office?

16 A. I've served on a number of committees and served as
17 chair of several committees over the years. I've been a
18 member of the board of directors at two different times, and
19 I chaired a committee on NAFTA, a committee on international
20 counterfeiting, I believe, and have spoken a great deal at a
21 great number of their meetings and special seminars on
22 different topics.

23 Q. Have you received any honors or awards over the years in
24 trademark-related areas?

25 A. I have. I believe my firm and I personally have

1 consistently been named in the best lawyers organizations,
2 best IP lawyers. This year, meaning 2015, actually, for next
3 year, I've been named the top intellectual property litigator
4 in the Miami area. We've obviously -- Martindale-Hubbell,
5 we've had the highest rating in Martindale-Hubbell since the
6 80s and the international organizations as well who recognize
7 international trademark practitioners.

8 Q. Okay. Can you speak to publications and speeches you
9 may have given?

10 A. I have regularly been asked to write and to speak on
11 trademark issues over the years. I've spoken for the ABA
12 programs. There's an organization in New York, PLI, the
13 Practicing Law Institute, the Florida Bar, the Colorado Bar,
14 the Michigan Bar Association. I've spoken overseas in
15 Geneva. I've got an upcoming presentation on fashion law
16 issues in Barcelona in the fall. The American Intellectual
17 Property Law Association I've spoken for on several
18 occasions.

19 So it's just sort of -- oh, the Florida Bar recently --
20 or within the last few years, enacted certification for
21 intellectual property law attorneys, and I gave the
22 presentation for lawyers who are seeking to become certified
23 in intellectual property law. I was responsible for the
24 preexam education in trademark law, so a great deal over the
25 years.

1 Q. Can you estimate approximately how many trademark and
2 licensing-related articles that you've published over the
3 years?

4 A. I'm terrible at estimating numbers.

5 Q. Okay.

6 A. 50 to 100, maybe.

7 Q. Thank you.

8 A. A lot.

9 Q. Again, estimate if you can about how many times you've
10 spoken and have been invited to speak at conferences and
11 committees on trademark and licensing issues?

12 A. Over the past almost 30 years, I've spoken probably two
13 to four times a year at least; so whatever -- however the
14 math comes out. It's been consistent.

15 Q. Is there anything else in your background that I've left
16 out that would be helpful to the Court?

17 A. Well, just in terms of my ongoing day-to-day practice,
18 the areas that I've focused most closely on have been
19 counseling many different kinds of businesses in connection
20 with clearance of trademarks, likelihood of confusion,
21 licensing and the business ramifications of those sorts of
22 actions.

23 Q. Okay. Can you tell me, can you describe what, if any,
24 affiliation, membership you've had in churches over the
25 years?

1 A. I was raised in the Presbyterian church. I was baptized
2 in the Presbyterian church. I've attended a number of
3 different church services for different reasons. And for a
4 period of time in Miami I regularly attended an Episcopal
5 Church, St. Stephen's Episcopal Church in Coconut Grove.

6 Q. When was that?

7 A. That was in -- I was drawn to that church because my
8 sons went to the school there, the elementary school. So
9 that was in -- would have been in the -- let me think --
10 probably for a period of close to ten years, up to five years
11 ago; so about five years ago.

12 Q. Okay.

13 A. So -- and actually I even served on the vestry in that
14 church, although I was never a member of the church. I
15 served on the board of the school, which is the -- is not --
16 it's kind of an amalgam, part school and part church, but I
17 served on the board for the school and then was asked to
18 serve for a term on the vestry of the church.

19 Q. Okay. And that was approximately five years ago when
20 you stopped going there?

21 A. No. Service on the vestry would have been longer ago
22 than that.

23 Q. Okay.

24 A. But I have not regularly attended that church for, more
25 or less, five years.

1 MR. SMITH: Okay. Thank you. I'd like to move to
2 qualify Ms. Lott as an expert in trademark practice and
3 procedure, trademark licensing and quality control of
4 trademarks and likelihood of confusion factors and analysis.

5 MR. RUNYAN: And I believe all of those are irrelevant.
6 The only claims made in this case related to trademarks,
7 other than a defense, are claims against individuals. The
8 defense doesn't raise the issues that he's just -- in my
9 opinion, he's just mentioned.

10 MR. SMITH: Your Honor, I would agree with Mr. Runyan
11 that our defenses touch upon this, and I can read -- there
12 are five of them that do. And with your permission, I'll
13 just read them into the record.

14 THE COURT: Okay.

15 MR. SMITH: The 11th defense, "Nonownership of
16 trademarks: Plaintiffs are not the true and lawful owners of
17 the mark -- names, marks and trademarks in which they claim
18 ownership, and they, therefore, are entitled to no relief."

19 The 12th defense, "Fair use: Any use by any of the
20 defendants of the names and marks in which plaintiffs allege
21 they have rights constitutes fair use that is permitted to
22 defendants and for which plaintiffs are entitled to no
23 relief."

24 13th defense, "Authorization: Any such use by any of
25 the defendants of the said names and marks is and has been

1 lawful and authorized use for which plaintiffs are entitled
2 to no relief."

3 The 14th defense, "Invalidity: The rights and interests
4 claimed by plaintiffs in the names and marks that are the
5 subject of the complaint are and were derived by plaintiffs
6 wholly from and through defendants and the rights and
7 interests therein claimed by plaintiffs against defendants,
8 therefore, are invalid and do not constitute a basis for the
9 relief sought."

10 The 18th defense, "Consent: Any use by defendants of
11 any of the names and marks that are the subject of this
12 action has been with the consent of plaintiffs who
13 accordingly are barred from seeking any relief therefor."

14 THE COURT: Anything further from the plaintiffs?

15 MR. RUNYAN: A, the marks in question are the marks of
16 the plaintiff parishes and the plaintiff diocese. They are
17 not marks in question of the Episcopal Church at issue. And,
18 no, I think that's it.

19 THE COURT: Okay. Very well. Overruled. With regards
20 to -- I think she is an expert; however, I'm not going to
21 limit the plaintiffs from making objections based upon the
22 question that is asked, and I'm not prepared to give a carte
23 blanche finding of expertise with regards to each and every
24 one of the areas that you just mentioned, particularly with
25 regards to the issue of confusion. And I think you know why.

1 MR. HOLMES: Yes, Your Honor.

2 THE COURT: Okay? Counsel, do you understand?

3 MR. RUNYAN: Yes, Your Honor.

4 THE COURT: In other words, I think she's an expert in
5 some of those areas, but you need to be prepared to make
6 objections if you believe that she lacks the expertise with
7 regards to the particular question.

8 You may proceed.

9 MR. SMITH: Thank you, Your Honor.

10 DIRECT EXAMINATION BY MR. SMITH:

11 Q. Ms. Lott, can you tell the Court what you were asked to
12 opine on in this case?

13 A. Yes. When I was contacted, I was basically explained
14 the underlying facts. I was not -- at my specific request, I
15 was not told which side of the question was contacting me,
16 whose side I was talking to. I just got kind of an objective
17 laying out of the facts, and the question was, essentially,
18 if there's a group that is leaving the organization, in this
19 case, the Episcopal Church, if a group is leaving the church,
20 does that group have the right to continue to use the name
21 Episcopal Church. And I said, "No, it doesn't."

22 So that's basically what I was asked to evaluate. I
23 subsequently, you know, got more facts. And that was sort of
24 the off-the-cuff opinion, and then we got more facts and went
25 from there.

1 Q. Can you explain what those more facts were? What
2 materials did you review in this case in rendering your
3 opinion?

4 A. Well, I looked, went through the pleadings, some of the
5 pleadings, some certain selected pleadings. I didn't try to
6 absorb everything, but certain pleadings, certain records
7 from the Patent and Trademark Office, and importantly, from
8 the pleadings, sort of the history and background of the
9 Episcopal Church, the organization of the Episcopal Church,
10 the controls, the supervision, you know, what it means to be
11 part of the Episcopal Church.

12 Q. Okay. And did you review any of the registration
13 certificates?

14 A. Just briefly, yes, I did.

15 Q. Ms. Lott, what was your ultimate opinion?

16 THE COURT: Stop. That's insufficient background for
17 me.

18 MR. SMITH: Okay.

19 THE COURT: I want to know what she looked at. I want
20 to know what marks she looked at. I want to know what
21 registrations she looked at. I want to know what history she
22 reviewed. Do you understand?

23 MR. SMITH: Understood.

24 THE COURT: I want a full articulation of the materials
25 reviewed by this witness, okay?

1 MR. SMITH: Yes, Your Honor.

2 THE COURT: With the exclusion of the expert Mr. Klein.
3 That's insufficient to say, "Oh, I looked at a few
4 registrations." That's not sufficient, Mr. Smith.

5 MR. SMITH: Okay.

6 THE COURT: I would like specificity.

7 MR. SMITH: Very good.

8 THE COURT: As you know, there are many marks at issue
9 here.

10 MR. SMITH: Your Honor, may I give the witness a copy of
11 her expert report just to refresh her memory.

12 THE COURT: Absolutely.

13 THE WITNESS: Thank you.

14 THE COURT: Anything else that you need to help you
15 testify, I want you to feel free to ask for that
16 documentation. I need the specificity.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Indeed.

19 Q. Let's start by identifying the specific marks that you
20 looked at. Can you do that? Can you identify which marks of
21 the Episcopal Church that you looked at?

22 A. Specific registrations?

23 Q. That's right.

24 A. Yeah. They're identified. There were four federal
25 registration certificates that I looked at. One was a

1 registration for the Protestant Episcopal Church in the
2 United States of America. Another was for the Episcopal
3 Church. That was registration No. 3195455. Actually, there
4 are three for the Episcopal Church: 3195454 and 3379870.

5 Q. Okay. Are those the only trademarks owned by the
6 Episcopal Church?

7 A. I don't know.

8 Q. In your --

9 A. Sorry.

10 Q. How did you find these marks?

11 A. I do not remember whether I went on the website for the
12 United States Patent and Trademark Office myself or whether
13 they were provided to me. I probably would have looked at
14 them myself anyway on the patent and trademark. These are
15 all publicly available records.

16 Q. Okay. In your report, you say, "the Episcopal Church is
17 the owner of a number of trademark registrations, including,"
18 and then you -- the same marks that you've just identified.

19 A. Yes.

20 Q. Are there any others that you may have seen on the USPTO
21 website?

22 A. I do not recall off the top of my head.

23 Q. Okay.

24 A. There may very well be.

25 Q. Have you reviewed, I believe it's four, state trademark

1 registrations filed in 2010 and '11 by the plaintiff diocese?

2 A. I believe I saw them in connection with my deposition.

3 Q. Right. So you already mentioned pleadings. Any other
4 documents that you reviewed?

5 THE COURT: So I want to just stop you because her only
6 contact with the state registration of marks is that she saw
7 them at a deposition?

8 MR. SMITH: Your Honor, I believe they were in materials
9 we provided her initially, but --

10 THE COURT: Well, that's not what she testified to.

11 MR. SMITH: I understand that.

12 THE WITNESS: I'll look and see.

13 THE COURT: Okay. All right. Very well, you may
14 proceed, Mr. Smith. Ask her a question.

15 Q. Yes. So where did you find the facts on which you base
16 your opinions?

17 A. Largely from the pleadings. There was a recitation of
18 the factual background of the Episcopal Church, the history
19 of the Episcopal Church, the governance of the Episcopal
20 Church. And to form the opinion, you look first at the
21 strength of the mark, how strong is the -- you know, what is
22 the mark? What are we talking about here?

23 And it's essentially, in my view, in my understanding,
24 it's the Episcopal Church. So when you're looking at the
25 term "Episcopal," how strong is that mark? How widely known

1 is it? How widely recognized is it?

2 For that, partly, that conclusion was based on the
3 background and history that was provided to me, the long,
4 long term of use of the mark in the United States, the wide
5 geographic extent of use of the mark in the United States
6 and, frankly, backed up just by my own observation.

7 I mean, certainly, from the time I was a child, there
8 were several major Protestant churches. The Episcopal Church
9 was one of them. So, again, to the public, to members of the
10 public, there's a strong identification, a strong designation
11 of what the Episcopal Church is. And I view it, and for
12 purposes of this opinion, viewed it as a strong mark.

13 You then have to look at how close are the two marks,
14 how similar are the two. And in this case, the word
15 "Episcopal," as used by the mother church, for want of a
16 better term, the mother church --

17 MS. GOLDING: Your Honor, I'm going to make an objection
18 to use of the word "mother church." I believe that the Court
19 early on asked that we utilize the word the defendant, the
20 national church. I think that's appropriate. I do not
21 believe there's any evidence that's appropriate that this
22 witness could identify the defendant national church as a
23 mother church.

24 MR. SMITH: Your Honor, that's fine.

25 Q. Could you please use national church instead of mother

1 church?

2 A. The national church? Certainly, yes.

3 Q. Can you tell me about what goods and services did you
4 consider? How did you define that scope?

5 A. Well, the services, my understanding is and the opinion
6 is based on the services offered by the national church and
7 the group that is now the group or groups that are now
8 splintering off of the national church. And I don't know if
9 there's a particular way I need to identify that.

10 MS. GOLDING: Your Honor, I'm going to object to that
11 also, groups that are splintering off from the national
12 church.

13 THE COURT: I don't know what that means. I'll sustain
14 the objection because we just --

15 THE WITNESS: Okay. I don't know to -- how should I
16 refer to the --

17 MS. GOLDING: How about the plaintiffs?

18 THE WITNESS: Okay. Okay. So the services offered by
19 the national church and the plaintiffs are identical
20 services, as far as I'm aware. They both offer church
21 worship services and services related to that. So the
22 services would be, for purposes of my analysis, essentially
23 identical.

24 You look at the similarity of the facilities. Are there
25 significant differences in the facilities? No. The

1 underlying facts assumed, for purposes of my opinion, were
2 that the facilities are identical. They're churches.
3 They're church buildings.

4 Q. Can you tell me about advertising? Did you look at
5 that?

6 A. Advertising is online advertising, and I assume the
7 standard, the general -- generally accepted advertising, the
8 notices in the newspaper of church services and where
9 different churches and what time, what time and where
10 different churches have their services.

11 Q. Did you look at, consider whether a church would use a
12 sign or a website?

13 A. I did consider the website and signage for sure, because
14 there would be signage that would give the name of the church
15 out front. And, of course, with the Episcopal Church,
16 there's the, "the Episcopal Church welcomes you," sign that
17 you see when you drive into towns or on church property; so,
18 yes, that also is a form of advertising, absolutely.

19 Q. Did you consider the message conveyed by the use of
20 these marks by churches on both sides of this dispute?

21 A. Yes. And, in fact, that's the central question, what
22 message is conveyed to the public in the use of the
23 trademarks, and the message that's conveyed to the public is
24 the Episcopal Church.

25 MR. RUNYAN: Your Honor, I'm sorry. I would object on

1 relevance grounds because the issue is the derivation of our
2 marks from theirs, and I just -- I don't think this is
3 probative of that issue.

4 MR. SMITH: Your Honor, could I ask the witness that
5 question?

6 THE COURT: Okay.

7 Q. Could you speak to how what -- did you say, derivation
8 of your marks from ours?

9 MR. RUNYAN: Ask the question.

10 MR. SMITH: I'm asking you what you just said.

11 MR. RUNYAN: You don't get to ask me questions. Ask
12 her.

13 MR. SMITH: Okay.

14 Q. Can you speak to the relation between the name the
15 Episcopal Church and the name the Episcopal Diocese in
16 South -- the Episcopal Church in the Diocese of South
17 Carolina?

18 A. Yes. My understanding, and I believe the generally
19 accepted, generally understood meaning of diocese is a
20 subdivision of a larger organization. So when you look at
21 the Episcopal Church, and you look at any name that has
22 "Episcopal" and "diocese" in it, it is communicating that
23 that is a subdivision of the greater organization.

24 Q. Can you speak to actual confusion?

25 MS. GOLDING: Your Honor, I'll make an objection.

1 MR. SMITH: Instances of actual confusion.

2 MS. GOLDING: I believe the Court's already ruled on
3 that matter, and there is absolutely no foundation that this
4 witness can speak to that issue.

5 THE COURT: There isn't. I agree. Sustained.

6 MR. SMITH: Your Honor, I would say that we are not
7 venturing into the areas that --

8 THE COURT: You can try to lay foundation, if you wish.
9 Maybe she's a sociologist. Lay a foundation, if you can.

10 Q. Okay. Going back to the materials you've reviewed in
11 this case, did you review the temporary restraining order?

12 A. I saw it, yes.

13 Q. Did you review the defendant's memo in support of its
14 motion to vacate the temporary injunction and its motion for
15 a preliminary injunction?

16 A. Yes, I believe so.

17 Q. Did you review the answer and counterclaims of the
18 Episcopal Church?

19 A. I have. Forgive me. Can you just direct me --

20 Q. I would refer you just to Page -- just to refresh your
21 memory, Page 13 of your expert report.

22 A. Thank you.

23 Could I ask you to repeat the question?

24 Q. Did you review the answer and counterclaims of the
25 Episcopal Church?

1 A. Yes, I did.

2 Q. Okay. Did you review the answer, defenses and
3 counterclaim of the Episcopal Church in South Carolina?

4 A. Yes, I did.

5 Q. Did you review the Episcopal Church in South Carolina's
6 notice and motion to join additional parties?

7 A. Yes.

8 Q. And then what else did you generally review besides
9 these materials, if anything?

10 A. Fairly extensive statutes and case law. One of the most
11 important things was Professor McCarthy's treatise on
12 trademarks and unfair competition. Professor McCarthy is the
13 leading -- without question, the leading expert in principles
14 of branding and trademarks and trademark law.

15 And, in addition, Patent and Trademark Office records.
16 The records of the Patent and Trademark Office, as I
17 mentioned, are public record and are available for anyone to
18 examine.

