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VOLUME XI

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.,)

TRANSCRIPT OF RECORD

JULY 22, 2014
ST. GEORGE, SC

vs.

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

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

Ruth L. Mott, RPR, CRR
Official Court Reporter

1 I N D E X

2					
3	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
4	MARK DUFFY				
5	MR. BEERS	1921, 1962, 2023		2036, 2037	
6	MR. RUNYAN		1953, 2026		2036, 2037
7	MS. GOLDING		1957		
8	MR. HOLMES	2022, 2025			
9	THOMAS RICKENBACKER				
10	MR. TISDALE	2042			
11	MS. GOLDING		2064		
12	CERTIFICATE OF REPORTER	2135			

12 E X H I B I T S

13	NO.	DESCRIPTION	ID	EVD
14	DSC-68	JOURNAL - GENERAL CONVENTION 1789	2031	2036
15	D-22	RECORD OF THE DISCIPLINARY BOARD FOR BISHOPS	2019	
16	D-143	NATIONAL CHURCH CONSTITUTION AND CANONS 1823	1920	1926
17	D-203	NATIONAL CHURCH CONSTITUTION AND CANONS 2009	1920	1928
18	D-425	NATIONAL CHURCH CONSTITUTION AND CANONS 1789	1920	1929
19	D-431	THE BLUE BOOK (EXCERPT)	1920	
20	D-434	3/30/99 MEMORANDUM	1920	1977
21	D-435	5/28/99 LETTER WITH ATTACHMENT	1920	1978
22	D-436	4/4/01 LETTER	1920	1980
23	D-437	5/10/01 LETTER	1920	
24	D-442	FAX COVER SHEET AND 11/2/04 LETTER	1920	1983
25	D-446	EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF MARYLAND	1920	
26	D-447	EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF MASSACHUSETTS	1920	

1	NO.	DESCRIPTION	ID	EVD
2	D-448	EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF NEW HAMPSHIRE	1920	
3	D-449	EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF NEW JERSEY	1920	
4	D-450	EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF NEW YORK	1920	
5	D-451	EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF PENNSYLVANIA	1920	
6	D-452	EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF RHODE ISLAND	1920	
7	D-454	EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF VERMONT	1920	
8	D-455	EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF VIRGINIA	1920	
9	D-463	EXCERPT FROM THE JOURNAL OF THE GENERAL CONVENTION 1964	1920	
10	D-464	EXCERPT FROM THE JOURNAL OF GENERAL CONVENTION 2009	1920	
11	D-465	EXCERPT FROM THE JOURNAL OF THE GENERAL CONVENTION 2009	1920	
12	D-466	6/25/07 LETTER	1920	
13	D-477	EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF CONNECTICUT	1920	
14	D-478	EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF DELAWARE	1920	
15	D-479	EXCERPT FROM THE JOURNAL OF THE GENERAL CONVENTION 1964	1920	2019
16	D-503	EXCERPTS FROM THE JOURNAL OF THE GENERAL CONVENTION 1922	1920	2019
17	D-504	EXTRACTS FROM THE ANNUAL REPORTS OF THE EPISCOPAL CHURCH BOARD OF MISSIONS 1866-1919	1920	1962
18	D-505	EXTRACTS FROM THE ANNUAL REPORTS OF THE EPISCOPAL CHURCH NATIONAL COUNCIL 1920-1938	1920	1963
19	D-506	EXTRACTS FROM THE MINUTES OF THE EPISCOPAL CHURCH NATIONAL COUNCIL 1911-1965	1920	1963
20	D-507	EXTRACTS FROM THE AUDIT REPORTS OF THE ACIN OF THE EPISCOPAL CHURCH 1934-1956	1920	1964
21	D-508	EXTRACTS FROM THE MINUTES OF THE AMERICAN CHURCH MISSIONARY SOCIETY OF THE EPISCOPAL CHURCH 1867-1899	1920	1965
22	D-509	RECORDS OF LOANS FROM THE EPISCOPAL CHURCH BUILDING FUND 1880-1991	1920	1966
23				
24				
25				

1	NO.	DESCRIPTION	ID	EVD
2	D-510	RECORDS OF THE UNITED THANK OFFERING 1971-2012	1920	1967
3	D-511	MISCELLANEOUS RECORDS REFLECTING AID TO THE DIOCESE AND PARISHES	1920	1968
4	D-512	BOOK OF COMMON PRAYER 1979	1920	1969
5	D-RS-32	CONSECRATION DOCUMENTS	2115	
6	C-7	DEPOSITION TRANSCRIPT	2080	

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1 (Defendant's Exhibits 143-512 premarked for
2 identification.)

3 THE COURT: All right. So how was our document-do
4 yesterday? That bad? Come on, Mark.

5 MR. PHILLIPS: Mine was great. We got along fine.
6 We've got one or two to talk to you about, but that's it.

7 MS. KOSTEL: So I've circulated the last three lists.
8 I've not heard back about any authenticity objections.

9 THE COURT: Yay.

10 MS. KOSTEL: We have different groups of relevance
11 objections, and then with a couple of parishes there are some
12 other objections that are very specific to them that are not
13 relevance. I'd like to try to work that out with them during
14 the course of today.

15 THE COURT: Okay.

16 MS. KOSTEL: And I still have not done a final list for
17 each of them based on all of our conversations, and I won't
18 do a list until we go over the general relevance objections.
19 But at some point today, hopefully not right now, Your Honor
20 will hear argument on the general relevance objections.

21 THE COURT: Sounds good. Maybe we'll stop around 4:00
22 and do that.

23 MS. KOSTEL: Okay. All right. Are you ready to call
24 your next witness?

25 MR. TISDALE: I believe they have a witness they would

1 like to call, Your Honor.

2 THE COURT: Wonderful, Mr. Tisdale.

3 MR. TISDALE: Good morning.

4 THE COURT: Good morning.

5 MR. BEERS: Thank you, Your Honor.

6 THE COURT: Yes.

7 MR. BEERS: We're going to call Mark Duffy to the stand.

8 THE COURT: Okay.

9 MARK DUFFY,

10 being first duly sworn, testified as follows:

11 THE COURT: If you will state your full name for the
12 record please and spell your last name.

13 THE WITNESS: My name is Mark Duffy, D-U-F-F-Y.

14 THE COURT: Thank you so much. Your witness.

15 DIRECT EXAMINATION BY MR. BEERS:

16 Q. Mr. Duffy, where do you live?

17 A. I live in Austin, Texas.

18 Q. What do you do for a living?

19 A. I'm the canonical archivist and director of archives for
20 the Episcopal Church.

21 Q. Tell us what the archives of the Episcopal Church is --
22 or are?

23 A. The archives is the central repository for the records
24 of the national church and for national church bodies and for
25 those entities that report to and interact with the

1 national -- what's thought of as the general convention, and
2 Domestic and Foreign Missionary Society of the Protestant
3 Episcopal Church in the United States.

4 Q. And what entities, generally, report to the archives --
5 or report to the church whose documents end up in the
6 archives?

7 A. Right. All the bodies, and agencies, boards, committees
8 of general convention report to the church; the dioceses
9 report to the church; the -- and several of the official
10 bodies that operate sort of on the periphery of the general
11 convention.

12 Q. When were the archives first established?

13 A. The archives were first established in 1835. I believe
14 the first Protestant denomination to establish an archives
15 was when they created the office of conservator of the
16 general convention's records.

17 Q. And where are the archives?

18 A. The archives are right now located in two locations, two
19 cities, at least, Austin where we have a number of
20 facilities, and in New York City where our records management
21 program operates the more current -- oversees the current
22 materials, current records.

23 Q. And how do you get materials, archival materials from
24 the operation of the church in its -- either in its
25 headquarters or one of its satellite offices?

1 A. Well, there are a couple of different ways in which that
2 happens. The materials that are maintained by the corporate
3 offices come to us with records retention schedules. We run
4 the records management program, as I say, and so things are
5 designated as coming to the archives for perhaps a temporary
6 period of time or for permanently, for permanent retention.

7 In other cases, where we aren't located physically with
8 the offices, that is with some of these committees and
9 commissions or with the dioceses, we have to -- some of them
10 routinely send us materials, and sometimes we have to go
11 seeking them out and reminding folks to forward things to the
12 archives.

13 Q. How frequently, say, does the presiding bishop's office
14 turn over documents for the archives?

15 A. Regularly. I would say several times a year.

16 Q. And how long have you been the archivist?

17 A. I've been the archivist since June of 1992, so 22 years.

18 Q. And do you have any other duties for the church that are
19 related in any way to the archives or to documents?

20 A. Well, I have -- yes, I suppose we have one large duty in
21 support of the general convention, which is our main concern
22 in terms of the documentation.

23 We edit the constitution and canons for the church, and
24 we provide editorial assistance for the other major
25 publications that come out of the general convention office.

1 Q. Do you have any role in the publication of the journals
2 of the general convention?

3 A. Yes, a significant amount of help is given to that
4 office. Indeed, we partially oversee the staff that edits
5 that volume.

6 Q. All right. I think that's all the background I need.
7 I'd like to turn your attention to Exhibit 143.

8 Ms. Kostel?

9 MS. KOSTEL: Yes.

10 MR. RUNYAN: Your Honor, could we have a copy of that or
11 be told what it is?

12 MS. KOSTEL: It's on your list.

13 MR. RUNYAN: What is it?

14 MS. KOSTEL: 1823 constitution and canons.

15 MS. GOLDING: When you say "list," what list are you
16 referring to?

17 MS. KOSTEL: The exhibit list that we gave you with the
18 hard drive.

19 MR. BEERS: Your Honor, we have these on hard drive.
20 These are -- I don't mean to testify, but these are documents
21 that we are -- that are voluminous, and we are going to have
22 hard copies in the courtroom tomorrow.

23 THE COURT: Okay.

24 MS. GOLDING: Can you identify -- what, again, is
25 exhibit -- the list we have, Your Honor, doesn't have exhibit

1 numbers.

2 MS. KOSTEL: No, it's the -- I'm sorry, I wasn't clear.
3 It's the hard drive exhibit list. Andrew has it.

4 MR. BEERS: We'll give you a chance to look at it before
5 we ask any questions.

6 MS. KOSTEL: No. 143, Andrew, on that list.

7 Q. Mr. Duffy, do you see 143?

8 A. Yes.

9 Q. Have you ever seen that document before?

10 A. Yes.

11 THE COURT: Hold on one second. Plaintiffs are still
12 putting their hands on it.

13 MR. BEERS: Okay.

14 THE COURT: We'll just have a moment.

15 MS. GOLDING: Thank you, Your Honor.

16 THE COURT: Everybody got it? All right. I know you
17 don't have hard copies, but have you got -- have you had time
18 to pop it up on the computer?