19 Q. Did you review a request for abandonment of a mark by
20 the Serial No. 85774980?

21 A. Yes, I did.

22 Q. Did you review office actions issued by the USPTO?

23 A. I do not recall looking at specific office actions, but
24 I did look at a number of Patent and Trademark Office
25 records.

1 Q. Right. Did you review websites for the Episcopal
2 Church?

3 A. Yes, I did.

4 Q. In your analysis, tell me where an entity's
5 incorporation or nonincorporation comes into play, if it
6 does, as to their use of marks and who owns marks.

7 A. For the most part, it doesn't. It doesn't really matter
8 whether an entity's incorporated or not incorporated or how
9 it's incorporated. The essence of trademark ownership,
10 ownership and validity is quality control, who controls the
11 nature and quality and characteristics of.

12 Q. What would you look at for that, to figure that out?

13 A. Well, specifically, specifically directed to the facts
14 in this case, you would look to the governance of the
15 national church, the organization, the governance, the
16 measure of control exercised.

17 And in forming my opinion, it's -- the facts assumed as
18 the bases for the opinion are that the national church is
19 highly organized. It has a constitution, it has canons, it
20 has an elected assembly of some name, it has regular
21 meetings, there's a Book of Common Prayer that governs
22 services, there is a strict hierarchy of clergy and specific
23 training requirements for clergy. There are requirements
24 that govern over the operation of sort of the business
25 aspects of the church, the financial aspects of the church,

1 requirements for regular audits and so forth.

2 So all of the indicia are present to indicate that there
3 is a -- an organization that oversees and controls the nature
4 and the quality and the character of the services offered
5 under this name, under this brand.

6 Q. And would that be an indicia of the existence of a
7 license?

8 A. If others were permitted to use the brand under those --
9 under those constraints, yes, that would be a license.

10 Q. Can you speak to how the public's perception of the
11 marks fits into your analysis?

12 MS. GOLDING: Your Honor, I'm going to make an
13 objection.

14 THE COURT: Sustained.

15 Q. So what opinions have you been asked to provide?

16 A. The basic opinion is whether it would -- whether it
17 would be permissible for a group that is leaving the national
18 church to continue to use the name of the national church,
19 and if not, why not, and the --

20 Q. And what was your opinion on that issue?

21 A. That it would not be permissible because there would be
22 an overwhelming likelihood of --

23 MS. GOLDING: Your Honor, I'm going to make an
24 objection.

25 MR. RUNYAN: It's going right to the issue that we don't

1 believe is relevant, Your Honor.

2 MR. SMITH: Your Honor --

3 MS. GOLDING: Further objection, there's no foundation
4 for that opinion.

5 MR. SMITH: Your Honor, I'm not sure how likelihood of
6 confusion could be irrelevant in a trademark case.

7 MR. RUNYAN: For starters, it's not a trademark case.
8 And secondly, if it's not a trademark case, confusion doesn't
9 matter. It's not relevant to your defenses.

10 MR. SMITH: It's not a trademark case?

11 MS. GOLDING: Further, there's no foundation as to this
12 witness --

13 MR. RUNYAN: Unless it's confusion through the misuse of
14 our marks.

15 MR. SMITH: Your Honor, I believe the second cause of
16 action in the plaintiffs' complaint is for service mark
17 infringement.

18 THE COURT: Yes, for theirs.

19 MR. SMITH: Right.

20 THE COURT: Not for yours.

21 MR. SMITH: Right. But as I read --

22 THE COURT: Do you want theirs?

23 MS. GOLDING: No, Your Honor.

24 THE COURT: I didn't think you did. Do you want to use
25 theirs? Are you okay with them keeping theirs?

1 MS. GOLDING: Yes, Your Honor.

2 THE COURT: That's what I thought. You just want yours.

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: And you'd like to use yours; am I right?

5 What am I missing? What am I missing?

6 MR. SMITH: Your Honor, your presumption that the marks
7 are theirs is the starting point.

8 THE COURT: They've got some registered marks and you've
9 got some registered marks, right?

10 MR. SMITH: Your Honor, I would argue that their
11 registered marks are, one, invalid; and, two, common law
12 trumps any type of state registration. And under common
13 law --

14 THE COURT: Stop. Didn't they have theirs before you
15 had yours?

16 MR. SMITH: No, Your Honor.

17 THE COURT: Didn't you have yours before they had
18 theirs?

19 MR. RUNYAN: According to the --

20 THE COURT: Stop.

21 MR. RUNYAN: -- dates of first use.

22 THE COURT: Yes.

23 MR. RUNYAN: I believe so.

24 THE COURT: Right.

25 MR. RUNYAN: And possibly for other reasons as well.

1 THE COURT: Aren't yours different than theirs?

2 MR. RUNYAN: Yes.

3 MS. GOLDING: Yes.

4 THE COURT: Okay. And they got -- and they have federal
5 registrations, yes.

6 MR. RUNYAN: They have three, four, which work out to be
7 two, essentially, yes.

8 THE COURT: Right. You don't want them?

9 MR. RUNYAN: No.

10 THE COURT: You just want yours?

11 MR. RUNYAN: Yes, Your Honor.

12 THE COURT: Do you want theirs?

13 MR. SMITH: Your Honor, our position is --

14 THE COURT: Answer me. Do you want theirs?

15 MR. SMITH: Well, we want ours, and we believe that
16 theirs are ours.

17 THE COURT: Well, then that's yours to use. Don't worry
18 about yours. Do you want theirs?

19 MR. SMITH: Yes.

20 THE COURT: Even though they're registered with the
21 State of South Carolina, yes?

22 MR. SMITH: Yes, they're registered.

23 THE COURT: And even though they have been in use by
24 them before you even existed.

25 MR. SMITH: That's not true.

1 MS. KOSTEL: No.

2 THE COURT: Okay. Well, before you registered yours.

3 MR. SMITH: Your Honor, can I make a general point?

4 THE COURT: No. Answer my question.

5 MR. SMITH: Yes, we want theirs --

6 THE COURT: You want theirs.

7 MR. SMITH: -- because we think ours is theirs and, yes,
8 we want it.

9 THE COURT: Then that's where your testimony must go --

10 MR. TISDALE: Right.

11 THE COURT: -- because they don't want yours. That's
12 not an issue. You can have yours. They're cool with that.

13 MR. SMITH: Okay.

14 THE COURT: See what I'm saying?

15 MR. SMITH: Okay.

16 THE COURT: Don't want them, don't want to use them,
17 taking them down, taking the flags down. Remember, I
18 listened to --

19 MR. SMITH: Right.

20 THE COURT: -- like, five days of taking flags down,
21 taking "the Episcopal Church Welcomes You" down, remember
22 that? Did that all week.

23 MS. KOSTEL: If I may, Your Honor.

24 THE COURT: No. He's got the witness. You can handle
25 it in a minute.

1 Are you with me? You want their marks.

2 MR. SMITH: Our defense, our basic defense is their
3 marks are our marks, and that is a defense to trademark
4 infringement.

5 THE COURT: Let's be clear what our issues are. These
6 marks are not identical. They are different. If your eyes
7 look at them, they're not the same. You've got some that are
8 federally registered, yes?

9 MR. SMITH: Yes.

10 THE COURT: Don't worry about those. They don't want
11 them, okay? Do you think they're using your federal ones?

12 MR. SMITH: Yes.

13 THE COURT: You think they're using your federal ones?

14 MR. SMITH: Yes. We think -- the difference between our
15 marks and their marks, our mark is the Episcopal Church.
16 Their mark adds the word "diocese" and "South Carolina." In
17 trademark terms, both of those are geographic descriptors.
18 They are not -- they do not create an independent mark from
19 the Episcopal Church.

20 THE COURT: That's where your testimony needs to go,
21 then, with regards to their marks. They don't want yours.
22 See what I'm saying? Yours are not in issue. Your federally
23 registered marks are not in issue. They do not wish to use
24 those, okay?

25 Where your testimony's got to now go is that based on

1 this witness's expertise, for some reason, she would opine
2 that their marks, although registered with the State of South
3 Carolina and they're in existence for a very long time, you
4 need to know that, that they really don't belong to these
5 folks. You see what I'm saying?

6 MR. SMITH: Yes, Your Honor.

7 THE COURT: But what's not in issue, and what you don't
8 need to spend any time on is yours, because they don't want
9 them. See what I'm saying?

10 Now, if you want to say they're too similar, they've
11 conceded that yours are yours, okay?

12 MR. SMITH: Okay.

13 THE COURT: Okay. So talk about theirs, because those
14 are the ones you want, right?

15 MR. SMITH: Right.

16 THE COURT: Okay. And the reason, you say why am I
17 referring to them as theirs, because they are registered to
18 them. I have seen those documents. They are registered to
19 the plaintiffs for the State of South Carolina. There's
20 testimony now in this trial that centuries before they were
21 actually registered, they were in use for the plaintiffs. So
22 that's where your testimony, I think, needs to focus with
23 regards to this witness. And since I've got to make the
24 decision, that's probably, if I were you, where I'd go, okay?

25 MR. SMITH: Thank you, Your Honor.

1 Q. Ms. Lott, can you speak to the use of the marks and how
2 that may affect ownership?

3 A. Could I ask you to be a little bit more specific?

4 Q. Let me ask you this: Can you evaluate the similarities
5 between the mark the Episcopal Church and the mark the
6 Episcopal Church in the Diocese of South Carolina?

7 A. Yes. Yes. As I mentioned, the term "diocese"
8 designates a subdivision of a larger group in general terms.
9 South Carolina's a geographic location; so the Episcopal
10 Diocese in South Carolina, if you were looking at, for
11 example, trademark infringement, that would be considered an
12 infringing mark. And the reason is members of the public
13 seeing that mark would logically assume this is the South
14 Carolinian diocese of the national church.

15 Q. And would the plaintiffs, therefore, need a license from
16 the Episcopal Church to use the name the Episcopal Diocese or
17 the Episcopal Church in the Diocese of South Carolina?

18 A. Yes, yes.

19 MR. SMITH: Thank you, Ms. Lott. If you could answer
20 questions from the plaintiffs.

21 THE COURT: National church.

22 MS. KOSTEL: One moment, Your Honor. I'm sorry.

23 THE COURT: Probably weren't quite ready for that.

24 MS. KOSTEL: I didn't think it was coming up that fast.

25 THE COURT: I understand.

1 DIRECT EXAMINATION BY MS. KOSTEL:

2 Q. Ms. Lott, I'm Mary Kostel. I represent the national
3 church. I just have a couple of questions. The first
4 question is, is a trademark property?

5 A. Yes.

6 Q. Okay. And is a license to use a trademark property?

7 A. I think it has been considered property.

8 MS. KOSTEL: Thank you.

9 Forgive me, Your Honor. I'm struggling a little bit
10 here technologically.

11 THE COURT: With technology?

12 MS. KOSTEL: Yeah. I can't find what I'm looking for.

13 THE COURT: Thank you. Can you just step back until she
14 finds the document?

15 Q. Okay. I'd like to show you a document that will be
16 marked for evidence but right now for identification. This
17 is a document that you see says, "Journal of the Proceedings
18 For the Bishop, Clergy and Laity for the Protestant Episcopal
19 Church of the United States of America." Do you see that?

20 A. Yes.

21 Q. And do you see what the date of that is?

22 A. September 19th, 1792.

23 Q. Okay.

24 MS. GOLDING: If we're going to refer to it, can we go
25 ahead and have it marked for identification?

1 THE COURT: It should be marked for identification. In
2 fact, it shouldn't be published to the Court until it's in
3 evidence. That's the rule, for what it's worth.

4 MS. KOSTEL: Just let me refer you to another document
5 that we'll mark for identification. What are we on, 12 or
6 13?

7 MR. TISDALE: 13.

8 Q. Can you take a look at that document and read it to
9 yourself. I won't read it -- don't publish it to the Court.

10 A. I can't read it very clearly. Do you need me to read
11 the whole thing?

12 Q. Just if you could read the title.

13 A. Oh, that's better. Thank you.

14 Q. Is that better?

15 A. Much.

16 Q. Do you see the name that is used of that body under
17 "Tenth convention"?

18 A. Yes.

19 Q. So I think you were opining, or you were asked to opine
20 about the use of the names the Episcopal Church, which is a
21 registered mark of the Episcopal Church, right?

22 A. Yes.

23 Q. And the use -- and the other registered mark that you're
24 discussing of the Episcopal Church is the Protestant
25 Episcopal Church in the United States of America, right?

1 A. Yes.

2 Q. Okay. And in these two documents, you see that in the
3 first document, that name was used --

4 MS. GOLDING: Your Honor, I'm going to make an
5 objection. She's leading the witness, and I think it's only
6 proper if she would just ask the witness a question.

7 MS. KOSTEL: Okay. I'll ask a question.

8 Q. Do you understand what these two documents are?

9 A. They appear to be recordings of meetings of, I assume,
10 the national church that took place in the 1790s.

11 MS. GOLDING: Your Honor, there again, that assumption
12 is incorrect. The document is meetings of the South
13 Carolina -- the Protestant Episcopal Church in the State of
14 South Carolina.

15 MS. KOSTEL: Correct. That's -- the second one is.
16 Let's go back to the first one. What's the first one?

17 THE WITNESS: Meeting of the Protestant Episcopal Church
18 in the United States of America.

19 Q. And so if you look at that document, what name do you
20 think, at least at this point in time as of 1792, what name
21 is the national church using?

22 A. Protestant Episcopal Church.

23 Q. Would you read the whole name, please?

24 A. In the United States of America?

25 Q. Right. And then what -- what name -- I think

1 Ms. Golding identified the second document as a record of
2 the -- of a meeting of, I suppose, what is now the plaintiff
3 diocese or the Episcopal Church in South Carolina, depending
4 on how you look at it, but what is the name that that South
5 Carolina entity is using in 1792?

6 A. The Protestant Episcopal Church of South Carolina.

7 Q. Okay. Thank you very much.

8 Have you looked at the mark that was registered by the
9 plaintiff diocese?

10 A. I do not recall seeing it.

11 MS. KOSTEL: Okay. Thank you. Nothing further.

12 THE COURT: Cross-examination?

13 MS. GOLDING: Ms. Lott, I'm Henrietta Golding. I
14 represent the plaintiff trustees in this lawsuit as well as
15 the parish St. Luke's.

16 CROSS-EXAMINATION BY MS. GOLDING:

17 Q. Now, my understanding, you were retained on about
18 May 19th, 2014; is that correct?

19 A. That's correct.

20 Q. Okay. And with respect to the information that was
21 provided to you to perform your services and render an
22 opinion, you were provided -- you were not provided all the
23 pleadings in this lawsuit, were you?

24 A. Not to my knowledge, no.

25 Q. Okay. And, in fact, the only documents, again, you were

1 provided were the temporary restraining order; is that
2 correct?

3 A. No. There were a number of others as well.

4 Q. I know. I'm going through each of them. The temporary
5 restraining order?

6 A. The temporary restraining order is one of them; that's
7 correct.

8 Q. And then you were provided with the defendant TECSC's
9 memorandum in support of its motion to vacate the answer --
10 motion to vacate the temporary injunction, it's motion for
11 preliminary injunction; is that correct?

12 A. I believe that's correct.

13 Q. Okay. And you did not ask for any opposing memorandums
14 with respect to the plaintiffs, did you?

15 A. No.

16 Q. And you did not receive any from the plaintiffs, did
17 you?

18 A. No.

19 Q. Okay. Then the next item you received from your client
20 was answer and counterclaims of the Episcopal Church to
21 second amended complaint for declaratory injunctive relief;
22 is that correct?

23 A. Yeah, I think so. I think that's correct.

24 Q. You did not receive the complaint from the plaintiffs,
25 did you?

1 A. I don't believe so.

2 Q. Okay. You didn't ask for the complaint, did you?

3 A. It wasn't pertinent to the questions I was being asked.

4 Q. So my question is you didn't ask for the complaint, did
5 you?

6 A. No.

7 Q. Okay. And in the complaint there are allegations and
8 statements as to the origin of the marks and how long the
9 plaintiffs' marks had been in existence. You say that's not
10 pertinent to your assignment?

11 A. The factual background is pertinent, but the allegations
12 of the complaint, as I understood it, were primarily around
13 corporate organizations and so forth, and I was looking at
14 particularly at the trademarks.

15 Q. Okay. So when you provided this opinion, you had no
16 information as to the plaintiff diocese as to how long it had
17 been an incorporated association, did you?

18 A. I'd have to look again. I don't -- I don't recall, but
19 that would not have been relevant to my analysis.

20 Q. Well, let's get to this now. We all know that use of a
21 mark is relevant, correct?

22 A. Yes.

23 Q. Okay. And so use of a mark, you have to go back in time
24 to say when that use first started and who first started that
25 use; is that not correct?

1 A. If that's the question you're asking, you'd have to go
2 back in time to answer that, yes.

3 Q. And use is relevant because the first user of the mark
4 is the owner of the mark; is that not correct?

5 A. Initially, yes; that's correct.

6 Q. Okay. And so if there's a dispute as to mark, you
7 understood that there was a dispute between the parties as to
8 the mark; is that correct?

9 A. Yes.

10 Q. Okay. So you are telling this Court that it's not
11 relevant as to who first started using the mark and when that
12 occurred?

13 A. It depends on the information --

14 Q. You can answer my question, then you may explain.

15 MR. TISDALE: Excuse me, Your Honor.

16 THE COURT: I will control it. If there's an objection
17 directed to me, then I will direct her.

18 Answer the question "yes" or "no." If you need to
19 explain your response, feel free to do that, but answer it
20 "yes" or "no."

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Thank you.