19 MR. PLATTE: Yes, Your Honor.

20 THE COURT: Okay. Thank you, Mr. Platte. All right.
21 Got it.

22 Q. What is that document, Mr. Duffy?

23 A. That is the canons of the general convention, 1823.

24 Q. And what is the publication?

25 A. This publication is in those years the church, general

1 convention, requested publication regularly of the canons of
2 the church for distribution to the body. And it was
3 published in a couple of different ways. It was published as
4 a separate pamphlet but it was also distributed alongside --
5 with the journal of the general convention.

6 So I'm not sure exactly which excerpt this is but...

7 Q. And how far back do you have copies of the constitution
8 and canons of the Episcopal Church?

9 A. Well, back to the first -- we have a complete set back
10 to 1789.

11 Q. All right. Now I'd like to ask you to turn to
12 Exhibit 1 --

13 MS. KOSTEL: David.

14 MR. BEERS: Excuse me.

15 (Attorneys confer.)

16 MR. BEERS: We offer this one in evidence, Your Honor.

17 THE COURT: Any objection?

18 MR. RUNYAN: None.

19 THE COURT: Very well.

20 (Defendant's Exhibit 143 admitted into evidence.)

21 Q. Would you turn to Exhibit 203.

22 MR. RUNYAN: What is that?

23 MR. BEERS: That is the 2009. Got it, Andrew?

24 MR. PLATTE: My list from the hard drive stops in 1961.

25 MS. KOSTEL: No, no, they're not in order, sadly.

1 MR. PLATTE: Oh, there it is.

2 MS. KOSTEL: Yeah, there.

3 MR. PLATTE: I see it.

4 MS. KOSTEL: Not '03, '09.

5 MR. PLATTE: I found it. Thank you.

6 Q. Have you seen that document before, Mr. Duffy?

7 A. Yes, sir.

8 Q. What is it?

9 A. This is the constitution and canons for the Episcopal
10 Church from the general convention, 2009.

11 Q. And was that attached to the journal or printed as a
12 separate pamphlet?

13 A. This is printed as a separate document, although it is
14 considered actually part of the journal proceedings of the
15 general convention.

16 Q. Now, do we have on the hard drive and can we produce
17 tomorrow hard copies of all of Exhibits 143 to 203; namely,
18 the constitution and canons from 1823 to 2009?

19 A. I believe so, I could.

20 MR. BEERS: Okay. We move those into evidence, Your
21 Honor.

22 MR. RUNYAN: Your Honor, we have a problem with 2009 for
23 sure. That constitution and canons was expressly disavowed
24 by the constitution and the canons of the Diocese of South
25 Carolina at its convention in 2010, so we have a problem with

1 its admissibility because of relevance.

2 Don't have any problem with authenticity at all on any
3 of this.

4 MR. BEERS: Well, they --

5 MR. RUNYAN: I guess there's a lack of foundation that
6 2009 canons are applicable to the issues in this case through
7 this witness.

8 MR. BEERS: But that has nothing to do with
9 admissibility, Your Honor, that's argument.

10 THE COURT: Overruled. That's for the Court to make a
11 determination. I think that goes to the heart of the issue
12 before the Court, and I think that it's been authenticated.
13 The question is, with regards to relevancy, is there a fact
14 which is in issue that this document would make more probable
15 or less probable. I think the answer is it probably does.
16 And I think that clearly this goes to the heart of one of
17 these issues, minimally.

18 MR. BEERS: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 (Defendant's Exhibit 203 admitted into evidence.)

21 Q. Now, Mr. Duffy, would you turn to Exhibit No. 425.

22 MS. KOSTEL: I have a better copy. May I approach the
23 witness, Your Honor?

24 THE COURT: Yes, of course.

25 Q. Do you have 425?

1 A. Yes, sir.

2 MR. BEERS: Do you have it?

3 MS. KOSTEL: No, it's not electronic.

4 THE COURT: You can pop it on the ELMO.

5 MS. KOSTEL: I can pop it on the ELMO.

6 Q. Have you seen that document before, Mr. Duffy?

7 A. Yes, sir.

8 Q. Tell us what it is.

9 A. This is the copy of the journal of the general
10 convention 1789, which we have a couple of wonderful copies
11 of, which contains the first constitution and canons of the
12 Episcopal Church.

13 MR. BEERS: We offer that in evidence, Your Honor.

14 MR. RUNYAN: No objection.

15 THE COURT: No objection. Very well.

16 (Defendant's Exhibit 425 admitted into evidence.)

17 THE COURT: Let me see the front of it again. That's a
18 document I'd like to hold.

19 MR. BEERS: Your Honor, we have hard copies for some but
20 not all, and the ones for which we do not, we'll have them by
21 tomorrow.

22 THE COURT: Sure.

23 MR. BEERS: So I'd like to turn to Exhibit 504 --

24 THE COURT: May I note for the record and inquire that
25 this says "Journal of a convention" which is, obviously, the

1 cover sheet and then it has a list of members of the
2 convention, which is the next page. And then the following
3 page begins in the middle of a sentence at page 57, so talk
4 to me about this document because I don't know if there's an
5 objection, but it doesn't appear to be a complete one.

6 MS. KOSTEL: I can help, Your Honor. At the bottom of
7 page 57 -- the first two pages are just to describe what the
8 document is. At the bottom it says that the canons were
9 adopted and they are as follows. The very, very last line.
10 That's why it's there, just to show the adoption.

11 And so when Your Honor turns to the next page, then the
12 canons are set out on page 58.

13 THE COURT: Well, a couple of things, just -- and I
14 understand there's not an objection to the admissibility of
15 it, but I might have an objection, so let me put down what it
16 is. First of all, this witness testified that this was the
17 first canon and constitution of the Episcopal Church. Now,
18 in the prior document that I reviewed it said, "Protestant
19 Episcopal Church for the United States, also known as the
20 Episcopal Church." That came from my memory.

21 MR. BEERS: I can explain that, Your Honor.

22 THE COURT: Hold on. Let me finish.

23 MR. BEERS: Okay. Sorry.

24 THE COURT: All right. This document says, "Journal of
25 a convention of the Protestant Episcopal Church in the states

1 of New York, New Jersey, Pennsylvania, Delaware, Maryland,
2 Virginia, and South Carolina." So this is something
3 different. This is not the first canon and constitution of a
4 national Episcopal Church. It just is what it is.

5 MS. KOSTEL: Your Honor's correct, that's the name of
6 the journal, but if you look on page 58 -- and probably the
7 front matter made things more confusing.

8 THE COURT: Yes.

9 MS. KOSTEL: But if Your Honor turns to page 58, it says
10 "Canons for the Government of the Protestant Episcopal Church
11 in the United States of America." So that's really what
12 we're entering in into evidence, and perhaps it would be
13 easier to get rid of the first three pages.

14 And then on page 61, Your Honor will see a general
15 constitution of the Protestant Episcopal Church in the United
16 States of America. It's really just the organic governing
17 documents that we're entering in, and we don't need the first
18 few pages.

19 MR. RUNYAN: Your Honor, I mean, the exhibit's in
20 evidence. I would object to removing pages from it.

21 MS. KOSTEL: That's fine.

22 MR. RUNYAN: We will introduce the entire document at
23 some appropriate time.

24 THE COURT: Okay.

25 MR. RUNYAN: They have picked this out and have

1 testified to what it is and --

2 THE COURT: Okay. In other words, just hush and hold
3 on. I got it.

4 MR. BEERS: Your Honor, the record should make clear
5 that it was Mr. Runyan that said that, not me.

6 MR. RUNYAN: I understood this to be testimony by the
7 witness that this is the first constitution and canons of the
8 Episcopal Church. It's not the first journal.

9 MS. KOSTEL: Correct.

10 THE COURT: That's what he said.

11 MS. KOSTEL: Yes.

12 MR. RUNYAN: Okay.

13 THE COURT: Okay. And it's dated 1789.

14 MS. KOSTEL: Correct.

15 Q. Is that right, Mr. Duffy?

16 A. Yes, sir.

17 THE COURT: All right.

18 Q. Let's turn to 504, and would you just tell us what that
19 document is.

20 A. Well, this appears to be the cover page to something
21 called the, "Annual Reports of the Board of Missions, 1866 to
22 1919."

23 Q. Mr. Duffy, did we ask you to search the archives for
24 documents that would reflect financial assistance by the
25 national church or one of its affiliates to parishes and

1 clergy in the Diocese of South Carolina?

2 A. Yes.

3 Q. And how did you go about doing that?

4 A. We looked at the entire collection. We identified,
5 through our catalogs, which bodies in the church would be
6 grant-making or money-distributing entities, and we isolated
7 those in a map of the collection, so to speak, and started
8 with each entity and went through, from the beginning to the
9 end, you know, from the start of the organization to when the
10 organization ceased, page by page and identified, wherever we
11 could, reference to funds leaving that entity and going to
12 some person or organization or the diocese or church in South
13 Carolina.

14 Q. And under what circumstances would a document such as
15 504 arrive at the -- get to the archives?

16 A. Well, in this case --

17 MS. GOLDING: Your Honor, I'm going to have to make an
18 objection. 504 appears to be an accumulation of reports, so
19 it's not an existing document in and of itself that went to
20 the archives. It was something put together by the witness.

21 MR. BEERS: Fair enough. Fair enough, Ms. Golding.

22 Q. How did the diocese, do you believe, receive the
23 information that is now put together in 504, that is, the raw
24 data?

25 MS. GOLDING: Your Honor, I'm going to object. This

1 witness can't testify how the diocese received information.

2 MR. BEERS: No, no, how the archives received it. How
3 the archives received the information that is contained in
4 504.

5 THE WITNESS: These records of the Board of Missions
6 were essentially the corporate -- official corporate records
7 of the Domestic and Foreign Missionary Society, the central
8 governing body of the -- or executive of the Episcopal
9 Church. And they form the core of the archives, essentially,
10 along with the journals of general convention. The Board of
11 Missions was the -- today's executive council.

12 Q. And what does Exhibit 504 contain? What does it
13 include?

14 A. It includes minutes, report, you know, sort of
15 manuscript and written report -- printed reports,
16 correspondence, accounts, account books, letter books,
17 receipts, a variety of those kinds of business records.

18 Q. All right. Fine. Thank you.

19 MR. BEERS: We offer in evidence 504, Your Honor.

20 MR. RUNYAN: Object to this document on the grounds that
21 the document was created by an entity that is not a party to
22 this lawsuit. The Domestic and Foreign Missionary Society is
23 a New York incorporated entity, and they're not a party to
24 this lawsuit. Lack of foundation.

25 THE COURT: Well --

1 MR. BEERS: May I make a representation to the Court
2 that might be helpful?

3 THE COURT: Sure.

4 MR. BEERS: The Domestic and Foreign Missionary Society
5 of the Protestant Episcopal Church in the United States of
6 America is a corporate body that manages property, financial
7 affairs for the church, and has since the 1830s.

8 THE COURT: All right.

9 MR. BEERS: It's the check-writing arm of the church.

10 THE COURT: And is this witness a custodian of those
11 records for that entity?

12 MR. BEERS: Yes, indeed.

13 Q. Excuse me. Mr. Duffy?

14 A. Yes.

15 THE WITNESS: Sorry, Your Honor.

16 THE COURT: Okay. And this is a summary. Summaries are
17 certainly admissible, so long as the underlying documents are
18 made a part of the record; in other words, you have to have
19 the underlying documents and then you can have a summary. So
20 this says extracts from the annual reports of the national
21 council, 1920, whatever the other date was. And so where are
22 those documents?

23 MS. KOSTEL: They're attached. They're following.
24 That's just a cover page, so let me -- these were produced in
25 discovery.

1 THE COURT: Okay. In other words, the extracts are
2 fine, but the underlying supportive full documents must be
3 attached to the summary and --

4 MS. KOSTEL: I'm confused, Your Honor, because we are --
5 for example, with the journals of the diocese, we're being --
6 we were going to offer the full diocesan journals in, but we
7 are now -- as a result of a variety of things, we're now
8 going to be putting in excerpts from the diocesan journals
9 instead of the full journals. And these are excerpts from
10 reports of other church bodies. They're not the whole -- I
11 mean, the whole report that we're talking about, massive,
12 massive amounts of pages. I'm not -- and these are excerpts
13 from those reports in the same way that the diocesan journal
14 excerpts, I'm not --

15 THE COURT: I'm with you. I got that. So there are a
16 couple things going on. There are really three things going
17 on. Number one, we have something called the business
18 records exception act, and so I'm sort of curious about that.
19 And I'm curious about that for my own edification. And while
20 I understand he's a custodian of records, there's some other
21 information that I'm curious about with regards to that.

22 Secondly, secondly, this is a summary, and I have to
23 hear from the plaintiffs that the plaintiffs do not object to
24 the excerpts coming in without the underlying source
25 documents.

1 And thirdly, it's been represented to the Court that
2 this body for which these documents are being shown to the
3 Court, which is now known as the executive council, is the
4 check-writing arm, as I understand, of the National Episcopal
5 Church, national church.

6 MR. BEERS: That's not quite right, Your Honor.

7 THE COURT: Well, that's what I was just told, so those
8 are -- I've got a number of incoming fire that I'm trying to
9 handle with these documents so...

10 Mr. Runyan?

11 MR. RUNYAN: Yes, Your Honor.

12 THE COURT: Talk to me about the pieces of this that you
13 have no problem with and then I'm not going to worry about
14 it.

15 MR. RUNYAN: Okay. Well, that's hard to do. I think
16 the pieces of this that, to go to the flip side, that I have
17 problems with are that it is a summary of information that is
18 not here and it must be made available. It must also be
19 independently admissible, and that's not been determined yet.
20 So it doesn't meet my understanding of the rule for a
21 summary.

22 I guess the fundamental problem, in addition to that, is
23 this reference to these are bodies of the church. The
24 Episcopal Church is the defendant here. The Domestic and
25 Foreign Missionary Society is not. And there is no -- that I

1 see, no foundation that says that that entity is controlled
2 by the Episcopal Church or owned by the Episcopal Church; and
3 there's, likewise, no foundation that all of these other
4 entities that we've talked about are "the church" have a
5 connection to this defendant, and I think that's the
6 foundational concern that I have in addition to the summary
7 problem.

8 MR. BEERS: Could I be heard on that?

9 THE COURT: Oh, absolutely.

10 MR. BEERS: Well, the source of data for the summary is
11 attached; is that right, Ms. Kostel?

12 THE COURT: No.

13 MS. KOSTEL: The excerpts are attached.

14 MR. BEERS: That is the -- what is attached forms the
15 basis of the summary. We understand that they're excerpts,
16 but the whole document is not in. The whole document deals
17 with other things. But the material from which the summary
18 was made is attached.

19 MS. KOSTEL: It is a summary. It's a collection that is
20 a summary.

21 MR. BEERS: All right. Now, this document was published
22 by the national council. That's --

23 THE COURT: I don't know what that means, the collection
24 is a summary. Tell me what that means, the collection is a
25 summary.

1 MR. BEERS: Okay.

2 THE COURT: I don't know what that means, the collection
3 is a summary.

4 MS. KOSTEL: In other words, these are extracts. We
5 haven't created an independent page that summarizes, that's
6 all I'm trying to be clear with, Your Honor. There's not an
7 independent page where we, you know, summarized it. This
8 collection is -- are pages that are extracts from larger
9 journals.

10 THE COURT: Got it.

11 MR. BEERS: Secondly, I'm going to ask Mr. Duffy a
12 couple questions that might be helpful.

13 THE COURT: Yes.

14 Q. What was the -- what is or was the national council?

15 A. The national council was the successor body to the Board
16 of Missions organized in 1919 to bring together all the
17 disparate arms and legs of the mission body of the Episcopal
18 Church, national church. That's the national council.

19 Q. And is the national council still in existence?

20 A. It was renamed in 1964 as the executive council, yes.

21 Q. And what is the role of the executive council?

22 A. Executive council acts between general conventions to
23 carry out the work of general convention.

24 Q. And once again, what is the Domestic and Foreign
25 Missionary Society?

1 A. Domestic and Foreign Missionary Society is a
2 corporation, New York, governed by the canons of the
3 Episcopal Church that are set out by general convention.

4 MR. BEERS: The national council and the Board of
5 Missions and the and executive council and the Domestic and
6 Foreign Missionary Society are not independent bodies. The
7 Domestic and Foreign Missionary Society has a corporate form,
8 but it is not separate from the church. And the national
9 council and the Board of Missions and the executive council
10 are not separate entities. They are entities within the
11 church that act when the general convention's not in session.
12 It would be like any other nonprofit which had a division or
13 an office of grant-making.

14 THE COURT: Let me ask you this question, Mr. Beers: Can
15 this witness explain to me in terms of a knowledge of
16 corporate structure the relationship between these entities?
17 What he's just told me is that it was an attempt to bring
18 together arms and legs. That's not a legal term that helps
19 me, arms and -- to bring together arms and legs. I don't
20 know what that means. I do understand what it means to be a
21 wholly-owned subsidiary. I do know what it means to be an
22 entity that owns the stock in. That, I understand. I don't
23 know what it means to intend to bring together arms and legs.
24 That doesn't help me. See what I'm saying?

25 Q. First of all, do you know what the corporate -- do you

1 know what the legal entity of the Episcopal Church is?

2 A. Yes.

3 Q. What is it?

4 A. Domestic and Foreign Missionary Society.

5 Q. No. What is the forum --

6 MR. BRYAN: Your Honor, he's interrupting his own
7 witness.

8 MR. BEERS: I didn't mean to interrupt. I apologize.

9 Q. Please finish your answer.

10 MS. KOSTEL: Just a second. Can we have a pause,
11 please?

12 THE COURT: Sure. Pausing.

13 (Brief pause.)

14 MR. BEERS: Ms. Kostel, why don't we let Mr. Duffy
15 finish that answer because he was interrupted.

16 MS. KOSTEL: Okay.

17 THE WITNESS: Could you ask the question again, please?

18 MR. BEERS: Let's start again when Ms. Kostel's ready.

19 THE COURT: Let me ask it. Do you understand the
20 corporate makeup of all of the entities associated
21 corporately with the national church?

22 THE WITNESS: No, Your Honor.

23 THE COURT: Okay. Take it from there.

24 MR. BEERS: I'm sorry, I didn't hear the answer.

25 THE WITNESS: No.

1 THE COURT: No.

2 Q. Let's take this one at a time. What did you mean by --
3 give me an example of an arm and a leg. Give the Court an
4 example of an arm and a leg.

5 A. Well, some of the documents that are in this set of
6 extracts are arms and legs; for example, the American Church
7 Building Fund is a body that is officially recognized and
8 reports to general convention and established through general
9 convention, but which, like many boards and committees and
10 commissions, is made up of volunteers who go about the
11 mission and work of the church and who report and who are
12 Episcopalians and --

13 THE COURT: That are what now?

14 THE WITNESS: Episcopalians. And understand their role
15 as being part of that larger body.

16 Knowing something about American church history, I mean,
17 this was not -- this is not unusual, particularly for
18 Protestant denominations, and there was a period, then, in
19 the -- for many of them, in the early 20th Century, late
20 19th.

21 MR. RUNYAN: Your Honor, Your Honor, I don't believe
22 he's qualified him as a historian. I would object to this
23 discussion about history.

24 THE COURT: Well, he's an archivist, so he probably
25 could be.

1 MR. RUNYAN: He could be.

2 THE COURT: But that's not where we are at this moment.

3 MR. BEERS: Let me try again.

4 THE COURT: Yes, go for it.

5 Q. Mr. Duffy, the so-called arms and legs that contributed
6 to the data that has been compiled in Exhibit 504, were they
7 all parts of the Episcopal Church?

8 A. Yes.

9 THE COURT: Mr. Beers, that doesn't help me.

10 MR. BEERS: Okay.

11 THE COURT: The question -- that's too general; in other
12 words, I'm trying to assess the relationship, the corporate
13 relationship between the national church and these other
14 entities.

15 My sense is that at some point in time, whatever these
16 entities or however they existed, maybe as an unincorporated
17 association, that they incorporated and somebody owns the
18 stock. It very well may be that the national Episcopal
19 Church owns the stock. That's what I'm looking for. That's
20 helpful to me. That's the information that I'm looking for.

21 MR. BEERS: Okay. First of all, the Episcopal Church
22 does not have stock. These entities don't have stock. The
23 Episcopal Church is an unincorporated association.