23 THE WITNESS: Sorry. Would you repeat the question.

24 Q. Certainly. I have now forgotten my question. I
25 apologize.

1 THE COURT: I think that the question, if you read it
2 back, was, "Is it not relevant to know" --

3 Q. Is it not relevant to know which party first used the
4 mark and when it was used, first used?

5 A. I need to know with respect to what? In general, you
6 would want to have that information, yes, but --

7 Q. So the answer to that question is "yes"?

8 A. In general, yes.

9 Q. Okay. And you have no idea today when the plaintiff
10 diocese contends it first used the mark, do you?

11 A. I do not know when they contend -- you mean as a
12 separate entity, separate from the national organization? I
13 don't understand the question. Sorry.

14 Q. Okay. When did the plaintiff diocese first use the word
15 "Protestant Episcopal"?

16 A. I don't know, but my understanding is that when the
17 plaintiff diocese first used the name "Episcopal" or
18 "Protestant Episcopal," it was part of the larger church
19 organization at that time.

20 Q. And where did you get that understanding from, the
21 defendants?

22 A. The historical background that is -- that's recited that
23 was provided to me, yes, and based part on my own knowledge
24 and experience and information.

25 Q. Okay. If it's based on your own --

1 THE COURT: Counsel, let me see you, please.

2 (Judge and attorneys confer.)

3 THE COURT: Okay. You may continue.

4 Q. Let's go back into the data that you received and you
5 reviewed. We stopped at answer and counterclaims, but you
6 admit you did not ever see the complaint of the plaintiffs?

7 A. I don't recall seeing it.

8 Q. Okay. Well, it's certainly not in the data. It's not
9 referenced or set forth in the data that you had attached to
10 your opinion as reviewing; is that correct?

11 A. If I had seen it, it would be there; so if I --

12 Q. Well, look at Page 13 of your report under D, "Data and
13 other information considered."

14 A. Okay. So, no, that's not included.

15 Q. Okay. Then the next item you have you said you
16 considered, "Answer, affirmative defenses and counterclaims
17 of the Episcopal Church in South Carolina to second amended
18 complaint for declaratory and injunctive relief"; is that
19 correct?

20 A. Yes, that's correct.

21 Q. And then the item you have, "TECSC's notice and motion
22 to join additional parties"; is that correct?

23 A. That's correct.

24 Q. Okay. So these five items are the only pleadings that
25 you have reviewed or received in this lawsuit for your

1 opinion; is that correct?

2 A. Yes, that's correct.

3 Q. Okay. And none of these items set forth the position of
4 the plaintiff diocese in this lawsuit as to any marks, do
5 they?

6 A. I'll agree with you that probably not, no.

7 Q. Now, you also stated or, if I understand correctly, you
8 did not personally conduct any research with respect to your
9 opinions that you present to this Court; is that correct?

10 A. No, that's not correct.

11 MS. GOLDING: Let's go to your deposition then.

12 Your Honor, may I hand the witness her deposition?

13 THE COURT: Yes, thank you. You may unseal it.

14 (The Court's Exhibit 6 marked for identification.)

15 Q. Let me hand you a copy of your deposition taken on
16 June 18th, 2014? I would like for you to first turn to
17 Page 19 of your deposition.

18 A. Okay.

19 Q. I will read -- starting with Line 12, I'm going to read
20 the question, and then I'm going to go to Line 20. So you
21 will read the answer, please.

22 A. Okay.

23 Q. "Question: So from whom or from what sources did you
24 get these facts?"

25 A. "The facts were derived from pleadings in this case that

1 were provided to me by defendants' counsel."

2 Q. "Question: I thought they sounded familiar." Please --

3 A. "Answer: Déjà vu. Yes. That was not independent
4 research on my part. That was provided."

5 Q. Okay. Let's go to Page 20.

6 A. If I may just --

7 Q. Ma'am, I haven't completed this. Let's go to Page 20
8 and then you can explain.

9 A. Okay.

10 Q. Line 18, No. 2, I'll read the question. "Question:
11 No. 2, still under Section D of your report. Give statutes
12 and case law listed A through L or A through K, I suppose.
13 And how did you arrive at that list of statutes and case
14 law?"

15 A. The answer says, "I didn't personally do the research.
16 This is in looking at likelihood of confusion factors.
17 Different circuits in the United States have different lists
18 of factors that they turn to to determine likelihood of
19 confusion of trademarks, and this list was derived from the
20 seminal factors relied on in the fourth circuit and in case
21 law specific to the fourth circuit and specific, in some
22 cases, to South Carolina in the fourth circuit, but that's
23 where these specific cases came from. But these are
24 essentially -- I think all of them essentially go to the
25 likelihood of confusion factors relied on by federal courts

1 in the fourth circuit, including the South Carolina courts."

2 This was the subject -- there were two mistakes in
3 transcription that were submitted to the court reporter as --
4 on an errata sheet, and this was one of them. This was
5 research that I did personally do, and I have submitted the
6 sheet to ask the court reporter to correct the "didn't
7 personally do the research" to "did" because this is research
8 that I did personally.

9 Q. Okay. Now, it's my understanding you are not an expert
10 or even knowledgeable about church history or religious
11 organizations; is that correct?

12 A. I am not an expert in church history or religious
13 organizations; that's correct.

14 Q. Nor in church governance or church structure; is that
15 correct?

16 A. That's correct.

17 Q. Okay. And you testified on direct that an entity's
18 organization is significant with respect to determining the
19 control of its marks; is that correct?

20 A. Yes.

21 Q. Okay. And you testified that you reviewed or went to
22 the website of the defendant national church, and you saw an
23 organization; is that correct?

24 A. No.

25 Q. No. Then I misunderstood --

1 A. But I'm sorry. I'm sorry. I was trying to explain an
2 earlier answer, and you interrupted me and said we'd get back
3 to that.

4 The first question you asked me was with regard to
5 specific facts that were derived from the pleadings, and
6 that's what the answer was: These specific facts. These
7 facts were derived from the pleadings, but we were looking --
8 if you'll look up at Page 19, starting at Line 4, we're
9 talking about Section C of the report. We're talking about
10 one section of facts.

11 That was not meant to say that no other research, no
12 other investigation was done. Clearly there was. But the
13 point is the specific facts listed at that specific section
14 of the report came from the pleadings and were provided by
15 counsel. I just want to be sure that the record is clear
16 that we're talking about one specific section there.

17 I'm so sorry. Please go ahead.

18 Q. Thank you.

19 In direct examination you testified as to the
20 organization of the defendant national church, did you not?

21 A. Yes.

22 Q. Okay. And, in fact, you went to some detail about how
23 organized it was; is that not correct?

24 A. Based on the facts provided to me, underlying
25 assumptions that I relied on in forming my opinion, that's

1 absolutely correct.

2 Q. And you have absolutely no knowledge of the plaintiff
3 diocese organization, do you?

4 A. No, I have no knowledge of the plaintiff diocese
5 organization.

6 Q. And you have absolutely no knowledge of the plaintiff
7 trustees organization, do you?

8 A. No.

9 Q. Okay. And you have no knowledge of any of the plaintiff
10 parishes' organizations do you?

11 A. No. But those would not be relevant to any of the
12 questions that I'm considering or testifying on.

13 Q. Okay. Are you saying that the plaintiff diocese
14 organization has no relevancy?

15 A. The form of organization or the manner of organization
16 is not -- it does not matter. The issue is the likelihood of
17 confusion of the public by use of a mark; so it doesn't
18 matter what entity or what organization is -- I guess it
19 doesn't matter how they're organized. No, it doesn't.

20 Q. Okay. And so that should be the truth for the defendant
21 national organization; it shouldn't make any difference how
22 its organized.

23 A. No, that's not correct.

24 Q. Okay.

25 A. That's not correct.

1 Q. Okay. So the defendant national corporation's
2 organization is pertinent to you, but the plaintiff diocese
3 or the plaintiff trustees organization is not pertinent to
4 you, is it?

5 A. That's right.

6 Q. Okay. And you call yourself an expert giving an opinion
7 that this Court relies upon, but you totally ignore one side
8 of the case; is that what you're telling us?

9 A. That's correct. May I explain why?

10 THE COURT: Yes.

11 THE WITNESS: Thank you.

12 The reason it doesn't matter is there is a single
13 organization. As long as that -- as long as that
14 organization exercises quality control, controls the need to
15 submit, submit audit reports, governance control, has canons,
16 has a constitution, has rules and regulations, that is the
17 body that is identified by the word "Episcopal."

18 This was recognized by the plaintiffs themselves when
19 they designated themselves Episcopal, Episcopalians and part
20 of the Episcopal Church. That's why it's important. It
21 doesn't matter who the plaintiffs are or what -- it could be
22 a single individual. It could be an unincorporated
23 association. It could be a corporation. They were members
24 of the national church.

25 They had chosen to withdraw from the national church.

1 Whether it's an individual or whatever, it does not matter
2 how they're organized. There can be no organization,
3 ultimate organization. It doesn't matter, if this group
4 continues to hold themselves out as the Episcopal Church,
5 particularly given the fact that this group or groups were,
6 in fact, part of the national church for so long. Members of
7 the public are going to be confused or deceived or misled
8 into believing there's a connection or an affiliation with
9 the national church.

10 Q. So if I have a mark and I join an organization and I
11 have a mark that's just my mark and I join that organization
12 that may use the same words as my mark, then I automatically
13 lose my mark; is that what you're telling this Court?

14 A. No.

15 Q. Okay. Thank you. Now --

16 A. No. But that's not the situation here.

17 Q. And let me ask you this, then --

18 A. Sorry.

19 Q. The situation here that you have is just based upon what
20 the defendants' information was given to you, nothing about
21 the plaintiffs; isn't that a fact?

22 A. The information given to me by defendants, the
23 information based on my own knowledge and background and 40
24 years of experience and also information based on my
25 individual research, Internet research and analysis, yes.

1 Q. Now, let's go into the registrations of the defendant
2 national church. I think you said the first registration was
3 when?

4 A. I don't think I said. You mean the date the
5 registration issued?

6 Q. Yes, ma'am.

7 A. 2007.

8 Q. Okay.

9 A. Actually, I believe the first three were 2007 and the
10 fourth was 2008.

11 Q. I did not note on direct examination that you told this
12 Court, with respect to the first registration, the type, what
13 was registered. What specifically was registered by the
14 defendant national church?

15 A. The mark?

16 Q. Yes, ma'am.

17 A. The Protestant Episcopal Church in the United States of
18 America.

19 Q. And in that registration, what is set forth as to the
20 date of first use?

21 A. I don't have it in front of me.

22 Q. Where is it?

23 A. I don't know.

24 Q. Do you recall?

25 A. I don't off the top of my head. I don't recall.

1 Q. Well, then let's go to your deposition. Let's go to
2 Page 23 of your deposition.

3 A. Okay.

4 Q. Okay. I want you to look at Lines 12 through 15.
5 That's your answer; is that right?

6 A. Yes.

7 Q. Now, does that refresh your memory as to this
8 registration as to the first -- the date of first use that is
9 present on the registration?

10 A. According to the transcript, it was January 1, 1836.

11 Q. Okay. And that was you testifying?

12 A. Yeah. I was reading from the actual document at the
13 time, yes.

14 Q. And so, again, tell the Court the mark that is in this
15 registration of 3-342-725.

16 A. The Protestant Episcopal Church in the United States of
17 America.

18 Q. And its first use is when?

19 A. That is -- the first use recited in the registration was
20 January 1, 1836. We were just looking at a document that
21 said "1793." So -- but -- so it's an important distinction.
22 This is what was recited in the registration.

23 Q. Well, that registration was done by the national church,
24 was it not?

25 A. I would assume so.

1 Q. Well, I mean, you're a lawyer in trademark. Isn't
2 that -- if you're going to get a client to do a registration,
3 you're going to get that client's permission, aren't you?

4 A. Yes.

5 Q. Okay. And it would be a fair assumption that the
6 national church knew that their attorney was registering the
7 name, wouldn't it?

8 A. I would assume that.

9 Q. Okay. And it would be also an assumption, a fair
10 assumption, that the registration would properly set forth
11 the date of first use?

12 A. Initially you could assume that, but there are a lot of
13 reasons why you would -- the dates -- getting down to the
14 bottom line, a use date in a registration is a presumption, a
15 legal presumption that the mark was in use at least as early
16 as that date. And the presumption is rebuttable by evidence
17 of prior use or subsequent use.

18 Q. Okay. Let me ask you this: That registration,
19 3-342-725, it has not been amended or revised in any way, has
20 it?

21 A. Not to my knowledge.

22 Q. Okay.

23 A. It has not.

24 Q. So as of today in the U.S., in the U.S. documents, the
25 date of first use of the term "the Protestant Episcopal

1 Church in the United States of America" is January 1, 1836?

2 A. I need you to repeat the question.

3 Q. I'm sorry.

4 A. Because clearly that is the date that for some reason
5 was recited in this registration, whether it was in error,
6 whether it was the specific use of these exact words in
7 connection with these specific services, I just don't know.
8 But it is not the definitive answer. It's the starting
9 point.

10 There's an initial presumption of this date, but we just
11 saw -- I just was asked to look at a document that reflected
12 a much earlier date; so I would not assume that this is the
13 actual, factually accurate date.

14 Q. And the document you were just asked to look at was
15 through Mary Kostel, wasn't it?

16 A. Yes.

17 Q. Okay. And that's the first time, today, that's the
18 first time you saw those two documents; is that not correct?

19 A. I believe that's correct.

20 Q. Okay. Now, let's look at the next registration that
21 you --

22 A. I do not have copies of the registrations in front of
23 me.

24 Q. Where are they?

25 A. I don't -- I don't have them.

1 Q. You didn't bring them with you?

2 A. No, I did not bring them with me.

3 Q. Okay.

4 A. They may be attached as exhibits to the deposition
5 transcript.

6 THE COURT: Then I'll tell you what we're going to do,
7 since it's 1:15, we're going to take our lunch break. And it
8 would be my request, ma'am, that you get familiar, please,
9 with your exhibits and your report between now and lunch,
10 okay, so you'll know what you have and what you've brought
11 with you and perhaps what you have not, okay?

12 THE WITNESS: Your Honor, I didn't bring anything with
13 me.

14 THE COURT: You brought nothing with you?

15 THE WITNESS: I brought a copy of my report, but I
16 didn't bring exhibits with me or anything.

17 THE COURT: You did not bring with you all of the copies
18 of the information provided to you by the defendant on which
19 you were coming to Court to opine?

20 THE WITNESS: I don't -- I don't believe I was requested
21 to bring documents or exhibits with me.

22 THE COURT: So you didn't bring all of the information
23 upon which you had possession that you were coming to this
24 Court to opine?

25 THE WITNESS: I have some files with me, but, no, I did

1 not.

2 THE COURT: Why don't you do this for me: Why don't you
3 try to get familiar with what you did bring, okay? There's a
4 lot of time that's being wasted while you try to figure out
5 whether or not you're familiar with a document or you have a
6 document. I would be most grateful to you if you would, over
7 the lunch break, take a look maybe at your report and what
8 you brought with you, okay? Can you do that for me?

9 THE WITNESS: I'm --

10 THE COURT: Okay. We'll handle it this way: I will
11 order you to do that, okay?

12 THE WITNESS: No question, Your Honor. I absolutely
13 will take care of that.

14 THE COURT: Okay. And, otherwise, please do not discuss
15 your testimony with anyone over the lunch break. I will see
16 you all please at 2:30. Thank you.

17 (Lunch recess held.)

18 THE COURT: All right. Cross-examination to continue.

19 MS. GOLDING: Thank you, Your Honor.

20 Q. Ms. Lott, I believe we stopped before lunch when we
21 discussed the first registration of the defendant national
22 church; is that correct?

23 A. Yes.

24 Q. Okay. And then we were going to go into the second
25 registration. And do you have that information in front of

1 you?

2 A. Okay. Give me just a second, yes. I have the excerpt
3 that I printed out from the Patent and Trademark Office right
4 here, yes.

5 Q. Very good. When was the second registration made?

6 A. Are you referring to -- the one I have on top is
7 3379870. The mark is the Episcopal Church, the registration
8 was filed in 2004 and registered in February 12th, 2008.

9 Q. And what is the date of first use on that mark?

10 A. 1967.

11 Q. And that date of first use was placed in there by the
12 defendant the national church; is that correct?

13 A. That's the applicant.

14 Q. And that's the applicant; is that correct?

15 A. That's correct.

16 Q. Okay. And then the third trademark is -- the last four
17 numbers are 5, excuse me, 454. Do you have that?

18 A. I do.

19 Q. And when was that registration approved?

20 A. It was registered January 9th, 2007.

21 Q. And the date of first use?

22 A. 1967.

23 Q. And what is that mark?

24 A. The Episcopal Church.

25 Q. And then the fourth mark, I believe that number ends

1 with 870; is that correct?

2 A. Oh, the 870 is the first one we talked about just now.

3 Q. Okay.

4 A. The one that I'm at, the next one ends with 455.

5 Q. Very good.

6 A. Sorry.

7 Q. When was that registered?

8 A. The registration date is January 9, 2007.

9 Q. And what is reflected as the date of first use?

10 A. 1967.

11 Q. Now, with regard to the names that were registered in

12 these four marks, aren't there two names that were

13 registered, two distinct names?

14 A. Yes.

15 Q. Okay.

16 A. Three of the registrations are for the Episcopal Church,

17 and one registration is for the Protestant Episcopal Church

18 in the United States of America.

19 Q. So we have two different names essentially; is that

20 correct?

21 A. Two different trademarks, yes.

22 Q. Okay. And one is the Protestant Episcopal Church in the

23 United States?

24 A. Of America.

25 Q. Of America. And the other is the Episcopal Church?

1 A. That's correct.

2 Q. Now, initially these registrations were denied; is that
3 correct?

4 A. I didn't bring that information with me. I believe
5 that's correct, yes.

6 Q. And they were denied -- one of the reasons for the
7 denial is because there are other institutions such as
8 churches that use the Episcopal -- the words "Episcopal
9 Church"; is that correct?