24 THE COURT: The national Episcopal Church --

25 MR. BEERS: Yes.

1 THE COURT: -- is an unincorporated --

2 MR. BEERS: Yes. And it has a corporate subsidiary
3 called the Domestic and Foreign Missionary Society. And the
4 boards of -- now I'm representing to the Court things that
5 are, I think, quite undisputed.

6 THE COURT: Okay.

7 MR. BEERS: Under our canons, the canons of the church
8 created the Domestic and Foreign Missionary Society. Its
9 board of directors is the board of directors of the executive
10 council. Executive council's like the board of directors.
11 It's not a separate entity. The board of directors of the --
12 executive council, the board of directors, is the same board
13 of directors as the Domestic and Foreign Missionary Society.
14 The Domestic and Foreign Missionary Society is a
15 check-writing body; it always has been.

16 THE COURT: And it is a corporate entity?

17 MR. BEERS: It is a corporate entity.

18 THE COURT: And it is what sort of corporate entity?

19 MR. BEERS: Nonprofit.

20 THE COURT: It is a nonprofit corporate entity?

21 MR. BEERS: Correct.

22 THE COURT: And who makes up the board of directors?

23 MR. BEERS: The same people who are by definition, that
24 is by canon, the members of the executive council of the
25 Episcopal Church, which acts as the board of directors of the

1 Episcopal Church. In Mr. Duffy's words, he said, "who acts
2 for the general convention when the general convention is not
3 in session."

4 THE COURT: And you're telling me that the national, the
5 Protestant Episcopal Church of the United States of America,
6 is an unincorporated association.

7 MR. BEERS: Correct, like many denominations and labor
8 unions and all kinds of things.

9 THE COURT: How about in South Carolina? Is it
10 incorporated in the state of South Carolina?

11 MR. BEERS: Is what incorporated, the national church?

12 THE COURT: The Protestant Episcopal Church of the
13 United States of America; is it incorporated in the state of
14 South Carolina?

15 MR. BEERS: We're getting back to one of our favorite
16 subjects. Did you mean the national church?

17 THE COURT: Yes.

18 MR. BEERS: It is not incorporated anywhere. It's an
19 unincorporated association, period.

20 THE COURT: Are you sure?

21 MR. BEERS: Yes.

22 THE COURT: Are you positive?

23 MR. BEERS: Yes, ma'am.

24 THE COURT: Because there is, in South Carolina, a
25 corporation whose name is -- Ian.

1 (Brief pause.)

2 THE COURT: I'll get that to you later because I
3 pondered that.

4 MR. BEERS: Well, you know --

5 THE COURT: But to your knowledge, there is -- the
6 national church is not incorporated in South Carolina?

7 MR. BEERS: Anywhere.

8 THE COURT: Got it. Okay.

9 MR. BEERS: Now, there are two explanations to that.

10 THE COURT: Now let me go back where I was.

11 Okay. So we have the executive council who acts as the
12 board of trustees, board of directors, for the unincorporated
13 national church?

14 MR. BEERS: Yes.

15 THE COURT: It also -- "it" being the executive council
16 as it's now known, it's been known as other names like the
17 national council --

18 MR. BEERS: National council, Board of Missions. And
19 Board of Missions.

20 THE COURT: Yes. And now those individuals also act as
21 the board of directors for the corporation, which is the --
22 something, which is the check-writing arm, if you will, the
23 financial management arm of the unincorporated association,
24 and that entity's name is? Tell me again.

25 MR. BEERS: The domestic -- let me start again. The

1 church is called the Protestant Episcopal Church of the
2 United States of America, and this is the Domestic and
3 Foreign Missionary Society of the Protestant Episcopal Church
4 in the United States of America.

5 THE COURT: Okay. And that is a corporation?

6 MR. BEERS: That is a corporation.

7 THE COURT: And its board of directors are the same
8 people as the executive council -- used to be known as the
9 national council, now executive council -- which act as the
10 board of trustees and directors for the unincorporated
11 association.

12 MR. BEERS: Correct, by canon, and also the officers are
13 the same.

14 THE COURT: Okay, okay. I'm with you. I feel so
15 enlightened. But that's only one arm. We've got other arms
16 and legs.

17 MR. BEERS: Well, let me ask Mr. Duffy some questions.

18 Q. Mr. Duffy --

19 THE COURT: Go ahead. I'm multi-tasking.

20 MR. BEERS: I don't have 504 in front of me.

21 MS. KOSTEL: I'll get it.

22 MR. BEERS: Let me take a look.

23 THE COURT: Just for your informational purposes, for no
24 other reason --

25 MR. BEERS: Yes, and as counsel to the presiding bishop,

1 I'd really like the information, Your Honor.

2 THE COURT: Yeah, absolutely.

3 -- there is an entity called the Protestant Episcopal
4 Church in the United States of America, Inc.

5 MR. BEERS: Yes.

6 THE COURT: It is a corporation. It is in good
7 standing. It is registered as a foreign corporation with the
8 Secretary of State of South Carolina. It's in good standing,
9 which is nice to know, and it is a nonprofit organization and
10 it is incorporated in the state of Wisconsin, ta-da.

11 MR. BEERS: Well --

12 THE COURT: I don't understand that. You don't need to
13 do anything with it.

14 MR. BEERS: Well, I can tell you why it's there.

15 THE COURT: Okay.

16 MR. BEERS: Several years ago, about 1996, the bishop --
17 a bishop in Wisconsin decided that he would try to trademark
18 the name of the church and create corporations in different
19 states, and he did. The movement died. It's long passed.
20 That corporation is -- there were several.

21 THE COURT: Not in South Carolina.

22 MR. BEERS: But it's not -- all I can tell you is that
23 it has nothing to do with the national church.

24 THE COURT: I'm with you, but just for your
25 informational purposes, in South Carolina it exists and it's

1 in good standing. It's alive and well here. Just for
2 your --

3 MR. BEERS: I can represent to the Court that it has not
4 functioned for many years. But in any event, that's fine.

5 Q. Now, who would --

6 THE COURT: I thought that was you all, but it's not.

7 MR. BEERS: It is not. It is not.

8 THE COURT: I got it. I understand.

9 MR. BEERS: It is not. And, actually, it was known at
10 PECUSA, Inc., but it's gone -- I mean, it's not gone in South
11 Carolina evidently, but --

12 THE COURT: No.

13 MR. BEERS: Now may I return to Mr. Duffy?

14 THE COURT: At least as of this morning.

15 Q. In 504, Exhibit 504, which entity is making the
16 grants -- allegedly making the grants?

17 A. The Board of Missions.

18 MR. BEERS: Your Honor, I move that into evidence once
19 more.

20 MS. GOLDING: One basic reason I have for admission is
21 that the attorney says "grants"; the witness said "funds" --

22 MR. BEERS: Sorry.

23 MS. GOLDING: -- and there's -- you know, the word
24 "grants" obviously means something very different from loans
25 and things of that nature.

1 MR. BEERS: I apologize.

2 MS. GOLDING: And I believe that characterization's
3 improper.

4 MR. BEERS: I didn't mean it. I'm just trying to get at
5 the core issue which is who is the entity that was doing
6 whatever the exhibit says. And it was the Board of Missions.
7 They may be grants, they may be loans, that's for the
8 document. It speaks for itself on that. I was just trying
9 to --

10 THE COURT: I understand. I'm with you. With that
11 correction --

12 MS. GOLDING: I still have an objection because it is a
13 separate legal entity than the defendant the national church.

14 MR. BEERS: That is absolutely contrary to what we've
15 established, Your Honor. The Board of Missions is not an
16 entity. It's a committee. It's a division of the church.
17 It's just like the executive council. The executive
18 council's not -- it's like a board of directors. It would be
19 like saying the board of directors is a distinct legal entity
20 from the corporation, which is nonsense.

21 THE COURT: So...

22 MS. GOLDING: I understood him to testify it is a
23 corporation.

24 THE COURT: Thanks for saying that because I thought I
25 was going to sound stupid if I said that because that's what

1 I thought too. I'm glad you said it instead of me.

2 You just said the committee; is it a corporation or a
3 committee?

4 MR. BEERS: No, no, no. The Domestic and Foreign
5 Missionary Society is a corporation. The Board of Missions,
6 like its predecessor, like the national council, like the
7 executive council, is just a -- it's like a board of
8 directors. It's not a separate entity. We're just talking
9 about the Board of Missions now, Your Honor. Whoever is
10 doing what 504 says that it's doing was the Board of
11 Missions. We're not dealing with the Domestic and Foreign
12 Missionary Society.

13 MR. RUNYAN: Your Honor, could he please elicit
14 questions from the witness about the corporate structure that
15 makes this relevant to this case as opposed to trying to
16 testify for the Court?

17 MR. BEERS: I have and I can do it again. I believe
18 that Mr. Duffy has testified what the Board of Missions was.

19 MR. RUNYAN: Objection; leading.

20 MR. BEERS: I'm talking to the Court.

21 MR. RUNYAN: Excuse me, I thought you were asking him a
22 question.

23 MR. BEERS: Listen more carefully.

24 MR. RUNYAN: Yes, I will.

25 MR. BEERS: I believe he testified that whoever was

1 acting in Exhibit 504 was the Board of Missions. And I
2 believe he testified that that was the predecessor to the
3 national council, which is the predecessor to the executive
4 council, which is like the board of directors. It is not a
5 separate entity. And when we get to an exhibit where the
6 person acting, making the decisions is the Domestic and
7 Foreign Missionary Society, we can take that up, but that's
8 not implicated in this document.

9 THE COURT: Okay. Ask him again.

10 Q. What entity is making either loans or grants or some
11 financial transaction in 504?

12 A. The entity making the financial distribution of funds
13 here is the Board of Missions, the Board of Missions of the
14 Domestic and Foreign Missionary Society.

15 Q. And the Board of Missions is the predecessor to?

16 A. The national council.

17 Q. Which is the predecessor to?

18 A. The executive council.

19 (Brief pause.)

20 MR. BEERS: Ask one more question, Your Honor?

21 Q. So who made the decision to make the financial
22 distributions? I don't care what the vehicle was for paying,
23 I just want to know who made the decision.

24 A. In this case the board.

25 Q. Thank you.

1 THE COURT: Okay. Here's what I'm going to do: I'm
2 going to -- just on the issue of the entity, just on the
3 issue of the entity, much like you do when you're talking
4 about an expert witness, I'm going to allow cross-examination
5 just as to this, just as to the entity, because of the
6 questions that have arisen, and I think it's appropriate, and
7 I think I have the discretion to do that.