10 A. I'm sorry. I don't know that.

11 Q. Okay.

12 A. I don't -- I didn't see the exemplar.

13 Q. You didn't see what?

14 A. The office action.

15 Q. Okay. So you do not have any knowledge as to why these
16 four applications were initially denied?

17 A. No, I don't.

18 Q. Well, it's a fact, though, that there are other entities
19 that use the word Episcopal Church; is that correct?

20 A. I believe that there are, but I have no independent
21 knowledge of them.

22 Q. Well, don't you think that that's a factor that should
23 be taken into consideration by an expert?

24 A. In determining what?

25 Q. In determining a mark, the strength of a mark.

1 A. Yes, I do.

2 Q. Because if a mark is weak, that is less of a -- the
3 weaker the mark, the less possibility of infringement; is
4 that not correct?

5 A. The less the scope of protection if a mark is weak;
6 that's correct.

7 Q. And one indicia of a weak mark is use of words by
8 others; is that correct?

9 A. Yes.

10 Q. Now, you'll agree that it is appropriate, in reviewing
11 or determining a mark and whether or not that mark is
12 infringing on another mark, is you have to look at the mark
13 in its entirety; is that correct?

14 A. That's correct.

15 Q. Okay. So let's look at these marks in their entirety.
16 Now, first of all, let's make sure. You know the plaintiffs'
17 marks, right?

18 A. I have the -- you're referring to the Protestant
19 Episcopal Diocese of South Carolina.

20 Q. Well, let me ask you, I want to ask you, you're here
21 today to testify.

22 A. Okay.

23 Q. What do you believe to be the marks of the plaintiff
24 diocese?

25 A. Okay. The marks that I am aware of -- bear with me just

1 a second. There are four South Carolina registrations and
2 two federal applications that have been abandoned. Those are
3 the ones that I am aware of.

4 Q. Now, with respect to the two federal applications that
5 have been withdrawn, that withdrawal, or you say abandoned,
6 does not affect the plaintiffs' common law rights to those
7 marks, does it?

8 A. No, it does not.

9 Q. So let's go ahead and tell me what you believe to be the
10 two names of the plaintiff diocese, the two marks.

11 A. Okay. The two marks that the plaintiff diocese is
12 claiming?

13 Q. Yes, ma'am. I want to know what you think they are.

14 A. Based on the records I have, they are the Protestant
15 Episcopal Church in the Diocese of South Carolina, the
16 Diocese of South Carolina, the Episcopal Diocese of South
17 Carolina, and then there's a design mark.

18 Q. Okay. Now, I think on direct you testified as to what
19 you believed to be the definition of diocese; is that
20 correct?

21 A. Yes.

22 Q. Okay. Now, you'll agree that that word, "diocese," is
23 not in the name of the defendant national church, is it?

24 A. Right.

25 Q. Okay. And your understanding of diocese, I think you

1 said it was some subdivision?

2 A. That's my understanding.

3 Q. Okay. Now, in your expertise it's proper to go to the
4 dictionary to find the meaning of a word, is it not?

5 A. Yes.

6 Q. Okay. And, in fact, if you went to Merriam-Webster, the
7 definition of a diocese is "The area that is controlled by a
8 bishop" --

9 MS. KOSTEL: Objection, Your Honor. Is she going to
10 testify about what's in Merriam-Webster?

11 MS. GOLDING: I hadn't finished my question, Your Honor.

12 MS. KOSTEL: Is that a question?

13 MS. GOLDING: Yes.

14 MS. KOSTEL: It didn't sound like a question.

15 THE COURT: Hold up. We'll see.

16 Q. Okay. You'll agree with me, if you went to
17 Merriam-Webster, the definition of a diocese is -- the word
18 diocese, "the area that is controlled by a bishop in a
19 Christian church," correct?

20 A. I don't dispute that, if that's what you're saying.

21 Q. Okay.

22 A. I can't testify to that, but I don't dispute it.

23 Q. Did you find a definition of that word, "diocese," as
24 being a subdivision?

25 A. I'm referring to the commonly accepted, commonly used

1 parlance, but that's not at all inconsistent with what you're
2 saying. It's controlled by a bishop. It's controlled by
3 a -- that makes sense to me.

4 Q. Well, no. My question was did you find in a commonly
5 accepted dictionary a definition of diocese as being a
6 subdivision?

7 A. I don't recall that specific word. That's paraphrasing.

8 Q. So let's go to the names. We have the national
9 Episcopal Church as the Protestant Episcopal Church in the
10 United States of America; is that correct?

11 A. That's one of the trademark registrations, yes.

12 Q. Okay. You will agree that the three names of the
13 plaintiff diocese that are registered in South Carolina do
14 not have the words "in the United States of America"?

15 A. That's correct.

16 Q. Okay. And you will agree that the words "in the United
17 States of America" are distinctive words?

18 A. No. It's a geographic designation.

19 Q. Okay.

20 A. So, I mean, it's -- no, I would not agree they're
21 distinctive.

22 Q. Then the next one, you've already said that the word
23 "diocese" is not in either name of the defendant national
24 church, correct?

25 A. That's correct.

1 Q. Okay.

2 A. Because it's the national church.

3 Q. Okay.

4 A. It's not in a separate diocese.

5 Q. The mark of the plaintiff, the Diocese of South
6 Carolina, there's nothing that's similar between those two
7 names between -- with the defendant national church?

8 A. Oh, no. I agree with that.

9 Q. Okay.

10 A. I agree with that, yes.

11 Q. Then the next one is the Episcopal Diocese of South
12 Carolina. There again, the words "Diocese of South Carolina"
13 are not found in the defendant national church's name, is it?

14 A. No. Because this is a -- a diocese is a subdivision of
15 the national church; so it wouldn't be found in the name of
16 the national church. It's indicating a subdivision of the
17 national church.

18 Q. Where do you -- I can't -- I have looked in the
19 dictionaries, I've looked in the encyclopedias, but I don't
20 see where the word "diocese" is defined as a subdivision of
21 the national church. How did you get that understanding?

22 A. That is common parlance. There are Catholic dioceses,
23 there are Episcopal dioceses, probably others, and it is a --
24 well, and by the definition you just read, it's a separate
25 subdivision of the national church, the part of the national

1 church that's under the authority of a specific bishop. I
2 didn't realize that's how it was laid out. I thought it was
3 maybe geographic, but I don't disagree with what you said.
4 It's the separate bishop's area of authority.

5 Q. Well, let me read the definition again. The definition
6 under Merriam-Webster of diocese, I want to see if you'll
7 agree with me, "The area that is controlled by a bishop in a
8 Christian church."

9 A. Right.

10 Q. "The area that is controlled by a bishop in the
11 Christian church." And you will -- is that correct?

12 A. That's what --

13 Q. Okay.

14 A. You're reading it to me, yes. I don't take issue with
15 that. I don't think that's inconsistent with what I've
16 always understood it to be.

17 Q. And there's no authority in your -- the data you
18 reviewed, you didn't present any authority, whether it's
19 McCarthy, as you say is the leading scholar, that says that
20 diocese means an Episcopal entity?

21 A. No, I don't think a diocese does mean an Episcopal
22 entity. It can be, like I just said, there are Roman
23 Catholic dioceses and probably other entities as well are
24 organized that way.

25 Q. And you will agree that the defendant national church

1 has not marked the word "diocese"; is that correct?

2 A. The word "diocese" can't be a trademark. It's a -- it's

3 a --

4 Q. Thank you.

5 A. It's descriptive.

6 Q. And you will agree that the national church has not

7 registered the word "Episcopal"?

8 A. It has. The word "Episcopal" is a part of the

9 registration, when you say "The Episcopal church," for

10 example.

11 Q. Maybe I -- the word, just the word "Episcopal," that is

12 not registered by the national church, is it?

13 A. Not to my knowledge, no.

14 Q. Okay. So in concluding, you agree that there are

15 differences between the marks of the defendant national

16 church and the plaintiff diocese?

17 A. Yes, I do.

18 Q. Thank you.

19 A. Thank you.

20 THE COURT: All right. Mr. Runyan.

21 CROSS-EXAMINATION BY MR. RUNYAN:

22 Q. Good afternoon. I gather from your direct testimony

23 that an important component to your opinions is that there is

24 some measure of control asserted by the national church over

25 the plaintiffs in this case; is that right?

1 A. Yes.

2 Q. And you got that solely from the documents you reviewed?

3 A. Yes.

4 Q. And, of course, if you were to see the documents that
5 you didn't review, you might see that that's very contested,
6 might you not?

7 A. It's possible, yes.

8 Q. Okay. Just to continue along the lines that my
9 colleague was asking you questions concerning, it's the
10 combination of words together that can create the uniqueness,
11 is it not?

12 A. When you say "that can create the uniqueness," I'm
13 sorry. I don't --

14 Q. Well, "Episcopal" is not something that you can say
15 infringes the use of the Episcopal Church?

16 A. Oh, yes.

17 Q. Yes, it does or it doesn't?

18 A. Yes, it does.

19 Q. So the use of "Episcopal" and another name or by itself
20 infringes the mark the Episcopal Church?

21 A. It can, yes.

22 Q. I didn't ask you that. Does it?

23 A. Well, it's not an absolute question.

24 Q. Okay.

25 A. If it is used in such a way as to cause a likelihood of

1 confusion to the public, that is the definition of trademark
2 infringement.

3 Q. So you could have lots of different uses. You could use
4 "diocese," you could use "Episcopal," you could use
5 "Episcopal Church," you could use "Protestant Episcopal" or
6 you could use "Protestant Episcopal Church," and it's
7 conceivable that any number of these would be just fine?

8 A. I do not see how any of those would be -- would not
9 cause confusion of the public, and if they caused confusion
10 of the public, by definition, they are infringing.

11 Q. Well, what if they occur -- what if they were in use a
12 long time before the Episcopal Church ever took its first
13 breath? Would that affect your opinion?

14 A. If you're saying that the term "Episcopal" was used
15 before there was an Episcopal Church.

16 Q. Absolutely. That's what I'm saying. Would that affect
17 your opinion?

18 A. Yes. If the term "Episcopal" -- let me think. If
19 you're using the term "Episcopal" before there's -- not
20 related to a church, not related to the Episcopal Church,
21 before there's an Episcopal Church?

22 Q. Can you answer my question?

23 A. I have to -- I have to change it. It would not.
24 Because if there was a use of "Episcopal," when you say a
25 long time, if you're talking about -- we saw documents today

1 in the 1700s. When you look at trademark infringement, when
2 you look at whether or not the public is going to be
3 confused, you're looking at what's happening today; so
4 trademark infringement is based on what living, breathing
5 people today perceive and whether they're likely to be
6 confused.

7 Q. So --

8 A. And if I can just explain what I mean by that, why it's
9 important. Because today, the recent history has been
10 there's been one church organization. If you go back
11 historically, and there may have been different
12 organizations, different corporations, different entities,
13 unincorporated, but the most recent history, prior to this
14 situation, was a single organization known as the Episcopal
15 Church.

16 If that single organization -- and, like I said, based
17 on my information, the groups that you represent were part of
18 that organization. They, in fact, recognized it. If they
19 now continue, having been part of the organization, having,
20 kind of, educated the public, having the public believe
21 they're part of that organization, if they continue to use
22 the name Episcopal or Episcopal Diocese, not being part of
23 that organization, it will inevitably cause confusion of the
24 public.

25 Q. You've seen our marks that are registered?

1 A. Yes. I've got copies of the registrations.

2 Q. All right. Registered with the State of South Carolina?

3 A. Yes.

4 Q. Are you saying the use of those state registered marks
5 violates the Episcopal Church mark; is that your testimony?

6 A. I believe they do, yes.

7 Q. Okay. Is there a process in South Carolina for dealing
8 with that?

9 A. Trial. I mean, an infringement --

10 Q. Is there a process in the statute for challenging those
11 marks?

12 A. I don't know. I've read the statute, but I do not
13 recall whether there's a process, other than coming into
14 court.

15 Q. Okay. So I want to get this clear: You're not saying
16 that the use of the word "diocese" or "Episcopal Diocese" or
17 "Protestant Episcopal" or "Protestant Episcopal Church" that
18 may have been in use for hundreds of years has any bearing
19 whatsoever on the your claim that the Episcopal Church mark
20 would be infringed by the diocese's use of something that we
21 are, in fact, using; no relevance. It's just today.

22 A. I'm saying that an analysis of likelihood of confusion
23 of the public is based on what the public perceives today.

24 Q. But that's not something you can testify about.

25 A. And that --

1 Q. Just a minute.

2 A. Okay. No, that's okay.

3 Q. That's not something you can testify about. My question
4 relates to the derivation of the marks that we have
5 registered. Is it your testimony that they are derived from
6 the Episcopal Church marks?

7 A. Okay. Number one, that is my belief. I'm not
8 testifying to that because I'm not a church historian.

9 Q. Okay.

10 A. But that's my -- if I can just finish.

11 Q. Well, if you're not a church historian, I don't need to
12 hear the answer.

13 A. But the reason that doesn't matter in terms of what
14 we're doing is, initially, the first to use the word
15 "Episcopal" owns -- has common law rights. My understanding
16 is there was a church organization, and the church
17 organization, whether it was international -- but even if the
18 very first church organization, there was no Episcopal Church
19 whatsoever anywhere until the South Carolina diocese
20 organized, even if that were the case, over the years, that
21 organization joined with the national church and became part
22 of the national church. And at that point, with the national
23 church's control of the character and quality and nature of
24 the services that were provided and control of the
25 organization, and with the South Carolina church groups

1 joining that organization and recognizing it, it is the
2 trademark owner.

3 Q. Take away the word "control." How does that affect your
4 opinion? There is no control. Take that away. How does
5 that affect your opinion?

6 A. If there were no control, you're still a member of the
7 organization.

8 Q. That's not my question. You testified on direct control
9 is important. You said that a while ago. I want to know if
10 it is not true that the Episcopal Church controls, as you
11 have defined it, the Diocese of South Carolina, how does that
12 affect your opinion?

13 A. If it -- if it controls the service.

14 Q. That is not -- you're not listening to my question.

15 A. But I'm telling you --

16 Q. I'm taking that away from you. I'm taking that away
17 from you.

18 THE COURT: Mr. Runyan, if there's an objection about
19 responsiveness, don't forget, I'm here still.

20 MR. RUNYAN: I'm sorry.

21 THE COURT: Are you concerned about responsiveness?

22 MR. RUNYAN: I am indeed.

23 THE COURT: All right. Listen very carefully, please,
24 to the question, and respond to that question if you can,
25 okay?

1 THE WITNESS: Thank you.

2 THE COURT: Yes.

3 THE WITNESS: I'm having trouble understanding the
4 questions.

5 THE COURT: What he's asking you is he wants you to
6 take -- you've testified to control, that that's important,
7 and I have heard that. What he's asking you is what if there
8 is no control. What if there's no control? Then, in terms
9 of the marks, what is the effect?

10 Is that correct, Mr. Runyan?

11 MR. RUNYAN: That is correct, Your Honor.

12 THE COURT: In other words, if there is no control, does
13 it matter?

14 THE WITNESS: And the distinction that I need to know
15 what you're talking about is whether you're talking about
16 corporate control or control over the operation of the
17 corporation or control over the nature of the services, the
18 Book of Common Prayer, the ordination of priests, that sort
19 of thing.

20 Q. Which one's important to you?

21 A. The one that's important to me is the nature and
22 character and quality of the services because that's what the
23 public perceives.

24 Q. Okay. And important to you in that process is that
25 somehow that nature and quality and whatever is under the

1 control of the Episcopal Church?

2 A. Is governed by the rules and regulations and adhered to
3 by the participants, yes.

4 Q. And if you take that away, all right, how does that
5 affect your opinion?

6 A. If the --

7 Q. Is this a difficult question to answer?

8 A. It really -- it is.

9 Q. Well, why?

10 A. Because I'm not sure -- I'm not sure what you mean. And
11 I know I'm talking about control, but the hypothetical is
12 that there's an organization that you're not saying it has no
13 relation. So I'm thinking if there's not a control, what's
14 the relationship between the two?

15 Q. Let's stop and start again.

16 A. Yeah.

17 Q. You've made an assumption that the form of worship and
18 whatever the characteristics are, are a product of the
19 Episcopal Church and are somehow under their control in some
20 fashion, correct?

21 A. Mm-hmm. I'm sorry. Yes.

22 Q. The assumption now is that that is not true.

23 A. That there's no control whatsoever.

24 Q. You don't have to rephrase it. The assumption is that
25 that is not true. Does that affect your opinion?

1 A. There's no control whatsoever, yes, that would affect my
2 opinion.

3 Q. How would it affect your opinion?

4 A. Then it would be -- then it would be -- it would be
5 infringing use. It would be infringing use. There's no
6 control now, as I understand it.

7 Q. Wait a minute.

8 A. And it --

9 Q. It would be infringed or not infringing?

10 A. The use of the mark of the name Episcopal by groups that
11 are not adhering to the Episcopal Church and under the
12 control of the Episcopal Church, in terms of the nature and
13 character and quality of services offered, would be
14 infringing use.

15 Q. I just told you and you just agreed, we took that away.
16 Why did you add it back?

17 A. We took away control, and if there's no control, there's
18 infringement. That's what I'm saying.

19 Q. So if the Episcopal Church does not control the form of
20 the service and the rights and what have you, there's still
21 infringement; is that your testimony?

22 A. Right now today, if an organization is not --

23 Q. That's not my --

24 MR. RUNYAN: Your Honor.

25 THE WITNESS: I'm trying -- I'm sorry. I'm trying to

1 understand the question.