8 I do not want you to go into the merits, whoever's going
9 to do this. I just want you to deal with the entity itself
10 with regards to this exhibit. Who's going for it?

11 CROSS-EXAMINATION BY MR. RUNYAN:

12 Q. Good morning, Mr. Duffy.

13 A. Good morning.

14 Q. Can you hear me okay?

15 A. Yes, sir.

16 Q. Okay. I understood your last question to be that the
17 Board of Missions authorized the funds to be sent to wherever
18 they were sent that are contained in this exhibit.

19 A. Yes, sir.

20 Q. So if the funds that are contained in this exhibit are
21 from the -- some other entity such as the children's relief
22 fund -- I'm making this up -- it would be something that the
23 Board of Missions authorized?

24 A. I don't understand that, I'm sorry.

25 Q. The proceedings of the Board of Missions would be

1 somewhat of a -- perhaps a journal of an annual meeting
2 maybe?

3 A. Perhaps, right.

4 Q. All right. And the Board of Missions, your testimony is
5 it is a part of the Domestic and Foreign Missionary Society?

6 A. It was the board of directors for the Domestic and
7 Foreign -- right.

8 Q. Okay. So as a board of directors of the DFMS, they are
9 discussing in here, and according to your testimony,
10 approving the transmission of funds to other entities?

11 A. Entities, right.

12 Q. And do you know anything about the corporate structure
13 of the Episcopal Church?

14 A. I know something about it, yes.

15 Q. Have you ever seen any evidence that the Episcopal
16 Church -- I gather that the Episcopal Church has no stock
17 ownership interest in the DFMS; is that right?

18 A. Correct.

19 Q. All right. When did the Board of Missions become the
20 executive council?

21 A. The Board of Missions became the national council in
22 1919.

23 Q. And then the national council became --

24 A. The executive council in 1964 as a result of the 1964
25 general convention.

1 Q. And was the overlapping director situation the same in
2 whenever this one is as it is today, 1880-something?

3 A. Can you ask me that again?

4 Q. Yes. I'm having a hard time seeing this. Looks like
5 it's 1868 maybe.

6 Has it always been the case that the board of directors,
7 the Board of Missions, people who are on it, have also been
8 part of the governing body of the Episcopal Church?

9 A. Yes, sir.

10 Q. All right. And that governing body has always been the
11 executive council?

12 A. It is today the executive council.

13 Q. When did it become the executive council?

14 A. In 1964.

15 Q. All right. So before that, before 1964, what -- and I'm
16 talking about at the 1800s -- what was the other board on the
17 Episcopal Church, of the Episcopal Church, that this entity
18 was overlapped with, the Board of Missions?

19 A. I think I'm understanding your question. In the
20 19th Century, there were a couple of boards that were enabled
21 by general convention; there was the Domestic and Foreign
22 Missionary Society of the Protestant Episcopal Church in the
23 United States; and there was --

24 THE COURT: Say that again for me.

25 THE WITNESS: The Domestic and Foreign Missionary

1 Societies of the Protestant Episcopal Church in the United
2 States of America.

3 Another body that was authorized by general convention
4 in the 19th Century was known as the American Church
5 Missionary Society. These boards eventually came together --
6 and I'm sorry I don't know exactly that date -- but they were
7 merged under the oversight of the general convention for the
8 benefit of bringing together and unifying the mission of the
9 church. But they came together -- it was a merger. They
10 came together under the title of Domestic and Foreign
11 Missionary Society of the Protestant Episcopal Church.

12 THE COURT: That was the surviving entity?

13 THE WITNESS: That was the surviving entity.

14 Q. In 1868, we're looking at a document here that says the
15 Board of Missions. And that is the Board of Missions of what
16 entity?

17 A. The Domestic and Foreign Mission -- the DFMS, if I can.

18 Q. All right. In 1868, what was the comparable entity that
19 this board overlapped with with the Episcopal Church?

20 A. Well, there was no comparable. I mean, this was the
21 entity that carried out and executed the business of the DFMS
22 on behalf of and at the request of the general convention.

23 Q. So there was no -- there was no executive council?

24 A. No, at that point it was the executive council; small E,
25 small C, right.

1 MR. RUNYAN: Okay.

2 MS. GOLDING: Just a few questions.

3 CROSS-EXAMINATION BY MS. GOLDING:

4 Q. With respect to DFMS, when was that incorporated?

5 A. It was twice incorporated. And, I'm sorry, I don't want
6 to be held accountable for those exact dates. I believe the
7 first time was earlier around 1832, but -- and then later in,
8 reincorporated in 18, roughly, 76. I may be right, I may be
9 wrong on those dates, I'm sorry.

10 Q. And the functions of DFMS, from its first incorporation
11 in 1832 to the present, substantially have not changed, have
12 they?

13 A. Actually, that's not exactly true but --

14 Q. How is it not true?

15 A. When the unity of the organization occurred in 1919, it
16 brought together the sum parts of the mission of the church
17 that were not part of the DFMS's original --

18 Q. So in 19 --

19 A. -- plan.

20 Q. -- 90 [sic] the corporation DFMS expanded its
21 responsibilities or activities; would that be correct?

22 A. In 1919, yes.

23 Q. Okay. And what state now is DFMS incorporated in?

24 A. I understand in the state of New York.

25 Q. Do you know if DFMS has registered as a foreign

1 corporation in any other states?

2 A. At least one that I know of.

3 Q. Which one?

4 A. Texas.

5 Q. Okay. And that's because DFMS transacts business or its
6 activities in the state of Texas?

7 A. Yes, ma'am.

8 MS. GOLDING: Okay. No further questions, Your Honor.

9 MR. BEERS: May I offer something further, Your Honor?

10 THE COURT: Yes. That was very helpful.

11 THE WITNESS: Thank you.

12 THE COURT: Yes, go ahead.

13 MR. BEERS: How -- what's the most convenient way to
14 give to the Court a copy of the 2009 canons?

15 MS. KOSTEL: Give everybody a book.

16 MR. BEERS: Counsel, I'm going to ask him to show the
17 Court.

18 MR. RUNYAN: You're moving it into evidence.

19 MR. BEERS: It's in evidence.

20 MS. KOSTEL: Yes, it's in evidence. All of them are.

21 MR. RUNYAN: I'm sorry I didn't hear, is it in?

22 MS. KOSTEL: She let them all in.

23 MR. RUNYAN: All right. Just give her a copy.

24 MR. BEERS: Your Honor, for the record, I'm going to
25 hand you a copy of -- let me find out what the exhibit number

1 is, Your Honor. I believe it's 203.

2 MS. KOSTEL: I have one for Your Honor and one for the
3 witness.

4 THE COURT: Great.

5 MR. BEERS: And I'd like to direct the Court's attention
6 to page 29, canon 3, which is titled Of the Domestic and
7 Foreign Missionary Society.

8 THE COURT: Hold on one second.

9 (Brief pause.)

10 THE COURT: Okay.

11 MR. BEERS: And if you'll look at Article 1 and then
12 look at Article 2, which, as the Court sees, executive
13 council as constituted by canon shall be its board of
14 directors and shall adopt bylaws for its government not
15 inconsistent with the constitution and canons.

16 And then if you drop down to -- if you'll take my
17 representation -- excuse me -- if you'll take my
18 representation, Article 3 has to do with the officers and the
19 relationship between the officers of the two entities.

20 And then Article 4, this constitution of the society may
21 be altered or amended at any time by the general convention
22 of the church.

23 It's an entity of the church. It's under the complete
24 control of the church.

25 MS. GOLDING: Your Honor, I'm going to object to that

1 characterization. That's not proper and the document speaks
2 for itself.

3 MR. BEERS: All right.

4 THE COURT: Sustained.

5 Okay. Now we're back to the document.

6 MR. BEERS: And, once again, we move in 504.

7 THE COURT: Let me ask one question of counsel. These
8 are extracts from the annual reports of the Board of Missions
9 1866 to 1919. In terms of discovery, have the entire annual
10 reports of the Board of Missions been provided to counsel
11 from 1866 to 1919?

12 MR. RUNYAN: No, Your Honor.

13 MS. KOSTEL: They certainly were available in the
14 archives but not --

15 MR. RUNYAN: Well, what was produced to us on the first
16 day of trial was this.

17 MS. KOSTEL: No, not the first day of trial, I'm sorry.
18 This was produced -- this is Bates stamped -- this was
19 produced months ago.

20 MR. RUNYAN: Excuse me, December.

21 THE COURT: Okay.

22 MS. KOSTEL: December, thank you.

23 THE COURT: Not the extracts -- I mean, the extracts
24 were.

25 MR. RUNYAN: The extracts.

1 MS. KOSTEL: Yes.

2 THE COURT: Okay. Of the annual reports.

3 MR. RUNYAN: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. BEERS: And they could have asked for more.

6 THE COURT: Okay. And these are in the journals of the
7 national convention?

8 MR. RUNYAN: No, they're not.

9 THE COURT: They're not?

10 MR. RUNYAN: No, they're not a part of the journal of
11 the defendant.

12 MR. BEERS: No, the journals -- the journals -- the
13 journals contain what happens at the triennial general
14 convention.

15 THE COURT: Yes, I just thought I heard that.

16 MR. BEERS: Yes, plus --

17 THE COURT: Where are they?

18 MS. KOSTEL: They're separate documents that each one of
19 these boards creates.

20 THE COURT: Okay.

21 MS. KOSTEL: Like minutes or, you know --

22 THE COURT: Okay, okay. And where are they?

23 MS. KOSTEL: In the archives.

24 THE COURT: Hi.

25 THE WITNESS: Hi.

1 THE COURT: So you have the whole hoopla?

2 THE WITNESS: Yes, Your Honor.

3 MS. KOSTEL: And to be clear, Your Honor, when this
4 production, which was produced in December, I think the
5 bottom of every page of the extract says that it came from
6 the archives.

7 THE COURT: Sure.

8 MS. KOSTEL: And we made the archives available to
9 plaintiffs with a variety of things that they could come in
10 and look at.

11 THE COURT: I'm not suggesting that they're not happy.
12 They haven't told me they're not happy. All right. Very
13 well.

14 All right. Admitted. Go for it.

15 (Defendant's Exhibit 504 admitted into evidence.)

16 MR. BEERS: Thank you, Your Honor.

17 THE COURT: Yes.

18 CONTINUED DIRECT EXAMINATION BY MR. BEERS:

19 Q. Now turn to Exhibit 505. And, Mr. Duffy, if you would
20 tell me what that is.

21 A. Okay. Looking at the title page to extracts produced by
22 the archives from the minutes and reports of the national
23 council.

24 MR. BEERS: We move its admission, Your Honor.

25 THE COURT: Any objection? I know about the national

1 council, it predates the executive council.

2 MS. GOLDING: No foundation, Your Honor.

3 THE COURT: I got some foundation. Overruled. It's in.
4 All right. Go on. I've got it.

5 (Defendant's Exhibit 505 admitted into evidence.)

6 Q. 506, Mr. Duffy?

7 A. Yes, this is the cover page to documents produced by the
8 archives from the minutes and proceedings of the national
9 council.

10 MR. BEERS: We'd move that, Your Honor.

11 THE COURT: And we're fixing to change names. Yes, it's
12 admitted, over the objection of the plaintiffs.

13 (Defendant's Exhibit 506 admitted into evidence.)

14 Q. 507, tell us what that is, Mr. Duffy.

15 A. Okay. So this is one of these entities created by the
16 general convention and for the specific purpose of addressing
17 the education of African-Americans in the 20th -- this was a
18 20th Century creation and it was reported to the general
19 convention and was operated with and alongside the Domestic
20 and Foreign -- the DFMS. And these are excerpts from audit
21 reports of that organization that are in the archives.

22 Q. That organization was created by the general convention
23 and it reported to the general convention?

24 MS. GOLDING: Your Honor, I think the witness needs to
25 testify, not Mr. Beers.

1 THE COURT: And you're --

2 MR. BEERS: Ms. Golding, Ms. Golding, I was summarizing
3 his testimony. He had already testified to that.

4 THE COURT: Sustained.

5 Q. Correct?

6 THE COURT: That was sustained. That was leading.
7 Already testified to it.

8 MR. BEERS: Well, I move its admission, Your Honor.

9 THE COURT: Any objection?

10 MS. GOLDING: Same objection as to Exhibit 504, Your
11 Honor. This is a different entity than the defendant.

12 THE COURT: Overruled. It's in.

13 (Defendant's Exhibit 507 admitted into evidence.)

14 Q. Exhibit 508, Mr. Duffy, what's that?

15 A. These are extracts from the archives of the American
16 Church Missionary Society, which in the 19th Century was a
17 missionary arm of the general convention.

18 Q. Created by whom?

19 A. Created by the general convention.

20 Q. To whom did it report?

21 A. It reported to the general convention.

22 MR. BEERS: Move it in, Your Honor.

23 THE COURT: Just to see if I've connected the dots
24 properly. This is the entity that you just discussed that in
25 the 19th Century this entity was joined with the -- and I was

1 so cool because I had an acronym for a moment, but F -- help
2 me.

3 THE WITNESS: The DFMS.

4 THE COURT: That one.

5 THE WITNESS: Yes.

6 THE COURT: This was the one that you talked about that
7 they were joined together?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: I gather because the need to keep them
10 separate was not perceived any longer in the 19th Century?

11 THE WITNESS: Correct.

12 THE COURT: I got it. Over the objection of plaintiffs,
13 in.

14 (Defendant's Exhibit 508 admitted into evidence.)

15 MR. BEERS: Thank you.

16 THE COURT: Yes. Proceed.

17 Q. Mr. Duffy, how about 509?

18 A. Okay. This is -- these are extracts from records that
19 the archives holds of the Episcopal Church building fund,
20 which is an organization of the church founded by the general
21 convention, reports to the general convention, with an
22 explicit, very focused mission to make funds available, loans
23 in this case, available to parishes and dioceses to support
24 building churches and church-related buildings.

25 MR. BEERS: We move its admission, Your Honor.

1 MS. GOLDING: No objection, Your Honor.

2 THE COURT: Very well.

3 (Defendant's Exhibit 509 admitted into evidence.)

4 Q. And 510?

5 A. These are excerpts from the records of the United Thank
6 Offering, which is a wholly-owned organization of the
7 Domestic and Foreign Missionary Society that makes grants and
8 distributes funds to missionary activities across the church
9 body, operated by the women of the church.

10 Q. I'm sorry, but again --

11 A. Operated specifically by the women of the church.

12 Q. And how does it get its funds?

13 A. It receives its funds from dioceses and parishes who
14 gather these funds during an annual campaign. The funds are
15 brought together at general convention and offered up at the
16 main service.

17 MR. BEERS: I move its admission, Your Honor.

18 THE COURT: Oh, you move the admission?

19 MR. BEERS: Yes, excuse me.

20 THE COURT: Oh, I thought you said something about its
21 mission.

22 For clarification purposes, is this going to be both
23 sides? Because I would presume it's going to be what went to
24 the diocese. Am I also going to see what came from the
25 diocese or am I just going -- in other words, in my head,

1 I've got -- based on what you just said, I've got money that
2 came from the diocese. Am I going to have both sides of that
3 or am I just going to have what went to the diocese? See
4 what I'm saying?

5 THE WITNESS: Mm-hmm, we were asked to document funds
6 leaving the church, the national church, if I could use that.

7 THE COURT: So this is not going to be what came from
8 the diocese, just what went to the diocese.

9 THE WITNESS: That's correct, Your Honor.

10 THE COURT: Okay. For what it's worth, I'll admit it.

11 (Defendant's Exhibit 510 admitted into evidence.)

12 MR. BEERS: Thank you, Your Honor.

13 Q. Exhibit 511?

14 A. These are documents, I believe, that are entitled
15 miscellaneous, if I'm not -- so I would have to look at
16 individual documents --

17 THE COURT: Kind of tough for you.

18 THE WITNESS: Yes.

19 -- that are from smaller organizations, so there weren't
20 complete runs of funds going out every year, so we pulled
21 these -- I guess these have been pulled together as just
22 miscellaneous. So they're all documents, however, that exist
23 in the archives and represent smaller pieces of that thing
24 called the Episcopal Church.

25 Q. Could you give me some examples?

1 A. Sure. The domestic committee of the home department of
2 the Domestic and Foreign Missionary Society, the Episcopal
3 Church Foundation, the Presiding Bishop's Fund for World
4 Relief.

5 Q. Are these all reports to the general convention?

6 A. Absolutely.

7 MR. BEERS: We move this in, Your Honor.

8 THE COURT: And the same question: These are just the
9 monies that came to the diocese; you're not offering -- these
10 documents are not going to tell me the amounts of money that
11 came to the diocese? Because if it's the bishop's relief
12 fund, obviously, they're from the diocese and he might have
13 had, I don't know, an oyster roast or something, raised
14 money, sent it back.

15 THE WITNESS: Right, so again, we were asked to simply
16 document the money coming out of these entities and not
17 coming in.

18 THE COURT: I got it.

19 It's admitted, for what it's worth, over objection.

20 (Defendant's Exhibit 511 admitted into evidence.)

21 MR. BEERS: Ms. Kostel --

22 THE COURT: I just presume it's the same objection. Am
23 I making a bad assumption?

24 MS. GOLDING: No, Your Honor.

25 THE COURT: Because you know what they say about

1 assumptions?

2 MS. GOLDING: Yes.

3 MR. BEERS: Ms. Kostel, can we have Exhibit 512?

4 Q. What is this document, 512?

5 A. This is the cover page of the Book of Common Prayer,
6 which is the -- here it is, the authorized standard book of
7 worship for the Episcopal Church, the authorized and only
8 valid, by virtue of the general convention -- can only be
9 changed by the general convention.

10 MR. BEERS: We'll put in a hard copy tomorrow, Your
11 Honor. We probably have one in the room if you'd like to
12 look at a hardcopy.

13 THE COURT: Okay. And you just want to put it into
14 evidence?

15 MR. BEERS: Yes.

16 THE COURT: Okay. It's in.

17 (Defendant's Exhibit 512 admitted into evidence.)

18 Q. Now, 431 --

19 THE COURT: It is what it is; in other words, it's in.

20 MR. BEERS: Yes, ma'am.

21 MS. GOLDING: The only thing with respect to
22 Exhibit 512, what year version was that?

23 MR. BEERS: Let me ask him some questions about that and
24 clarify that.

25 MS. GOLDING: Thank you, Your Honor.

1 Q. First of all, what was the publication year of that
2 book, that version of the Book of Common Prayer? What does
3 it say?

4 A. The publication year, I did not notice the publication
5 year, but it is known as the 1979 edition of the Book of
6 Common Prayer.

7 Q. And what happened in 1979?

8 A. 1979, the second reading of a constitutional amendment
9 was passed by the general convention authorizing this exact
10 copy to be the book of worship for all Episcopal Churches.

11 Q. Would you turn to the preface of the prayer book.

12 MS. GOLDING: Which page are you referring to?

13 MS. KOSTEL: Page 9.

14 MS. GOLDING: Do you have a hardcopy?

15 MR. TISDALE: I have one at home.

16 Q. I just have one question. Would you turn to the end of
17 the preface. What is the date of the preface?

18 A. 1789, October 1789.

19 Q. Do you know whether or not the Book of Common Prayer has
20 ever had any other preface?

21 A. I don't believe so.

22 Q. Thank you. All right. Now turn to 431.

23 (Brief pause.)

24 MR. BEERS: Your Honor, there's some people in the
25 courtroom who would like me to ask you for a break.

1 THE COURT: That sounds brilliant. We'll take 15
2 minutes.

3 MR. BEERS: We need to hold it to that, Your Honor,
4 because Mr. Duffy's got a plane reservation this afternoon.
5 Thank you.

6 (Recess held.)

7 THE COURT: All right. Yes, sir.

8 MR. BEERS: Ms. Kostel, could we see Exhibit 431?

9 Q. Mr. Duffy, would you turn to 431.

10 MS. KOSTEL: May I approach, Your Honor?

11 THE COURT: Yes.

12 MS. KOSTEL: Thank you.

13 Q. Mr. Duffy, I want to call your attention to page 99.
14 Now let me back up before we get to page 99.

15 Tell us what this document is?

16 A. This is the -- commonly called the "Blue Book" and
17 officially entitled The Reports of the Committees,
18 Commissions, Boards, and Agencies of the General Convention.

19 Q. Did you mean an excerpt from the blue book?

20 A. I meant an excerpt.

21 Q. Yes, okay. Go ahead.

22 A. And it is -- forms part of the journal of convention.
23 It used to be published but the journal got so large that
24 they began to publish the reports as a separate book and
25 that's -- so this is an excerpt from the report of the

1 standing commission on constitution and canons.