2 MR. RUNYAN: Your Honor, I'd ask the witness to answer
3 the question. I'll rephrase it.

4 Q. An assumption, I believe, in your testimony, and you
5 tell me if I'm wrong, is that there is a measure of control
6 by the Episcopal Church over the form of worship and over the
7 rights and over such other types of things; is that correct?

8 A. A measure of control over the members, the adherents to
9 the Episcopal Church, yes.

10 Q. And that's an important part of your opinion, true?

11 A. Yes.

12 Q. I want you to assume that that measure of control does
13 not exist. Would that affect your opinion?

14 A. If the -- yes.

15 Q. And how would that affect your opinion?

16 A. If there is an organization, a group, holding itself out
17 as the Episcopal Church that's not operating under the
18 tenants and constitution and so forth of the Episcopal
19 Church, that would be trademark infringement. It would
20 confuse the public.

21 Q. One of us is not getting this; so I'm going to try one
22 more time.

23 A. I'm sorry.

24 Q. I'm going to try one more time. Your picture, if you
25 will, mental picture, is that the Episcopal Church has put

1 this blanket, if you will, over the diocese, and that blanket
2 contains the form of worship and the -- and all the things
3 like that. And that's the kind of control that I think
4 you're talking about, is it?

5 A. Yes.

6 Q. Okay. Take the blanket off. The Episcopal Church has
7 no control of the worship service, has no control of the form
8 of the service, then the diocese could use that form of
9 service and not infringe anything, couldn't it?

10 A. You're saying if the Episcopal Church, if there are --
11 if there are no standards, there are no canons, there are no
12 rules, there's no Book of Common Prayer for any of the
13 Episcopal Churches in the country?

14 Q. No. You're trying --

15 A. Then it wouldn't control this one?

16 Q. I'm just asking you to assume that the issues of control
17 are gone. The Episcopal Church doesn't control the way that
18 the diocese and the parishes do their worship. You've told
19 me that that's an important component. I'm now taking that
20 away from you. If you assume that that is not the case, then
21 would there be, could there be any problem with the use, the
22 worship services that we are engaged in?

23 A. I'm sorry. I don't know how to answer you other than
24 the way I've answered you. I may be totally
25 misunderstanding, but I don't know how else to respond.

1 Q. Okay. All right. You're not testifying that an entity
2 that calls itself the Episcopal Diocese of something
3 something would be somehow misusing the Episcopal Church's
4 mark, are you?

5 A. If it was not an Episcopal Diocese, it would be, of
6 course.

7 Q. No, it is an Episcopal Diocese by definition because it
8 has it in its name. Are you saying that use of the term
9 "Episcopal Diocese" means it must be a part of the Protestant
10 Episcopal Diocese in the United States of America; is that
11 your testimony?

12 A. I'm saying if it's not, I think it would be confusing to
13 the public.

14 Q. Does it matter where that happens geographically?

15 A. I don't think so.

16 Q. So an Episcopal Diocese in Canada might infringe?

17 A. Might infringe the -- not the Episcopal Church of the
18 United States. Episcopal -- trademarks are territorial.

19 Q. Okay.

20 A. And they're country by country.

21 Q. Okay. So you could have an Episcopal Diocese of Vienna
22 or Jerusalem or wherever, and that's not an issue.

23 A. I'm not saying it's not an issue. I'm saying if there's
24 an Episcopal Diocese in another country or in another --
25 outside of the United States, it would not have any bearing

1 on -- we're talking about U.S. trademark registrations and
2 U.S. trademark rights. There could be other Episcopal
3 organizations in other countries.

4 Q. So the use of the terms "Episcopal Diocese" by
5 themselves, in some contexts, don't necessarily mean that
6 that entity is a part of the Episcopal Church?

7 A. It doesn't mean that entity is a part of the Episcopal
8 Church, the national church, as we refer to it.

9 Q. Right. Same question with the use of the terms
10 "Protestant Episcopal Church." That doesn't necessarily mean
11 that that entity is a part of the Protestant Episcopal Church
12 in the United States of America, or affiliated with it for
13 that matter.

14 A. If it were used in the United States, I believe that it
15 would lead people to believe that it is affiliated with the
16 Protestant Episcopal Church of the United States.

17 Q. Okay. And your testimony now concerns recent times,
18 right?

19 A. Mm-hmm. Yes.

20 Q. All right. So the use of that routinely and regularly
21 in the past goes to the strength of the mark but not
22 necessarily to whether it's being misused now?

23 A. I'm sorry. Say again.

24 Q. Does the use of those terms in the past go to the
25 strength of the mark?

1 A. Yes.

2 Q. Okay.

3 A. Yes.

4 Q. When an owner of a mark gives consent, how is that
5 typically done?

6 A. Frequently through a license, not always. It can just
7 simply be a consent or a concurring use agreement but
8 frequently through a license.

9 Q. Can consent be granted when two people know they're
10 using something that's very similar?

11 A. Can be, yes.

12 Q. And neither of them complain about it?

13 A. That would be the concurrent use agreement that I
14 mentioned to you, for example.

15 Q. Well, I don't mean agreement. I just mean they're just
16 using it and they know each other are using it. Is that
17 consent?

18 A. It's forbearance to take action. You can just not take
19 action.

20 Q. Is it consent?

21 A. It's acquiescence, I think, at least.

22 Q. Acquiescence. Good enough.

23 How about agreeing in writing that you cannot use
24 someone else's marks, would you consider that to be consent?

25 A. No. That's forbidden. That's forbidden use, not

1 consenting to use.

2 Q. I see.

3 A. -- right.

4 Q. I see.

5 Would you consider it important if the Episcopal Church
6 had consented in writing that it could not use the marks of
7 the plaintiff diocese?

8 A. If the national church consented that it would not use?

9 Q. That's right.

10 A. Would not use a mark that said the Episcopal --

11 Q. No, no, no.

12 A. -- Episcopal Diocese of South Carolina.

13 Q. The marks of the diocese. Want me to state the question
14 again?

15 A. Well, okay. Yeah, state the question again.

16 Q. Would you consider it important to your opinions if the
17 national church had consented to a requirement that they not
18 use the marks of the Protestant Episcopal Church in the
19 Diocese of South Carolina, the Diocese of South Carolina and
20 the Episcopal Diocese of South Carolina?

21 A. It's interesting. It's hard -- it's hard to imagine how
22 that would come up, but if they consented that they would not
23 use -- you can do that. You can make an undertaking that I
24 will not use certain language, that the use of that language
25 still could infringe their rights, but, yeah, you can consent

1 not to use certain language. I mean -- I'm so sorry. Tell
2 me the question -- what is the question again?

3 Q. It's really very simple. It's really very simple. Do
4 you consider it important -- would you consider it important
5 to your opinions if the Episcopal Church, also known as the
6 Protestant Episcopal Church in the United States of America,
7 agreed in writing that it could not use the following names:
8 The Protestant Episcopal Church in the Diocese of South
9 Carolina, the Diocese of South Carolina and the Episcopal
10 Diocese of South Carolina?

11 MS. KOSTEL: Objection, Your Honor. There's no
12 foundation for that question. I can state another objection
13 if that one doesn't work for you.

14 THE COURT: Well --

15 MS. KOSTEL: What he's doing is he's bringing in, I
16 believe, unless there's a writing I'm not aware of, he's
17 bringing in what's happened in the litigation of this case.

18 MR. RUNYAN: I don't think it -- I think wherever it
19 happens, it happens. I mean, I'm -- and that may not be it.
20 I'm just asking her a hypothetical.

21 THE COURT: I think you are correct, and your objection
22 is does that have any relevance. I think he can ask if it
23 has any relevance.

24 MS. KOSTEL: What we did in litigation?

25 THE COURT: Well, it depends on who the "we" is, because

1 it wouldn't be the "we," because you wouldn't be -- you're
2 not the "we."

3 MS. KOSTEL: I'm the Episcopal Church.

4 THE COURT: I know. But you're not the "we."

5 MS. KOSTEL: Who's the "we"?

6 THE COURT: They're the "we."

7 MS. KOSTEL: He's not -- I believe he's talking about --
8 I believe he said the Episcopal Church.

9 MR. TISDALE: We're not the "we," Your Honor.

10 MR. RUNYAN: Let me just --

11 THE COURT: They didn't agree; you agreed. Temporarily.

12 MS. KOSTEL: I don't believe so.

13 THE COURT: Was it the other way around? You agreed?

14 MS. KOSTEL: Yes.

15 THE COURT: I'm sorry. You used to be them and now
16 you're someone else.

17 MS. KOSTEL: Right.

18 THE COURT: You're everywhere, Mr. Tisdale. I
19 understand what you're saying.

20 MS. KOSTEL: That's a position we took in litigation.

21 THE COURT: Exactly. It was the intention it would be
22 done without prejudice, right?

23 MS. KOSTEL: Exactly.

24 THE COURT: I understand.

25 MS. KOSTEL: Thank you.

1 THE COURT: Yes.

2 Q. Ms. Lott, is the use of the word -- words "the reformed
3 Episcopal Church" an infringement of the Episcopal Church's
4 mark?

5 THE COURT: Say again? I missed that one.

6 Q. Is the use of the words "the reformed Episcopal Church"
7 an infringement of the Episcopal Church's marks?

8 A. Without knowing anything more than that, because there
9 are factors that you have to analyze to make that
10 determination, but just initially on its face, initially it
11 looks like it might be. But obviously, the ultimate question
12 is, is there a likelihood of confusion. And there are a lot
13 of factors that go into that. So there's not enough
14 information to form an opinion, but on its face, you'd sure
15 want to look closer.

16 MR. RUNYAN: Thank you.

17 THE COURT: Anyone else on behalf of the plaintiffs?
18 Mr. Phillips.

19 MR. PHILLIPS: Yes, ma'am.

20 THE COURT: Mark Phillips representing St. Philip's.

21 MR. PHILLIPS: Yes, I'll let her know.

22 CROSS-EXAMINATION BY MR. PHILLIPS:

23 Q. Ms. Lott, my name is Mark Phillips, and I represent an
24 entity whose name is the Protestant Episcopal Church of the
25 Parish of St. Philip in Charleston in the State of South

1 Carolina. Does the use of that name that I just gave you, in
2 your view, constitute an infringement on the Episcopal
3 Church, the defendants? And I'll give it to you again. It's
4 the Protestant Episcopal Church of the parish of St. Philip's
5 in Charleston in the State of South Carolina.

6 A. There is -- and I don't mean to hedge, but there is a
7 difference between an official corporate entity, corporate
8 name and the trademark or trade name that you hold out to the
9 public. I mean, is the sign on the front of the church the
10 Protestant -- you know what I mean, is it the whole thing or
11 is it -- I'm sorry, St.?

12 Q. St. Philip's Church.

13 A. St. Philip's.

14 Q. That's right.

15 A. So if it says "St. Philip's Episcopal Church" or
16 "St. Philip's Church" on the front, that of course would be,
17 in my view, probably. Even the corporate name would cause
18 confusion. You know, I haven't evaluated all of the factors,
19 but, frankly, I would assume it's an Episcopal Church.

20 Q. Okay. And I think you indicated earlier for either
21 Ms. Golding or Mr. Runyan that the first to use the word
22 "Episcopal" has the common law rights in the name; is that
23 right?

24 A. Initially, yes.

25 Q. Okay. Now, I'm going to show you what's already been

1 marked and what's already in evidence as Exhibit No. 3 and
2 just ask you quickly have you ever seen the 1785 General
3 Assembly Act, State of South Carolina, which incorporated
4 St. Philip's Church?

5 A. I have not. I've heard of it, but I have not seen it.

6 Q. And are you familiar with an act from 1791, Exhibit 4?

7 A. I'm sorry. Can I just take a quick look? They've blown
8 up a part of this.

9 Q. Excuse me. I called the wrong exhibit up.

10 Exhibit 5. It's on the bottom of the page, the first
11 page of that exhibit, the last three lines. There we go.
12 It's coming up.

13 A. Okay. This looks to me as if there are existing
14 vestries and wardens of the Episcopal Church, and they are --
15 they're now incorporating, but they're -- yeah, but
16 they're -- they are the Episcopal Church.

17 Q. Right. So there was a second incorporation in 1791 of
18 what had been incorporated in 1785, both of which regarded
19 St. Philip's Church, whose proper name as given by the
20 legislature, was the Protestant Episcopal Church of the
21 Parish of St. Philip in Charleston in the State of South
22 Carolina.

23 A. Okay.

24 Q. Do you agree with that?

25 A. Well, I think so, but it looks as if they even

1 preexisted this -- the entity was there, it was part of the
2 the Episcopal Church, and they incorporated the entity that
3 incorporated. Is that --

4 Q. All right. You testified for Ms. Golding, I believe,
5 that when the Episcopal Church registered its own marks, it
6 indicated in a filing, in a federal filing, that it first
7 used the title "the Protestant Episcopal Church in the United
8 States of America" on January 1, 1836, correct?

9 A. I said that that's the date that appears on the
10 registration; that's correct.

11 Q. All right. And, again, St. Philip's Church was
12 incorporated well before the national church ever used that
13 name, "the Protestant Episcopal Church in the United States
14 of America," correct, if, in fact, it was incorporated in
15 1785 as indicated by Exhibit 3?

16 A. I don't believe the date of incorporation governs. I
17 think that -- I think these were, based on the little blurb I
18 just saw of this, they were -- there was a -- the Episcopal
19 Church was there already. These were apparently maybe
20 parishes of the Episcopal Church, and they were -- they
21 incorporated at that time. But, again, it's -- they're still
22 part of the Episcopal Church. This was not the original
23 first anywhere Episcopal Church.

24 Q. Ms. Lott, can you testify under the oath that you've
25 given to us that the entity known as the Episcopal Church or

1 any organization known as the Episcopal Church existed at any
2 time before 1785?

3 A. No, I cannot. I don't have that background.

4 Q. So you really don't have the facts to say that Episcopal
5 Churches existed in relation to a national organization at
6 any time before 1785, can you?

7 A. I cannot testify of independent knowledge of that.

8 Q. Okay.

9 A. But I can, by way of example, you point to the federal
10 registrations of the national church. There were two federal
11 applications filed on behalf of the South Carolina diocese
12 that recited dates of first use in 1977 and 1821. I mean,
13 they went in -- there are a lot of different reasons why
14 dates go in applications. They may or may not be correct.
15 You know, especially given what we're seeing here, it looks
16 to me like you can't really rely on that.

17 Q. Let's take a look, please, at Exhibit 36 that's also in
18 evidence. And if you'd please go to the last page of this
19 registered mark. This is Exhibit SPH 36. All these are SPH
20 exhibits. Do you recognize the name St. Philip's Church
21 we've been discussing?

22 A. Yes. There you go. That's what we're talking about.

23 Q. And do you see when St. Philip's Church, in its
24 registration as issued by the state, indicated the date of
25 first use? What date is that?

1 A. 1680.

2 Q. Right. Are you aware of anything for the Episcopal
3 Church, from your knowledge, that predates either 1785 or
4 1680?

5 A. I'm not personally aware of it, no.

6 Q. Okay. And certainly you're not going to give any
7 testimony like that to Judge Goodstein, correct?

8 A. I'm not.

9 Q. And you said that the use of marks of the name
10 Episcopal, the first to use the word "Episcopal" is the
11 entity that has the common law rights, correct?

12 A. Initially.

13 Q. Yes.

14 A. Initially, yes.

15 MR. PHILLIPS: Okay. Thanks. Thank you.

16 THE COURT: All right. Does that conclude your
17 examination?

18 MR. PHILLIPS: Yes, please.

19 THE COURT: Thank you, Mr. Phillips. Anyone else? All
20 right.

21 MR. TISDALE: Your Honor, just one thing. And she
22 doesn't have to be on the stand for this, I don't think, but
23 she has her report that has been provided to everybody in
24 this matter, her report, minus the matter you excluded this
25 morning.

1 THE COURT: Yes.

2 MR. TISDALE: We would like to mark it as an exhibit.

3 MR. RUNYAN: Objection. It would be cumulative, Your
4 Honor.

5 THE COURT: It would be cumulative.

6 MR. TISDALE: Thank you.

7 THE COURT: Sustained. All right. Yes, sir.

8 MR. SMITH: One question, Your Honor.

9 THE COURT: All right.

10 REDIRECT EXAMINATION BY MR. SMITH:

11 Q. Ms. Lott, can you clarify what you mean when you just
12 said, "Initially, yes"? Can you clarify that?

13 A. Yes, yes. Because trademark ownership, trademark rights
14 evolve over time. Sometimes marks are valid at one time and
15 subsequently declared invalid, depending on the public
16 perception at the time. For example, cellophane, escalator,
17 aspirin all used to be valid trademarks.

18 When the public perception changes so that that does not
19 designate a specific entity, it's just the generic name, then
20 that's no longer a trademark. But in terms of -- but you're
21 always seeking to see what does this mean to the public, what
22 does the term mean to the public and is use by another going
23 to be likely to cause confusion.

24 And the owner of a trademark at a given time is the one
25 who controls the nature and character and quality of the

1 goods and services offered under that trademark.

2 MR. SMITH: Thank you, Ms. Lott.

3 THE COURT: All right. We have the national church.

4 Redirect.

5 MS. KOSTEL: We have nothing, thank you.

6 THE COURT: Nothing?

7 MS. KOSTEL: No.

8 THE COURT: All right. Recross?

9 MS. GOLDING: Nothing, Your Honor.

10 MR. RUNYAN: No.

11 THE COURT: All right.

12 MR. PHILLIPS: No more.

13 THE COURT: Very well. You may come down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Yes. Call your next witness.

16 MR. TISDALE: Your Honor, I think Ms. Kostel wants to
17 move to admit a group of exhibits, getting ready for some
18 testimony coming up tomorrow.