2 Q. Let's go back to what the blue book is.

3 Do I understand that before things got so voluminous --
4 make sure I understand your testimony -- that reports of
5 bodies that reported to the general convention had their
6 reports in the back or the front or somewhere in the annual
7 journal?

8 A. Yes, sir.

9 Q. But it got too big?

10 A. Right.

11 Q. And when does this come out?

12 A. When does the blue book...

13 Q. When does this document become public?

14 A. I believe it's -- it's at least nine or ten months
15 before general convention.

16 Q. And its purpose?

17 A. Its purpose is to inform the deputies and bishops who
18 attend general convention of the work that has been done by
19 its official bodies in the three years between and to receive
20 from them legislation or resolutions pertaining to that, to
21 the work of those -- the study work of those commissions and
22 bodies.

23 Q. And is this a report of a commission that we have?

24 A. Yes, sir.

25 Q. And what commission is that?

1 A. This is the report of the standing commission on
2 constitution and canons.

3 Q. All right. Now if you'll turn to page 99. And do you
4 see on the left-hand margin on line 25 the words "Canon 14"?

5 A. Yes, sir.

6 Q. And what's going on there?

7 A. Well, the -- any attempt to change the constitution or
8 the canons is governed by rules that are in the -- rules of
9 the convention, that they have to be set out in a certain
10 manner; new text has to be italicized, deleted text has to be
11 overstruck, and it has to be distributed to everybody in that
12 format. And so that's what's going on here. We have what
13 appears to be a new Canon 14, is the way I read this, and all
14 of that italicized text under it is the new canon -- is new
15 text.

16 Q. And where does the comment that you see, where does that
17 come from?

18 A. That comes from the standing commission itself.
19 They've, obviously, printed their revisions, and then
20 sometimes those comments are after the whole thing. But
21 because this was so long, I remember this canon, they were
22 sticking some of their comments right into the body of the --
23 in these square blocks.

24 MR. BEERS: Thank you. I'd move that into admission,
25 Your Honor.

1 THE COURT: What is the "that," though.

2 MR. BEERS: Oh, the -- I move the document in. I move
3 the document in.

4 MR. RUNYAN: Two objections, Your Honor. One is
5 relevance, which I think has been covered before on the issue
6 of hierarchy.

7 The second is, this is an incomplete version of
8 Canon 14. I would object to it as an incomplete document.

9 MR. BEERS: Well, let me ask Mr. Duffy another question.

10 Q. Was Canon 14 adopted?

11 A. Yes, sir.

12 MR. BEERS: Well, then, Canon 14 is in evidence, Your
13 Honor.

14 THE COURT: Is in what?

15 MR. BEERS: Is in evidence.

16 MR. RUNYAN: But this document is incomplete. The
17 witness has testified to Canon 14. Canon 14 is not all here,
18 that's my issue. I object.

19 THE COURT: And for the sake of completeness, I'm just
20 asking it be -- before it is admitted, that it be made
21 complete. I understand the issue of the relevancy and I
22 overrule it on that basis, but it must be in its entirety.
23 And, quite frankly, the reason for that, if I am looking at
24 this and it becomes important to my determination, I will
25 never remember that this isn't all of Canon 14.

1 I'm not saying you've got to do it right at this minute,
2 but at some point before the end of the proceedings if you
3 all can just make that the complete Canon 14, that would be
4 most appreciated.

5 MR. RUNYAN: It'd just be marked for identification at
6 this point?

7 THE COURT: Yes, and that will be a reminder. And mark
8 it for identification as conditionally admitted. And the
9 only condition that needs to be satisfied is that whatever
10 the rest of it is, it just be added.

11 And, again, that's as much as for my edification as for
12 anything else so that I'm really looking out for me. Because
13 as I am reviewing these documents, I need to be sure I'm
14 looking at the whole thing, so that would be helpful to me.
15 And I don't care when you do it, I really don't. We're going
16 to conditionally admit it. It is admitted when you're able
17 to make it the whole 14.

18 Q. I'd like to turn to 434 -- Exhibit 434.

19 Mr. Duffy, do you have 434 before you?

20 MS. KOSTEL: Just a second.

21 MR. BEERS: No, I guess you don't. Can I hand this up,
22 Your Honor.

23 THE COURT: The hardcopy of it?

24 MR. BEERS: Yes.

25 THE COURT: Yes. Thank you.

1 Q. Mr. Duffy, tell us what this document is.

2 A. This is the --

3 Q. Excuse me, just a second. I think counsel needs more
4 time.

5 THE COURT: I handed mine to Mr. Duffy. It's so much
6 easier to read. And it's not in evidence, so I don't have it
7 yet, just for your informational purposes.

8 And so when you're ready to tell him what it is, you can
9 tell him what it is.

10 MR. RUNYAN: I apologize, Mr. Duffy.

11 Lack of foundation. Would you lay a foundation, please?

12 MR. BEERS: Well, I haven't started yet.

13 MR. RUNYAN: Well, he was just going to talk about it.

14 MR. BEERS: Oh, no, no, no, no.

15 MR. RUNYAN: I have a foundation -- a foundation
16 objection.

17 MR. BEERS: No, no, no. I wasn't going to --

18 Q. First of all, would you just tell us what you understand
19 the document is?

20 A. Right. This was a letter, a memorandum, that was sent
21 to all diocesan administrators and treasurers and
22 chancellors.

23 Q. Stop there. Where did you get this document?

24 A. This document is in the archives of the Episcopal
25 Church.

1 Q. And in what category would this be?

2 A. Records of the treasurer, the finance department.

3 Q. Is that standard?

4 A. Yes, sir.

5 Q. And just without getting into any substance, just could
6 you tell me what the subject matter of this document is?

7 A. The file is entitled tax exemption.

8 MR. BEERS: All right. Now we move it in, Your Honor.

9 MR. RUNYAN: No objection.

10 THE COURT: Very well.

11 (Defendant's Exhibit 434 admitted into evidence.)

12 MR. BEERS: How about 435?

13 Your Honor, if I may, I'm going to hand you a stack and
14 we'll go through them one by one.

15 THE COURT: Would you like to know what the stack is?

16 MR. RUNYAN: It would be lovely.

17 MR. BEERS: Take a look at them. 435, Your Honor.

18 Q. Mr. Duffy, what's this document?

19 MR. RUNYAN: I have a foundation objection.

20 MR. BEERS: We'll find out.

21 MR. RUNYAN: Okay.

22 Q. What does it appear on its face to be? Let's start with
23 that.

24 A. It is a letter from the assistant treasurer of the
25 Diocese of South Carolina.

1 Q. And where did you get this document?

2 A. In the same file -- in the file entitled tax exemption
3 in the records of the treasurer of the finance department of
4 the DFMS.

5 Q. A type of document you routinely receive?

6 A. Routinely.

7 Q. And do you know what the subject of this document is?

8 A. Yes, it has to do with the group exemption for the -- of
9 the -- the Episcopal Church's group exemption and its
10 application to the Diocese of South Carolina.

11 Q. Thank you.

12 MR. BEERS: We offer this, Your Honor.

13 MR. RUNYAN: No objection.

14 THE COURT: Very well.

15 (Defendant's Exhibit 435 admitted into evidence.)

16 Q. Now, 436 --

17 MS. KOSTEL: 435.

18 MR. BEERS: That was 435.

19 THE COURT: Yes, it was, yes.

20 MS. KOSTEL: Oh, I'm sorry.

21 Q. 436, Mr. Duffy, what does this appear to be?

22 A. Okay. This is part of the same file and it is a letter
23 that came from you to the treasurer, Steven Duggan, and would
24 be in that same file that we received from the treasurer's
25 office routinely and it's under the title of tax exemption.

1 MR. BEERS: We offer that.

2 MS. GOLDING: Your Honor, this document, obviously,
3 is -- contains conclusions of law and unsupported facts and
4 goes to central issues in this lawsuit. I do not believe
5 it's proper to be presented.

6 MR. RUNYAN: In addition to the fact that it is hearsay
7 written by Mr. Beers to the IRS, not a party to this case
8 that I know of.

9 MR. BEERS: Your Honor, this is a document that, in the
10 ordinary course of business, was sent to the IRS regarding
11 our group exemption.

12 MS. KOSTEL: I'm sorry, Your Honor, would you like a
13 hard copy?

14 THE COURT: No, I can read it very easily. I was just
15 going to read the rest of it.

16 And that's the conclusion, there aren't any attachments
17 to this letter. Is that the end?

18 MS. KOSTEL: Yes, Your Honor.

19 THE COURT: All right. Now, of course, with regards to
20 admissibility, number one, it's been authenticated. And
21 number two, relevance is with regards to a matter which is of
22 consequence to the litigation, does this letter make a fact
23 which is of consequence more probable or less probable; in
24 other words, does it move the peanut ahead or back? I think
25 it does. I think it's admissible and in over the objection.

1 (Defendant's Exhibit 436 admitted into evidence.)

2 MR. BEERS: Thank you, Your Honor.

3 Q. Now let's turn to 437. What's this, Mr. Duffy?

4 A. This is a letter from the IRS to the Episcopal Church
5 but found in the records of the treasurer and the finance
6 department and held in -- a couple of copies, actually, to
7 make sure we can always find it. It is the exemption number,
8 which is pretty important.

9 MR. BEERS: We offer that in evidence, Your Honor.

10 MR. RUNYAN: Same objection as to that, Your Honor.

11 THE COURT: Not as to authenticity but as to relevance,
12 right?

13 MR. RUNYAN: And hearsay.

14 THE COURT: Well, it's hearsay. What about the hearsay
15 objection?

16 MR. BEERS: Well, Your Honor, this is part of a suite of
17 documents.

18 THE COURT: We don't have an exemption for that.

19 MR. BEERS: Okay. The memo goes out inviting the
20 dioceses to come under the group exemption. The Diocese of
21 South Carolina says yes. The church makes an application to
22 the IRS, and this is the official response.

23 THE COURT: Right.

24 MR. BEERS: It's a -- I mean, you can take judicial
25 notice of it. It's an action of the federal government.

1 THE COURT: I understand.

2 MR. RUNYAN: I think, Your Honor, the third paragraph
3 contains some conclusions that the absence of the declarant
4 makes it impossible to understand what the intent was of
5 those conclusions, and that's the whole problem; inability to
6 cross-examine the person who used some of the words in the
7 third paragraph, so it's hearsay.

8 MR. BEERS: Well --

9 (Brief pause.)