19 THE COURT: Sure. Okay.

20 MS. KOSTEL: Your Honor, you'll recall that, I think --
21 I don't know, I've lost track of what day -- two days ago I
22 mentioned exhibits on a hard drive, which we provided two
23 copies for the plaintiffs with exhibit lists, but the exhibit
24 lists were not yet numbered. They were descriptions and
25 Bates numbers, but now I have numbered lists. I have a hard

1 drive with numbered lists for the Court. I have an
2 additional hard drive for Your Honor, if you -- okay.

3 THE COURT: Very well. And what are the numbers?

4 MS. KOSTEL: Let me give the list to the plaintiffs
5 first.

6 THE COURT: All right. So the numbers are?

7 MS. KOSTEL: To not cause confusion with the hard copies
8 that we already put in, we started at 100. And they go
9 through 512 plus. And those are sort of the general ones,
10 and then we have parish-specific exhibits.

11 And I can go through -- this may take a little bit, but
12 I'll just go through the -- not every number, but I'll tell
13 you. For example, we have "D," for defendant, "AS," for All
14 Saints, 1 through -- for All Saints, it's through 61. So
15 DAS-1 through DAS-61; DSLP-1 through DSLP-48; DCC-1 through
16 DCC-72; DCSP-1 through DCSP-56; DCTK-1 through DCTK-22; DOS-1
17 through DOS-73; DTC-1 through DTC-42; DE-1 through DE-23;
18 DHC-1 through DHC-43; DR-1 through DR-39; DRS-1 through
19 DRS-59; DGS-1 through DGS-39; DHC-1 through DHC-51; DHT-1
20 through DHT-46; DOSA-1 through DOSA-62; DPG 1 through DPG 28;
21 DSAMP-1 through DSAMP-60; DSB-1 through DSB-64; DPCSH-1
22 through DPCSH-70; DSJJ-1 through DSJ -- I'm sorry. That's
23 wrong. DSJJI-1 through DSJJI-35; DSJC-1 through DSJC-59;
24 DSJF-1 through DSJF-97; DSJ-1 through DSJ-63; DSL-1 through
25 DSL-59; DSM-1 through DSM-31; DSMFM-1 through DSMFM-43;

1 DSMT-1 through DSMT-30; DSMI-1 through DSMI-42; DSPB-1
2 through DSPB-74; DSPC-1 through DSPC-23; DSPS-1 through
3 DSPS-69; DSPH-1 through DSPH-97; DTED-1 through DTED-33;
4 DTMB-1 through DTMB 66; DTP-1 through DTP-49.

5 And what we tried to do -- that's it. And what we tried
6 to do is those letters correspond with the Bates designations
7 of the parishes; so just to make it a little easier.

8 THE COURT: I got it. I got it. Absolutely.

9 And have you had an opportunity to meet and confer with
10 counsel for each of the entities to determine whether or not
11 there are any objections to the proffered documents?

12 MS. KOSTEL: I have not. I provided them to Mr. Runyan
13 and Ms. Golding. Generally, we've been working through them,
14 and so --

15 THE COURT: Got it.

16 MS. KOSTEL: -- I've not heard one way or the other.

17 THE COURT: I understand. I understand.

18 So, Counsel, I just ask, is it appropriate for me to ask
19 at this point with regards to objections? Is that something
20 that needs to be handled by the individual counsel for the
21 different parishes? In other words --

22 MR. RUNYAN: They're offering these in evidence, is that
23 what she's doing?

24 THE COURT: Yes.

25 MR. RUNYAN: Well, we have a few objections.

1 THE COURT: You do?

2 MR. RUNYAN: Yes.

3 THE COURT: Okay. And are you in a position, at the end
4 of today, to be able to share that with Ms. Kostel?

5 MR. RUNYAN: Sure. It's --

6 THE COURT: Terrific. Sure. Great.

7 MR. RUNYAN: It's very simple. Yes.

8 THE COURT: Okay. And then whatever we need to do
9 tomorrow, we'll do.

10 MR. BRYAN: I'm William A. Bryan on behalf of Church of
11 the Resurrection.

12 THE COURT: Come on down.

13 MR. BRYAN: I'm not sure I understand exactly what's
14 being offered into evidence. I just want to be clear on
15 behalf of the parishes what it is.

16 THE COURT: Good for you. And remind me. Your parish
17 is?

18 MR. BRYAN: Church of the Resurrection, Surfside.

19 I couldn't hear all that was said; so I'm trying to
20 determine if any of these documents pertain to my parish.

21 MS. KOSTEL: They do.

22 MR. BRYAN: All right. I didn't hear anything that says
23 RS anything.

24 THE COURT: There's DRS.

25 MR. BRYAN: Pardon me?

1 THE COURT: There is DRS.

2 MR. BRYAN: DRS?

3 MS. KOSTEL: D is defendant. D was before everything.

4 THE COURT: DRS-1 through 59.

5 MS. KOSTEL: And to be clear, everything in these
6 letters are documents that were produced to us.

7 THE COURT: Gotcha.

8 MS. KOSTEL: By the plaintiffs.

9 THE COURT: So what were your designations for your
10 exhibits?

11 MR. BRYAN: RS.

12 THE COURT: You were just plain old RS?

13 MR. BRYAN: Plain old RS, right.

14 THE COURT: So it would be DRS.

15 MR. BRYAN: DRS.

16 THE COURT: You've got some, 1 through 59.

17 MR. BRYAN: Do you have a list you can give me?

18 MS. KOSTEL: Sure, I can give you a list.

19 MR. BRYAN: I think all the parishes need it to see
20 exactly what it is you're trying to offer.

21 MR. PHILLIPS: I was about to speak on behalf of
22 St. Philip's Church, Your Honor. I have not seen the actual
23 documents they intend to tender or a list of them. I would
24 need to in order to make an intelligent objection.

25 THE COURT: Great. I got it.

1 MR. CAMPBELL: Your Honor, Pierce Campbell for Church of
2 the Holy Cross. There were two parishes listed as HC. I
3 imagine the other was Holy Comforter, but not having seen
4 these exhibits, I have no idea which one is supposed to be
5 mine.

6 THE COURT: I'm with you. I got it. Ditto and ditto
7 and ditto and more ditto. Lots of ditto. Ditto, ditto.
8 Okay.

9 MS. KOSTEL: I'm assuming that Mr. Runyan and
10 Ms. Golding did not confer in the last two days with the
11 other parishes.

12 THE COURT: Sounds kind of like it.

13 MR. EASTERLING: Your Honor, please.

14 THE COURT: Mr. Easterling.

15 MR. EASTERLING: Harry Easterling for St. David's
16 Church, Cheraw. I got a copy of the list, but I did not see
17 St. David's on any of the list.

18 THE COURT: You'd be SDS. Hold on.

19 MS. KOSTEL: I think that's correct. I think
20 St. David's -- you're right that those are -- because of the
21 way things came in to us, they're going to have to be offered
22 later.

23 THE COURT: Okay.

24 MS. KOSTEL: This is not the universe of what we're
25 offering.

1 THE COURT: These are the ones now.

2 MS. KOSTEL: This is all I could get on here before --

3 THE COURT: Thank her.

4 MS. KOSTEL: Yes, you're right about that. And I
5 realize now, as I look at this list, that there's an
6 additional folder on that hard drive called "missing
7 documents," which includes -- and there's no printout here --
8 which are documents that were -- that came in late for a
9 variety of reasons that are different parishes. And I've got
10 to get that -- I've got to get that printed out and give it
11 to both of them.

12 THE COURT: I gotcha.

13 MS. KOSTEL: Yes.

14 THE COURT: So it sounds as though there needs minimally
15 to be a caucus.

16 MS. KOSTEL: I think most of the plaintiffs, if they see
17 this list with the descriptions and their Bates numbers, they
18 will know what -- they'll readily recognize what documents --
19 I mean, they're documents that they produced to us.

20 THE COURT: Gotcha. Let me ask you this question: One
21 of the very, very easy ways to disseminate the information
22 would be to post electronically your information on the
23 website. That way everybody's got the -- everybody has equal
24 access to their documents.

25 MS. KOSTEL: Okay.

1 THE COURT: Do you think --

2 MS. KOSTEL: Post this list on the website?

3 THE COURT: Yes.

4 MS. KOSTEL: Because this would be hard to post. This
5 is big. This is a lot of data, which is why it's on a hard
6 drive. But this just has the descriptions and the Bates
7 numbers so they have the documents themselves with their
8 Bates numbers on them.

9 THE COURT: I understand.

10 MS. KOSTEL: Yeah.

11 THE COURT: How does that work for everybody?

12 MS. KOSTEL: I could even email this list to everybody.
13 That might be the fastest way for me to do it.

14 THE COURT: Because you've already got everybody's
15 emails?

16 MS. KOSTEL: Yes.

17 THE COURT: Okay.

18 MR. PHILLIPS: Just a question, Ms. Kostel.

19 MS. KOSTEL: Yes.

20 MR. PHILLIPS: Just if you email them, will you be able
21 to give us the Bates number, the description and the proposed
22 exhibit number?

23 MS. KOSTEL: Yes.

24 MR. PHILLIPS: That'll help.

25 THE COURT: Great.

1 MR. CAMPBELL: Just making sure, Your Honor, that just
2 the provision of this list does not mean we don't have a
3 chance to offer any other objections we may have once we've
4 reviewed all this information, correct? That's not what
5 we're trying to do here, right?

6 THE COURT: What do you think?

7 MR. CAMPBELL: I wanted to make sure. I just wanted to
8 make sure. It's not like that's going to resolve the
9 problem. And I don't know whether it will or it won't.

10 THE COURT: It begins to, like, drain the swamp.

11 MS. KOSTEL: Okay. So I'll email this. And how else
12 would you like me to proceed? Confer with Mr. Runyan this
13 afternoon?

14 THE COURT: Well, here's what I think probably makes
15 more sense is rather than try to do that this afternoon,
16 because folks aren't going to have an opportunity to take a
17 look, that would be like homework. And then maybe we'll
18 talk. Maybe instead of starting at 9:30 in the morning, we
19 may start a little bit later. Give everyone an opportunity
20 to confer.

21 MS. KOSTEL: Okay.

22 THE COURT: Okay.

23 MS. KOSTEL: Because some of it, some things I would
24 like to have the benefit of knowing his position going into
25 some of the testimony.

1 THE COURT: Sure.

2 MS. KOSTEL: Right.

3 THE COURT: Sure.

4 MS. KOSTEL: Okay. Good.

5 THE COURT: Sure.

6 MS. KOSTEL: Thank you.

7 THE COURT: Absolutely. So, I guess -- I'm trying to
8 think. Can we facilitate the ability to email that like
9 sooner rather than later? What can I do to help facilitate
10 that? What can I do to help facilitate that now?

11 MS. KOSTEL: As soon as I get the list, I'll use this
12 little device to email it to everybody.

13 THE COURT: Have you got the list? I mean, we've all
14 got lists sort of floating around.

15 MS. KOSTEL: I have the list that I just read out to
16 Your Honor, the two lists. I have them. I mean, they will
17 be -- I didn't type it myself, but I'll have it sent to me.

18 THE COURT: Are you going to divide them up per --

19 MS. KOSTEL: I don't think so. But, I mean, it's easy
20 to flip through.

21 THE COURT: Okay. I think that will be so much quicker
22 than if you have to go back.

23 MS. KOSTEL: Yes. That would take me forever. Thank
24 you, Your Honor.

25 THE COURT: Okay. So as I understand it, just for

1 everybody's informational purposes, it is my understanding
2 that other than the "D" that the designations that follow are
3 the ones that are used on your exhibits. Everybody cool
4 about that? Like, for example, DAS is All Saints.

5 MR. CAMPBELL: Your Honor, I just want to make sure that
6 the Court understands there were two that were HC, and my
7 parish used HCS for its exhibits, and so I have no way of
8 knowing. I'm happy to work with Ms. Kostel to find out, but
9 I just want to make sure the Court knows that there are still
10 even some numbering issues that exist.

11 MS. KOSTEL: Well, you know what, Your Honor? I can
12 speak to that. First of all, in the descriptions, you'll be
13 able to tell. I mean, the descriptions are pretty complete.
14 I'm looking at HC now, and that's Holy Comforter. I don't
15 know why HCS is not in front of me.

16 MR. CAMPBELL: One had 43 exhibits; one had 51 exhibits.

17 THE COURT: Yes, there are two DHCs.

18 MS. KOSTEL: That I read out, two DHCs?

19 THE COURT: Yes. Yes. The first one is DHC Exhibits 1
20 through 43, and the other is DHC-1 through 51.

21 MS. KOSTEL: Yes. Okay. Well, maybe we need to
22 change -- we will change that, Pierce.

23 MR. CAMPBELL: Thank you.

24 THE COURT: DHC, you might call it, for the Holy
25 Comforter --

1 MS. KOSTEL: Yes.

2 THE COURT: -- DHCP.

3 MS. DURANT: Your Honor, I'm Bess Durant. I represent
4 Holy Comforter. If Mary could tell me 1 through 43, is that
5 Holy Comforter, or is that Pierce's church, Holy Cross?

6 MS. KOSTEL: 1 through 51 is Holy Comforter.

7 THE COURT: Okay.

8 MS. KOSTEL: And 1 through 43 is Holy Cross.

9 THE COURT: Got it. Holy Cross. Okay. So it'll be
10 DHCP is 1 through 43.

11 MS. KOSTEL: HCP will be Holy Comforter.

12 THE COURT: Yes. DHCP will be Holy Cross.

13 MS. KOSTEL: Holy Cross.

14 THE COURT: You're Holy Cross?

15 MR. CAMPBELL: Your Honor, we used HCS. I'm just trying
16 to --

17 THE COURT: You're HCS?

18 MR. CAMPBELL: Holy Cross, Stateburg. We used that in
19 our exhibits. If we can just use --

20 THE COURT: All right. Let's just use HCS for my
21 purposes.

22 MS. KOSTEL: Yes.

23 THE COURT: Yes.

24 MS. KOSTEL: And I'll change this so it says HCS.

25 THE COURT: Great, great, great.

1 MS. KOSTEL: But I may not be able to change it before I
2 circulate it.

3 THE COURT: Got it.

4 MS. KOSTEL: Okay.

5 THE COURT: You won't. But Pierce has got it. You got
6 it, right, Pierce?

7 MR. CAMPBELL: Yes, Your Honor.

8 THE COURT: All right. Next.

9 MR. TISDALE: Your Honor, we will call Eleanor Koets.

10 ELEANOR BROWNLEE KOETS,

11 being first duly sworn, testified as follows:

12 THE COURT: If you would state your name and spell your
13 last name for our record.

14 THE WITNESS: Eleanor Brownlee Koets -- I married a
15 Dutchman -- rhymes with boots, K-O-E-T-S.

16 THE COURT: Great. Thank you.

17 Your witness, Mr. Tisdale.

18 MR. TISDALE: Thank you very much, Judge.

19 DIRECT EXAMINATION BY MR. TISDALE:

20 Q. Ms. Koets, where do you live?

21 A. I live in Summerville, South Carolina.

22 Q. How long have you been a resident of Summerville?

23 A. Since 1975.

24 Q. And you --

25 A. 40 years.

1 Q. 40 years. And you mentioned just now that you are
2 married?

3 A. Yes.

4 Q. To a Dutchman?

5 A. I am.

6 Q. Okay.

7 A. A good one.

8 Q. Good. Ms. Koets, are you engaged in any occupation, or
9 have been, in Summerville; or what is your status?

10 A. Yes. I'm a photographer. I have a photography studio
11 in Summerville.

12 Q. What sort of photography do you do?

13 A. I do portrait photography, and I used to do wedding
14 photography.

15 Q. And --

16 A. And I have been doing that since '77.

17 Q. And what is your husband's occupation, if any?

18 A. He's an optometrist.

19 Q. Okay. Ms. Koets, what has been your and your husband's
20 religious affiliation since 1975 in Summerville?

21 A. We joined the Episcopal Church in -- at St. George's
22 Episcopal Church at that point in 1981, '82.

23 Q. Okay. And after that?

24 A. And then we transferred to St. Paul's Episcopal Church
25 maybe '85, '86. My husband was senior warden and junior

1 warden of St. George's at that point.

2 Q. All right. But you went to St. Paul's church, a party
3 to this lawsuit, St. Paul's?

4 A. That's right.

5 Q. In around 1985 or '86?

6 A. That's right.

7 Q. All right. And were you all communicants in St. Paul's
8 in more recent years up until, say, the fall of 2012?

9 A. That's right.

10 Q. And what I would like you to do and, of course,
11 everybody at this point I think knows the issues that we're
12 here about, and that is, why some people are no longer being
13 able to go to what were Episcopal Churches that aren't now.
14 So what I would like to ask you to do is to describe for the
15 Court's benefit, please, your experience in what happened at
16 St. Paul's, and after you determined that, as matters were
17 being determined, as to whether or not it would remain an
18 Episcopal Church.

19 A. All right. Sure.

20 Q. Thank you.

21 A. I was on the vestry from 1998, 1999 and 2000 at
22 St. Paul's. After that point, I was aware that there was a
23 gradual change in a number of ways. The prayers for the
24 presiding bishop were deleted from the prayers of the people
25 on Sunday mornings.

1 Q. This was 1999 or so?

2 A. No. This was sometime after 2000.

3 Q. After 2000?

4 A. Yes.

5 Q. Okay.

6 A. Signage was changed to delete the word Episcopal and off
7 of other written documents and some other shifts. In I think
8 it was December 2011, there was a special called meeting of
9 the parish. I think it was for the purpose -- I can't even
10 remember the purpose, but I'll tell you what happened at the
11 meeting.

12 Q. Please.

13 A. The -- all three of the clergy spoke to the fact that
14 they could no longer conform with the doctrine, discipline
15 and worship of the Episcopal Church.

16 Q. Just for the record, tell us who those three clergy
17 were.

18 A. Okay. Mike Lumpkin.

19 Q. Is he the rector of the parish, or was he?

20 A. Yes.

21 Q. Michael Lumpkin.

22 A. John Scott, who's a retired clergy, but he's with the
23 church, and Tyler Prescott.

24 MR. SHELBOURNE: Your Honor, Brandt Shelbourne on behalf
25 of St. Paul's. I'm going to object to hearsay testimony by

1 anyone not part of the leadership of the church. And I think
2 it only goes to senior rector. The other assistant rectors
3 are not. Only the rector would be appropriate, Your Honor, I
4 think.

5 MR. TISDALE: Your Honor, with all due respect, I think
6 the three clergy who were on the staff of the church and made
7 presentations on behalf of the church at the meeting would
8 certainly be relevant testimony. It's a party to this
9 lawsuit.

10 THE COURT: Mr. Tisdale, let's sort of divide it.
11 There's no objection with regards to Mr. Lumpkin.

12 MR. TISDALE: Yes.

13 THE COURT: We'll move him aside for the moment.

14 MR. TISDALE: Okay.

15 THE COURT: And then the question, it would be Mr. Scott
16 and Mr. Prescott, as I understand it, is an objection. What
17 I would just ask you to do as you go into things that they
18 may have said --

19 MR. TISDALE: Yes.

20 THE COURT: -- lay some foundation for me.

21 MR. TISDALE: I will.

22 THE COURT: Where were they, how were they dressed, what
23 were they doing, whatever. You know what I mean?

24 MR. TISDALE: I do.

25 THE COURT: Okay.

1 MR. TISDALE: And I will endeavor to do that, Your
2 Honor.

3 THE COURT: In other words, give me some foundation.

4 MR. TISDALE: All right. Thank you very much.

5 Q. Ms. Koets, let's talk about the people who you testified
6 were making these presentations.

7 A. They were listed on the bulletin as either associate or
8 assistant rectors.

9 Q. All right. And at this meeting on that occasion, did
10 Father Scott speak?

11 A. Yes, he did. And so did Tyler Prescott.

12 Q. All right. Hold on just a minute now. The judge wants
13 me to find out a little more about it.

14 A. Okay.

15 Q. Did he speak?

16 A. Yes.

17 Q. Was he dressed as a priest or a clergyman?

18 A. Yes.

19 Q. And you say his name was on the bulletin of the parish
20 as an associate priest?

21 A. It's either associate or assistant priest --

22 Q. Assistant.

23 A. Rector.

24 Q. And did he appear at this meeting with the rector for
25 the purpose of --

1 A. Yes.

2 Q. -- participating in the presentation?

3 A. Yes.

4 Q. All right. And you say the other priest there was named
5 Tyler Prescott?

6 A. Right.

7 Q. And without asking each of those questions again, does
8 the same thing apply to him that you said about Father Scott?

9 A. Sure.

10 MR. TISDALE: And so, Your Honor, I would think that
11 they would be representatives of the parish for these
12 purposes.

13 THE COURT: Yes, sir.

14 MR. SHELBOURNE: Your Honor, they're not corporate
15 officers, and we would object to that.

16 THE COURT: Well, I understand. I would allow the
17 testimony because it certainly does appear to be sufficient
18 showing of apparent agency on this basis. They're on the
19 bulletin, and Ms. Koets has testified that they were dressed
20 as clergy folk. They were on the bulletin as being clergy
21 for that day. They were notified that they would be
22 speaking, I gather, on behalf of the church.

23 I don't think there's a lot of leap when they're dressed
24 as clergy folk, and they're on the bulletin, and they're in
25 the special meeting. Minimally, there would be certainly the

1 existence of apparent authority.

2 MR. TISDALE: And I can also ask, just to bolster that a
3 little bit, did both of these gentlemen, other than the
4 rector, lead worship services at the church on a regular
5 basis.

6 THE WITNESS: Sure.

7 MR. TISDALE: And conduct other programs sponsored by
8 the parish as a part of their duties on the staff.

9 THE WITNESS: Yes. And Mike Lumpkin testified that they
10 were in unanimous agreement as the clergy of St. Paul's.

11 MR. TISDALE: May I proceed, Your Honor?

12 THE COURT: Yes.

13 MR. TISDALE: Thank you.

14 Q. Now, Ms. Koets, you were about to tell us what was said
15 by the clergy at a meeting. But first, when did this meeting
16 occur?

17 A. December 2011, I believe.

18 Q. All right. And as the Court has said, would you tell us
19 what each of these gentlemen presented?

20 A. I can't tell you exact quotes from them --

21 Q. No.

22 A. -- but I think the content of it was -- and I think the
23 senior warden that testified the other day spoke to this to
24 confirm it -- that there was a communication that they could
25 not -- could no longer conform to the doctrine, discipline

1 and worship of the Episcopal Church. The rector spoke that
2 there had been a vestry resolution unanimously agreed upon by
3 the vestry and by the clergy that they stood in alignment
4 with Bishop Lawrence wherever it went forward with him.

5 One of the vestry people, not one of the clergy, spoke
6 to some pretty virulent attacks on the presiding bishop, said
7 they didn't think she had Jesus as the center of her life.
8 That was the general tone of it. Also Jim Lewis who was
9 canon -- excuse me, go ahead.

10 Q. No, go ahead. I wanted to identify him, which you were
11 getting ready to do. Who is Jim Lewis?

12 A. Jim Lewis is the canon to the ordinary, or of the
13 ordinary, to the ordinary, who represents the bishop.

14 Q. All right.

15 A. And he was in attendance at the meeting.

16 Q. Let me ask you this: Was he at that meeting?

17 A. He was in attendance and he spoke.

18 Q. All right. And did he speak?

19 A. He spoke.

20 Q. Can you tell us what Canon Lewis, as I think you were
21 getting ready to do before I interrupted you, contributed to
22 the presentation at the meeting?

23 A. Right. He encouraged us, at the parish of St. Paul's,
24 to review, to look at our bylaws, saying that just as the
25 language of accession to the Episcopal Church was problematic

1 to the diocese, that it might be problematic to our parish.

2 Q. Did he explain how or why?

3 A. I don't remember the details of that, but he did speak
4 to the fact that it was the language of accession to the
5 Episcopal Church.

6 Q. Did he --

7 A. And I objected, stood up and objected, and then as an
8 Episcopalian in the Episcopal Church in the Episcopal
9 Diocese, expressed support for the Episcopal Church.

10 Q. And how was your objection received?

11 A. It was heard.

12 Q. All right. Well, tell us, did anything else of any
13 significance to you on this issue occur at that meeting?

14 A. I did ask if a quitclaim had been filed, I mean, had
15 been received and filed, and Mr. Lumpkin did confirm that it
16 had been file -- received and was in the process of being
17 filed.

18 Q. Okay. Anything else that you can recall --

19 A. That's all I can recall.

20 Q. -- of significance?

21 A. But there was the announcement that there would be
22 consideration of changes to the bylaws and that we would
23 receive more information on that at the usual annual parish
24 meeting the next month in January of 2012.

25 Q. Okay. Would anything happen before the annual parish

1 meeting at the next month concerning this issue that affected
2 you or involved you?

3 A. We received notice of it, of the meetings, in the usual
4 forms. We did not receive written copies of the changes to
5 the bylaws. It was said that they could only be accessed by
6 going to look at them on the bulletin board.

7 Q. At the church?

8 A. At the church.

9 Q. Did you attend the annual meeting?

10 A. Yes.

11 Q. And what concerning this issue happened at that annual
12 parish meeting? And first of all, roughly when was it?

13 A. January 20-something, '12.

14 Q. 2012?

15 A. 2012, right.

16 Q. Okay.

17 A. The vestry had voted on changes to the bylaws in which
18 the language of accession to the Episcopal Church and any
19 mention of the Episcopal Church was deleted. And it was
20 called to a vote by the parish, and I asked for a written
21 vote, and that was declined; so it was by a voice vote, and
22 it passed by majority.

23 Q. All right. Anything else at that meeting or any
24 presentations made concerning the --

25 A. No, sir.

1 Q. -- bishop?

2 A. Not that I remember.

3 Q. What next occurred, Ms. Koets?

4 A. Was it October or November of 2012?

5 Q. Yes.

6 A. My husband and I were ushering that day and --

7 Q. At a service?

8 A. Yes.

9 Q. What service? Which one was it? Do you remember?

10 A. Happened to be the 11:00 service.

11 Q. All right.

12 A. Which was the only other one in the church besides the

13 8:00 a.m. one.

14 Q. And was this in either October or November 2012?

15 A. Yes.

16 Q. Okay.

17 A. Apparently the clergy, the three of them were sharing

18 the duties of making this announcement because there were

19 several services. I believe John Scott and Tyler Prescott

20 both spoke to this.

21 Q. During the service?

22 A. During the service. Mr. Lumpkin was at the other 11:00

23 service in the other building and announced that the clergy

24 were leaving the Episcopal Church and that the bishop and the

25 standing committee were leaving the Episcopal Church and that

1 they were in alignment with them and in support of them. And
2 even though it's like a death, you know it's coming --

3 Q. Right.

4 A. -- it was stunning as we walked up to usher that last
5 time as Episcopalians in that place.

6 Q. Ms. Koets, was anything said about the status of the
7 property, the buildings and so forth?

8 A. Not that I remember. A few weeks before that
9 Mr. Lumpkin had mentioned that he had grave concerns about
10 remaining in the Episcopal Church. And then after the
11 service, I asked him if he was still an Episcopal priest, and
12 he said "yes." And he said, "But regardless, I am staying
13 with St. Paul's."

14 MR. SHELBOURNE: Your Honor, I object. I move to
15 strike. The question was about property. That has nothing
16 to do with property. Move to strike that answer as
17 nonresponsive.

18 THE COURT: As nonresponsive? Okay.

19 MR. TISDALE: I will just ask her that question.

20 THE COURT: Okay.

21 Q. Ms. Koets, I asked about the property, whether anything
22 was said. And you, in answer to that, I think you said you
23 had a conversation with the rector?

24 A. Right. He didn't say property, but he said he planned
25 on staying at St. Paul's.

1 Q. He planned on staying at St. Paul's?

2 A. Right.

3 Q. All right. Now, when did you last go on a regular basis
4 or at all to St. Paul's church that you just described where
5 you were ushering --

6 A. That Sunday. I've been back for some funerals, but that
7 Sunday was my last regular worship service.

8 Q. Do you know whether anyone or you or anyone working with
9 you attempted to continue to use any of the property at
10 St. Paul's for worship services?

11 MS. GOLDING: Your Honor, I think that's an improper
12 question. She can only testify with respect to herself. She
13 can't testify --

14 MR. TISDALE: I'll limit it to that.

15 MS. GOLDING: Thank you.

16 MR. TISDALE: I just thought she might be walking along
17 with some other people and, you know --

18 THE COURT: Probably was, but we'll just talk about
19 Ms. Koets.

20 MR. TISDALE: I understand. If we have to, we'll talk
21 about it later.

22 THE COURT: Okay.

23 Q. Ms. Koets, I was asking you whether you encountered any
24 effort to or were involved in any effort to use any of the
25 property at St. Paul's for a worshiping place for people who

1 wished to remain loyal to the Episcopal Church.

2 A. Yes.

3 Q. Will you explain that to the Judge.

4 A. Sure.

5 After that service, in grief and bewilderment, we met on
6 my back porch, a number of us who had just heard that news as
7 well.

8 Q. Now, when was this?

9 A. The afternoon. I guess it might have been in November.

10 I'm not sure --

11 Q. 2012?

12 A. Of 2012. What do we do? Where do we worship? Where do
13 we go from here? What do we do --

14 Q. Now, they --

15 MR. SHELBOURNE: I'm going to object to hearsay about
16 what the other people did.

17 THE COURT: I think Mr. Tisdale's going to do that.

18 Q. The Judge is going to tell us that you can't say what
19 anybody else at that meeting said.

20 A. Okay.

21 Q. But what I'm asking you to do is describe what happened
22 in that meeting --

23 A. Sure.

24 Q. -- what your involvement was and how the issues were
25 resolved.

1 A. Sure.

2 I was at that meeting with a number of other people who
3 also wanted to remain faithful Episcopalians.

4 Q. Okay.

5 A. We sent two people out of that gathering of fellow
6 Episcopalians to speak with the rector, Mr. Lumpkin --

7 Q. Okay.

8 A. -- to see if we might worship there in some space --

9 Q. All right.

10 A. -- as Episcopalians.

11 Q. All right. Now, as a result of that, were you able to
12 worship in some space as Episcopalians at St. Paul's?

13 A. No. He said that he was too busy with --

14 MS. GOLDING: Your Honor, she's already testified she
15 was not one of the persons that had this communication with
16 the rector.

17 MR. TISDALE: I think she can testify.

18 THE COURT: I'm actually not clear if she was. I know
19 there were two people that went, but I don't know if she's
20 one of the folks or not.

21 MR. TISDALE: I don't think she was.

22 THE COURT: Okay.

23 MR. TISDALE: But she learned that they weren't able to
24 worship there because --

25 THE WITNESS: We asked her to -- we asked them to.

1 THE COURT: Hold on. Hold on.

2 You can ask, "As a result of the conversation, have you
3 been worshipping there?"

4 MR. TISDALE: All right.

5 THE COURT: Okay.

6 Q. After that approach to Mr. Lumpkin was made, have the
7 loyal Episcopalians been allowed to worship at St. Paul's
8 Church?

9 A. No.

10 Q. All right. Now, let's talk for a minute about where you
11 have been worshipping.

12 A. During advent, which was right -- the season, holy
13 season.

14 Q. And that's roughly four weeks before Christmas, right?

15 A. Right.

16 Q. Okay.

17 A. I didn't know where to worship, and I attended a very
18 small Episcopal Church close by.

19 Q. What's the name of it?

20 A. Church of the Epiphany, I think.

21 Q. I think so.

22 A. For a couple of Sundays.

23 MS. GOLDING: Your Honor, may I make an objection. I
24 see no relevancy in any of this testimony as to any of the
25 claims in this lawsuit.

1 THE COURT: I understand where you're coming from, but I
2 don't know where we're going.

3 MR. TISDALE: Your Honor, we've had this with other
4 witnesses before. And one of the big issues in the lawsuit
5 is the manner of departure from the church and how these
6 people were treated. And all she's doing is describing it
7 and what they had to do to get reorganized. And I think it's
8 completely relevant. The parishes and the dioceses and
9 everything else, others have testified to the same thing.

10 THE COURT: Yes, sir, Mr. Shelbourne?

11 MR. SHELBOURNE: Your Honor, how Ms. Koets feels she was
12 treated is not part of this lawsuit; it's not relevant to
13 this case.

14 MR. TISDALE: I'm just asking her what happened.

15 MR. SHELBOURNE: Well, that's how she -- Mr. Tisdale I
16 thought said, "Look, this is how they felt they were treated
17 and how they were treated after leaving." It's not part of
18 this lawsuit; it's not relevant, and I would object on the
19 grounds of relevancy to that.

20 MR. TISDALE: We can also ask her about how they
21 reorganized themselves as Episcopalians. That's all I'm
22 trying to establish. Part of the Episcopal Church in South
23 Carolina, one of the parties.

24 THE COURT: I understand that. I understand where
25 you're coming from with regards to that. What about the

1 issue of, for informational purposes for the Court, that they
2 were reorganized as an unincorporated association. That
3 might be -- that might have some assistance. I don't know
4 why, but --

5 MR. RUNYAN: If that's helpful to the Court.

6 THE COURT: It might be.

7 MR. RUNYAN: I think the concerns expressed by a number
8 of these witnesses about how they felt and their emotional
9 state, I really don't think that's relevant, but I --

10 THE COURT: I would think that whenever there's a split
11 in any religious organization that there's tremendous and
12 terrible angst and upset. I think that's a part of it, and I
13 certainly understand that. And so there's a tendency to
14 certainly want to let people testify with regards to that.

15 Unfortunately, for the issues that I have to deal with,
16 while I understand that completely, I think that the
17 relevance on these issues, that in and of itself, is probably
18 not relevant; however, having said that, I am interested,
19 Mr. Tisdale, in you continuing to pursue this line of
20 questioning, because I am interested and because you're now
21 an unincorporated association. I don't know how that
22 happened, and I --

23 MR. TISDALE: The Episcopal Church in South Carolina.

24 THE COURT: Yes, sir. And I would like to know that.

25 MR. TISDALE: All right.

1 THE COURT: Are you with me? So keep going.

2 MR. TISDALE: Well, let me get her experience, then, in
3 her parish in Summerville and what they did and what they are
4 a part of.

5 THE COURT: Well, maybe begin by asking your part of
6 that and, you know, tell me how that happened, because you're
7 sort of -- people are everywhere.

8 MR. TISDALE: Well, actually, I think you're going to be
9 a little bit surprised in this particular case.

10 THE COURT: Okay.

11 MR. TISDALE: But that's part of it too.

12 THE COURT: Okay.

13 Q. Ms. Koets, where do you worship now?

14 A. We worship in Wesley Methodist Church, United Methodist
15 Church, down Pressley Avenue off of West Fifth South. It's
16 an African-American population that's graciously accepted us
17 as -- offered us hospitality worshipping there after their
18 services are done.

19 Q. Ms. Koets, does the organization that you now worship
20 with have a name?

21 A. Yes. The Episcopal Church of the Good Shepherd.

22 Q. And that worships at the United Methodist --

23 A. At Wesley United Methodist, yes.

24 Q. -- Methodist Church. You're using space that they are
25 letting you occupy?

1 A. Mm-hmm. We're renting space.

2 Q. Renting space. All right.

3 And is the Church of the Good Shepherd that you
4 belong -- are you a communicant of the Church of the Good
5 Shepherd?

6 A. Yes. I transferred my membership.

7 Q. And is it a mission --

8 A. Yes.

9 Q. -- church of the Episcopal Church in South Carolina?

10 A. Yes. It was just recognized as that at the latest
11 convention.

12 Q. All right. Latest annual convention of the Diocese of
13 the Episcopal Church in South Carolina?

14 THE COURT: In the Episcopal Church, right?

15 MR. TISDALE: Episcopal Church in South Carolina.

16 THE COURT: In.

17 MR. TISDALE: Right. An unincorporated association.
18 The Episcopal Church in South Carolina.

19 Q. And that's what you -- your church is in union with the
20 convention of that body?

21 A. That's correct.

22 Q. All right. Now, just for the record here, is the Church
23 of the Good Shepherd incorporated?

24 A. We have articles. I think that's it.

25 Q. Of incorporation?

1 A. I think that's it.

2 Q. Okay.

3 A. I'm not on the vestry, but I think that's what it's
4 called.

5 Q. Sounds like you weren't involved in getting the
6 corporate charter and so forth, were you?

7 A. No, hm-mm.

8 Q. Who did that for you?

9 A. I think our senior warden did, I believe.

10 Q. Who's that?

11 A. Ginger Wilder, Virginia Wilder.

12 Q. Ms. Ginger Wilder? Okay.

13 So roughly, without the necessity of being exact, how
14 many members does the Church of the Good Shepherd --

15 A. We have about 100 on the rolls. Attendance varies.

16 Q. And do you have a regular priest?

17 A. We have an appointed priest in charge, the
18 Reverend Al Votaw. And then we have -- had supply clergy all
19 throughout.

20 Q. All throughout?

21 A. More supply than priest in charge until the last year.

22 Q. Have you had -- have you or Church of the Good Shepherd
23 had any relationship with St. Paul's church in Summerville
24 since you left in the fall of 2012?

25 A. No official --

1 Q. No official?

2 A. -- connection.

3 Q. Just know people there, I presume.

4 Now, the other day in Court, when a representative of
5 St. Paul's was testifying -- I've forgotten who that person
6 was. Do you remember?

7 A. Senior warden currently.

8 Q. Do you --

9 A. Currently the senior warden.

10 Q. Do you know that person's name?

11 A. Bob Armstrong, maybe.

12 Q. All right.

13 A. Is that his name?

14 Q. Whatever. I just can't remember. There's been so many
15 of these witnesses for parishes.

16 But let me ask you this: One of the issues that has
17 come up is whether or not, like St. Paul's who still call
18 themselves an Episcopal Church or not an Episcopal Church, is
19 there any signage out there that identifies -- and I asked
20 Mr. Armstrong, if that's his name, was there any signage
21 identifying it as an Episcopal Church. And were you in
22 Court?

23 A. Yes.

24 Q. Do you remember what he said about that?

25 A. He said "no." He must have missed this one.

1 Q. All right. Now, why do you say he missed it?

2 A. It's on the front post of the church.

3 Q. Main church?

4 A. Of the main church, and it was on the front page of the
5 Friday paper just before that.

6 Q. All right. Last week --

7 A. I'd be glad to furnish copies of that.

8 Q. Do you want to show that to the Judge?

9 MR. TISDALE: We'll go ahead and mark it. What's the
10 problem?

11 MR. SHELBOURNE: Could I take a look at it before it's
12 published?

13 THE WITNESS: Here are copies. You probably have one at
14 home too.

15 (Defendant's Exhibit 13 marked for identification.)

16 MR. SHELBOURNE: Thank you, Your Honor. No objection.

17 MR. TISDALE: They don't have any objection.

18 (Defendant's Exhibit 13 admitted into evidence.)

19 THE COURT: And while we're sort of paused, I know my
20 court reporter's going to ask you, it was Reverend Al?

21 MR. TISDALE: I've got it down.

22 THE WITNESS: V-O-T-A-W.

23 MR. TISDALE: V-O-T-A-W.

24 THE WITNESS: The Reverend Alastair, A-L-A-S-T-A-I-R, I
25 believe.

1 Q. Now, just for the record, that newspaper that's just
2 been put into evidence, I think, what does that sign say on
3 the front of the paper? Front page, isn't it?

4 A. Front page of the Summerville Journal Scene, "St. Paul's
5 Episcopal Church, founded 1829. I was glad when they said
6 unto me let us go into the house of the Lord, Psalm 122:1."

7 MR. TISDALE: All right. Ms. Koets, thank you very much
8 for your testimony. Stay there, though. Somebody else might
9 have some questions.

10 THE COURT: National church first.

11 MS. KOSTEL: Nothing, Your Honor. Thank you.

12 THE COURT: All right. Your turn.

13 CROSS-EXAMINATION BY MR. SHELBOURNE:

14 Q. Ms. Koets, I know you as Eleanor. Is it all right if I
15 call you Eleanor?

16 A. It sure is, Brandt.

17 Q. Thank you.

18 Ms. Koets, you were a member, you said, of St. George's
19 in 1981?

20 A. I think that's when I joined the Episcopal Church
21 through St. George's.

22 Q. And then you moved to St. Paul's in '85-'86,
23 approximately?

24 A. Around then, yes.

25 Q. And at that time, do you know what bylaws were in

1 effect?

2 A. I have no idea.

3 Q. Would you be surprised to learn that the bylaws in
4 effect at that time were 1941 bylaws?

5 A. I have no knowledge of that.

6 Q. Would you be surprised to know that they had no
7 reference in them at all to the national church?

8 A. Have no knowledge of that.

9 Q. Would you be surprised to learn that, though?

10 A. I don't know. I have no idea what those bylaws said.

11 Q. Do you know when the bylaws were changed to include a
12 reference to the national church?

13 A. I don't. I'm aware of the bylaws that were changed in
14 2012.

15 Q. And those bylaws were changed at an annual meeting,
16 correct?

17 A. Yes.

18 Q. And it was properly noticed?

19 A. Yes.

20 Q. Okay. There was a vote?

21 A. Yes.

22 Q. According to the bylaws?

23 A. Yes.

24 Q. And it was properly taken?

25 A. Sure.

1 Q. And the majority voted in favor of the changes?

2 A. That's correct.

3 Q. And as far as you're concerned, that was a legal vote.

4 A. It was a legal vote.

5 Q. All right. And you objected. I mean, you voted against
6 it, correct?

7 A. That's right.

8 Q. And there were a few other people who voted against it?

9 A. Well, there were at least ten former vestry members.

10 There were three former junior and senior wardens. There
11 were a number of people.

12 Q. About 13 or 14 people, maybe?

13 A. Well, no. There were a lot more than that. It just --
14 it included that.

15 Q. But there's no question that the vote passed?

16 A. It passed by a majority.

17 Q. Okay. Thank you.

18 A. Sorry.

19 Q. And in your opinion, it was a legal vote?

20 A. Yes, it was.

21 Q. And all that did was remove the references to the
22 national church from the bylaws?

23 A. If you say that's all.

24 Q. Well, did anything else --

25 A. That's pretty significant, yes.

1 Q. Did anything else happen?

2 A. That was it. That was pretty major.

3 Q. And that was Article 2 and Article 7, correct?

4 A. That's correct.

5 Q. In October, nine months later, you were still at the
6 church.

7 A. Say that again?

8 Q. October 2012, you were still at the church?

9 A. Yes.

10 Q. Okay. So you didn't leave the church because of the
11 vote?

12 A. I was concerned, but it was still an Episcopal Church at
13 that point.

14 Q. Well, you testified in October that what happened in
15 October was that the priests basically said they weren't
16 Episcopal priests.

17 A. I think it was October or November. It was probably
18 November because it was closer to advent.

19 Q. Okay.

20 A. They didn't announce that until the last Sunday I
21 attended.

22 MR. SHELBOURNE: Nothing else --

23 THE WITNESS: That was the reason why I stopped
24 attending the non-Episcopal services.

25 MR. SHELBOURNE: Beg the Court's indulgence.

1 THE COURT: All right.

2 MR. SHELBOURNE: Nothing else, Your Honor. Thank you.

3 THE COURT: Okay. All right. Any other?

4 MR. RUNYAN: No, Your Honor.

5 THE COURT: Very well. Any redirect?

6 MR. TISDALE: None from me, Your Honor.

7 THE COURT: You may come down. Thank you.

8 MR. TISDALE: Your Honor, let me check and see who my
9 next witness would be.

10 THE COURT: Sure. Good time to take our afternoon
11 break, you think?

12 (Recess held.)

13 FRANCES LUCILLE ELMORE,

14 being first duly sworn, testified as follows:

15 THE COURT: And if you could state your full name for
16 our record.

17 THE WITNESS: Frances Lucille Elmore. Last name is
18 E-L-M-O-R-E.

19 THE COURT: All right. Your witness.

20 DIRECT EXAMINATION BY MR. TISDALE:

21 Q. Ms. Elmore, I think I did the right thing by calling you
22 Doctor a while ago.

23 A. Yes.

24 Q. Do you have a doctorate degree?

25 A. Yes, I do.

1 Q. And what is that?

2 A. It's from the University of South Carolina in education.

3 Q. And what is the degree?

4 A. An Ed.D.

5 Q. Okay. Now, where do you live, Ms. Elmore?

6 A. I live in Florence, South Carolina.

7 Q. How long have you been a resident of Florence?

8 A. All my life.

9 Q. Okay. Now, in Florence, have you been, for a period of
10 time at least, if not all your life, associated with a
11 religious organization?

12 A. Yes. My family joined St. John's Episcopal Church when
13 I was 7; so I was a member of St. John's for 63 years.

14 Q. Okay. And how long -- when did that -- when did you
15 cease being a communicant at St. John's Church?

16 A. I believe it was in October of 2012. For convenience
17 sake, I often went to the 8:00 service, although I did attend
18 the 10:30 service from time to time. But that morning I was
19 going to the 8:00 service, and I noticed the rector out front
20 in front of the church. And our rector is Ken Weldon.

21 Q. Okay.

22 A. And he was out there talking with some parishioners, and
23 one was visibly upset. That was a friend of mine. She was
24 supposed to lay read that morning. And as I walked up, he
25 said, "We are no longer in the Episcopal Church, and you may

1 not feel comfortable worshipping here anymore."

2 So I went with my friend to try to console her, and we
3 ultimately did not go back. I have been back on occasion for
4 funerals.

5 Q. Okay. Did you see the storm clouds approaching on this
6 particular issue before this event that you just described?

7 A. Yes, I did. Things began to change, I believe, in 2003
8 when Bishop Robinson was elected and --

9 Q. That's up in New Hampshire?

10 A. Yes.

11 Q. Okay.

12 A. Then, ultimately, when the presiding bishop was a
13 female, that sort of did not go well. And I knew from the
14 time that Father Weldon came to St. John's that he ultimately
15 would leave the Episcopal Church.

16 Q. You knew that?

17 A. Yes.

18 Q. How did you know that?

19 A. I had conversations with him on many occasions, and he
20 made that pretty clear.

21 Q. What, for example, without going into a lot of detail on
22 every occasion, what sort of things did he say from which you
23 gathered that conclusion?

24 A. Well, I was concerned about the direction that the
25 church, the diocese was heading, and I voiced that to him.

1 And he made it clear to me that if the diocese left the
2 Episcopal Church, he would go with Mark Lawrence.

3 Q. All right. Ms. Elmore, prior to the incident that you
4 described when you were getting ready to lay read that
5 morning -- now, were you getting ready to lay read?

6 A. No. My friend was.

7 Q. Your friend was.

8 When you were told that you might not be comfortable
9 worshipping there anymore by the rector, had there been any
10 meetings of the congregation of which you were aware to deal
11 with this particular issue?

12 A. I believe that when the bishop came on a couple of
13 occasions for confirmation in the past that they did discuss
14 some things. I was not present at all those meetings.

15 Q. Okay. Had you been told before the morning of the
16 incident that you described that this was going to happen
17 when it did?

18 A. No, I was not aware.

19 MR. ORR: Objection -- she didn't hear. That's okay.

20 MR. TISDALE: She said she wasn't aware.

21 Q. All right.

22 A. I read it in the paper.

23 Q. Read it in the paper.

24 A. Yes.

25 Q. After this incident, you read it in the paper, or

1 before?

2 A. I believe there was something in the paper in reference
3 to the bishop having been --

4 Q. Inhibited?

5 A. Yes. Mm-hmm.

6 Q. All right. And was that the Florence Morning News?

7 A. Yes. It would have to have been.

8 Q. All right. Ms. Elmore, what had you done -- are you
9 still an Episcopalian?

10 A. Yes, I am.

11 Q. In fact, do you have any role in the Episcopal Church in
12 South Carolina, a leadership role?

13 A. Yes. I'm currently on the steering committee --
14 standing committee, excuse me.

15 Q. Standing committee of the diocese called the Episcopal
16 Church in South Carolina?

17 A. Right.

18 Q. Now that this occurred, where do you worship?

19 A. At St. Catherine's Episcopal Church in Florence.

20 Q. How long has that church been in existence?

21 A. Well, we like to say 2012, when we first started meeting
22 in a house, but officially, I believe we were accepted as a
23 mission at this past convention.

24 Q. And that would have been maybe in February?

25 A. Yes. Correct.

1 Q. And is your church congregation, St. Catherine's, in
2 union with the convention of the Episcopal Church in South
3 Carolina?

4 A. Very much so.

5 MR. TISDALE: Okay. Your Honor, I don't have any
6 further questions.

7 THE COURT: Thank you.

8 MR. TISDALE: I live by my word.

9 MR. BEERS: No questions.

10 THE COURT: Cross-examination. Yes, sir.

11 MR. ORR: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION BY MR. ORR:

14 Q. Ms. Elmore, the meeting at St. John's, the
15 congregational meeting at which a vote was taken concerning
16 the diocese's withdrawal from its affiliation with TEC was
17 December the 2nd, 2012; is that correct?

18 A. Yes, that's correct.

19 Q. Okay. And was it later that day that you participated
20 in a meeting at Jane Hart Lewis's house?

21 A. We had conversation, yes, at Jane Hart Lewis's house.

22 Q. Okay. That was a meeting of a steering committee of
23 Episcopalians of the Pee Dee, or whatever, that wanted to
24 remain affiliated with the national church?

25 A. It was a group of those who wanted to remain, yes. It

1 encompassed more than just my church.

2 Q. Okay. Also some members of All Saints?

3 A. All Saints, Christ Church.

4 Q. St. Bartholomew's?

5 A. St. Bartholomew's, yes.

6 Q. And ultimately, you all formed St. Catherine's?

7 A. Yes, we did.

8 Q. And there were -- were there any times that you had any
9 meetings at St. John's or on the property of St. John's?

10 A. No, we did not.

11 Q. Were you refused use of any of the property?

12 A. No. We did not ask.

13 Q. Okay. You didn't ask. So you just went ahead and
14 started your efforts to form St. Catherine's?

15 A. Well, we started our efforts to find another way to
16 worship, yes.

17 MR. ORR: Okay. Thank you, ma'am. That's all I have.

18 THE COURT: Anyone else on behalf of plaintiffs?

19 Cross-examination?

20 MR. RUNYAN: No, Your Honor.

21 THE COURT: All right. Any redirect?

22 MR. TISDALE: None, Your Honor, from me.

23 THE COURT: Very well. Ma'am, thank you so much. You
24 may come down.

25 All right. This really is a good place for us to

1 conclude for the day. We'll start in the morning, but I need
2 to -- we've got about 15 minutes, and maybe you all can just
3 caucus just to make sure that those documents are getting
4 delivered. And those that need to meet, maybe if you all
5 could be here at 9:30 and meet and then we'll start at 10:00
6 tomorrow morning.

7 And did we decide what time we're going to -- Mr. Beers,
8 what time is your flight tomorrow?

9 MR. BEERS: Could we adjourn at 3:30?

10 THE COURT: Yes.

11 MR. BEERS: All right, then.

12 THE COURT: Does that suit everyone? I mean, I don't
13 want anyone to lose any witnesses because we would be doing
14 that. Nobody's going to lose any witnesses? Okay. Yes,
15 we'll certainly plan on that.

16 MR. BEERS: Thank you, Your Honor.

17 THE COURT: Absolutely.

18 MR. TISDALE: Excuse me, Your Honor. Go ahead.

19 THE COURT: You go ahead.

20 MR. TISDALE: I was just reminded that this right here
21 is the proffer, offer of proof for the witness earlier today
22 who was excluded. And they might have an objection to some
23 of it, but we would submit it. It includes his -- what was
24 given as his report. That's his report.

25 THE COURT: And if you wish, you may attach as

1 attachments those items that were connected to Ms. Lott's. I
2 don't know if that's in there or not. If you want to go
3 ahead and attach those items, I don't have a problem with
4 that.

5 MR. TISDALE: This is fine as it is, and it's marked as
6 Exhibits 14 and 15.

7 THE COURT: Okay. For identification purposes.

8 MR. TISDALE: We just -- as an exhibit. I mean --

9 THE COURT: I got you.

10 MR. TISDALE: You said we could do that.

11 THE COURT: You can, as a proffer. I just want to be
12 sure that I --

13 MR. TISDALE: It says "proffer" on it.

14 THE COURT: Perfect. Just as long as I can tell what's
15 what. That will be fine.

16 (Defendant's Exhibits 14-15 marked for identification.)

17 THE COURT: Now, I want to yield -- because of the
18 space, I want to yield to everyone. I don't want you all to
19 have to leave; so I'm going to be leaving. So you all can be
20 at ease, and then that way you've got your space to have a
21 conversation as you need to have about the documents.

22 I know security will be fine to give you all the time to
23 have that preliminary conversation about your documents, and
24 then you can figure out what you've got concerns about in the
25 morning.

1 MR. PHILLIPS: Can we ask for anticipated witnesses as
2 well?

3 THE COURT: Oh, yes.

4 (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 17th 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 29, 2014

16

17 /S/ Ruth L. Mott

18 Official Court Reporter

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