10 THE COURT: Let me say this, this document is hearsay
11 and I cannot find an exception that I think is applicable.
12 But for your purposes, as I understand it, I don't remember
13 exactly who, I would say that there have been multiple
14 people, though, who have testified with regards to the group
15 exemption and that the diocese was also a party to that.

16 I am concerned with regards to the fact that this is
17 hearsay and the level of hearsay. It's actually triple
18 hearsay, and I think it's admissible in terms of the fact
19 that it's kept and it's typed, that doesn't concern me.

20 And I thought about whether or not it really matters
21 whether it could be admitted, not for the truth of the matter
22 asserted but for some other reason, but clearly it would be
23 being admitted for the truth of the matter asserted.

24 The third level of hearsay, obviously, cannot be handled
25 here today, but I know that the diocese -- I know that they

1 were a part of the group exemption, I know that, so, I mean,
2 I know that.

3 MR. BEERS: And I guess we want to close the loop that
4 it's a response to a particular application, and that
5 application listed the Diocese of South Carolina as part of
6 the group.

7 THE COURT: I know. That's in your letter.

8 MR. BEERS: Sorry?

9 THE COURT: That's in your letter.

10 MR. BEERS: Yes. And the only point that we were
11 offering this for is that we have a group exemption --

12 THE COURT: Yes.

13 MR. BEERS: -- which covers the Diocese of South
14 Carolina.

15 THE COURT: It's already been testified to by somebody.

16 MR. BEERS: But let me tell you, Your Honor, in the
17 30(b)(6) depositions, witness after witness after witness
18 denied that they knew anything about this. But if you're
19 satisfied that there is evidence in the record that the South
20 Carolina -- people in South Carolina elected to be part of
21 the group exemption, that's fine.

22 THE COURT: And this letter doesn't add anything to
23 that. It doesn't detract anything, but it doesn't add
24 anything to it. And your letter is very general. Your
25 letter just says South Carolina.

1 MR. BEERS: All right. Let's move to 442.

2 THE COURT: Right. I'm so sorry. You've got to read
3 that. Can you read that?

4 I just don't think Mr. Duffy can read that.

5 MR. BEERS: I don't think that's the right one,
6 Ms. Kostel.

7 Q. Here you go. Here it is. Mr. Duffy, where does this
8 file -- where does this document come from?

9 A. So this document also comes from the records of the
10 treasurer and the finance department and they're found -- and
11 it is found in the same file on tax exemptions, which is an
12 accumulating file of correspondence with our dioceses and the
13 IRS.

14 Q. And what does this document on its face purport to be?

15 A. This is a reply, I believe, from Nancy Armstrong, the
16 assistant treasurer, updating -- as required, updating the
17 treasurer's office on the status of the diocese and the
18 parishes and congregations currently active and their
19 addresses and all that directory information.

20 THE COURT: Is it copied to -- to there you go. Okay.
21 Got it.

22 MR. BEERS: We move that in, Your Honor.

23 MR. RUNYAN: No objection.

24 THE COURT: Okay. Very well.

25 (Defendant's Exhibit 442 admitted into evidence.)

1 Q. Now, Mr. Duffy, would you turn to 446.

2 MR. RUNYAN: Is there a question?

3 MR. BEERS: There's no question.

4 MR. RUNYAN: Okay, thank you.

5 MR. BEERS: Do you want me to ask one?

6 MR. RUNYAN: You would have to sooner or later.

7 THE COURT: Do you have this document?

8 MS. GOLDING: We have a document that says the Diocese
9 of Maryland, Your Honor.

10 MR. RUNYAN: And we only have a few pages. We don't
11 have the whole -- -

12 THE COURT: How can you tell it even says that?

13 MS. GOLDING: From their list.

14 MR. RUNYAN: It's from their list, that's the only way.

15 MR. BEERS: No, it's not the only way. The word
16 Maryland's right there at the top of the page next to the
17 date 1790.

18 THE COURT: Mine's got a hole in it.

19 MR. BEERS: Well, why don't we find out what Mr. Duffy
20 has to say about this document.

21 Q. Mr. Duffy, tell me, what is this document and where did
22 you get it?

23 A. All right. So the archives maintains a comprehensive
24 collection of the journals of each diocese of the church,
25 foreign and domestic. This is a -- what I'm looking at is an

1 excerpt from the 1790 journal of the Diocese of Maryland held
2 in the archives in better condition.

3 THE COURT: Okay. It's authenticated. Tell me what the
4 relevance is. It's Maryland.

5 MR. BEERS: This is a collection of expressions by the
6 Diocese of Maryland regarding their compliance with the
7 canons of the national church.

8 These are documents we offer to show that this diocese
9 understood that it was bound by the canons of the church and
10 it was reporting on that -- the degree of that compliance, at
11 very early on 1790 -- starting in 1790 and running up through
12 1818. Now, Ms. Kostel's --

13 Oh, yes, there are two things. One is that in this
14 document, the Diocese of Maryland is entitled the Protestant
15 Episcopal Church in the Diocese of Maryland. We offer that
16 because there has been some suggestion in this case that the
17 diocese claims that the term "Protestant Episcopal Church in
18 the Diocese of South Carolina" was somehow unique or unusual,
19 and we're going to show through this exhibit and several
20 others that it was in common use in several dioceses. That's
21 number one.

22 And number two, it is an explanation of the manner in
23 which they have obeyed the canons and the reasons why.

24 MR. RUNYAN: Your Honor --

25 THE COURT: Sustained.

1 MR. BEERS: Would you, with respect, ask you --

2 THE COURT: Let's make this an offer of proof.

3 MR. BEERS: Sorry?

4 THE COURT: Let's make this an offer of proof. In other
5 words, this exhibit will be marked. We can either mark it
6 for identification purposes or we can mark it as a Court's
7 exhibit and make it an offer of proof.

8 MR. BEERS: All right. Let me consult with Ms. Kostel
9 on that.

10 (Brief pause.)

11 MR. BEERS: Now, in order to speed up, I would like to
12 ask Mr. Duffy some questions before --

13 Yes, Your Honor, we offer that as -- present that as an
14 offer of proof.

15 THE COURT: Thank you.

16 MR. BEERS: So I guess it's Exhibit 446 for
17 identification.

18 THE COURT: Perfect.

19 Q. Now, Mr. Duffy, would you tell me what 447 is.

20 A. Well, these I know well. These are the -- well, that is
21 an excerpt from the journal of the diocese of Massachusetts.

22 Q. From -- excerpts from various --

23 A. From 1799.

24 Q. Various -- several journals?

25 A. Yes, well, I'm looking at the 1799, but the list I have

1 indicates that there are several in this packet, yes.

2 Q. All right. Now I'm going to go on to 448.

3 A. Okay. So this is from excerpts from material in the
4 archives from -- these are excerpts of the journals of the
5 Diocese of New Hampshire, also in the archives.

6 Q. 448 or 449?

7 A. Well, the one I'm looking at on the screen is --

8 THE COURT: It says 4th Convention 1804, it doesn't
9 have --

10 THE WITNESS: This is 448, I assume.

11 Q. All right. And 449?

12 A. 449, oh, it's New Jersey. Okay. So this is an excerpt
13 from the journal of the Diocese of New Jersey.

14 Q. Journals?

15 A. Journals. There are several in here.

16 Q. 450?

17 A. These are excerpts from the journals of the Diocese of
18 New York.

19 Q. 451?

20 A. These are excerpts from the journals of the Diocese of
21 Pennsylvania in the archives.

22 Q. 452?

23 A. These are excerpts from the journals of the Diocese of
24 Rhode Island.

25 Q. 454?

1 THE COURT: Vermont.

2 THE WITNESS: Thank you, ma'am. These are excerpts from
3 the journals of the Diocese of Vermont.

4 Q. 455?

5 A. These are excerpts from the journals of the Diocese of
6 Virginia.

7 Q. 477?

8 A. These are excerpts from the journals of the Diocese of
9 Connecticut.

10 Q. And, I believe, 478.

11 A. And these are excerpts from the journals of the Diocese
12 of Delaware.

13 MR. BEERS: If the Court please, we offer -- we offer
14 all of these for the same reasons that we offered the
15 original ones from the Diocese of Maryland.

16 THE COURT: Got it.

17 MR. BEERS: And we would have each marked for
18 identification and put in the record as a proffer.

19 THE COURT: Thank you so kindly.

20 Q. Now, would you please look at 463.

21 A. Okay. This is a -- these are excerpts from the journal
22 of the general convention for the -- for 1964, which is
23 located in the archives.

24 MR. BEERS: And we offer this in evidence, Your Honor,
25 I'll be glad to explain why.

1 MR. RUNYAN: Well, I guess our -- I might not have an
2 objection to this if I could see the whole thing, but since I
3 can't see the whole thing, it's incomplete. That would be
4 the objection.

5 MR. BEERS: Well, we -- first of all, the journals are
6 in evidence. Are they in evidence?

7 MS. GOLDING: No.

8 MR. BEERS: No, they're not, but we can supply the whole
9 volume.

10 MS. KOSTEL: Again, just to point out, we're putting
11 in -- at the request of everyone in the room, we're putting
12 in excerpts from the diocesan journals to save having to put
13 in the entire journals, so this is an excerpt from the
14 general convention journal.

15 THE COURT: I think that Mr. Runyan just wanted to be
16 able to see the whole document.

17 MS. KOSTEL: The whole journal, Your Honor?

18 THE COURT: I don't know. Probably the whole excerpt,
19 to begin with, the whole excerpt because it was chopped off
20 and then you moved it up, so I don't know where it is at this
21 point. It's kind of hard to make a decision when half of
22 your page is chopped off.

23 MS. KOSTEL: They are on the hard drive that they've
24 had.

25 MR. RUNYAN: "They" what, the whole journal?

1 MS. KOSTEL: No, this excerpt is.

2 MR. RUNYAN: Ah, how about -- well, okay. The same
3 problem.

4 THE COURT: Say what?

5 MR. RUNYAN: She said the excerpt was on the hard drive.
6 I think it's the same issue, still incomplete.

7 MR. BEERS: Well, Your Honor, the word "incomplete"
8 seems to me to be misused here. If you have a book that's
9 1,000 pages and there's one page in which there is a point
10 and that page is offered, it's hard to see what's wrong with
11 that. We're offering just these words.

12 THE COURT: Well, I understand that, but let me hear
13 from Mr. Runyan. I'm sure that his concern is with regards
14 to lack of completeness. Is it because Article 5, Section --
15 or Article 5 is incomplete? Tell me to what extent, if any,
16 incompleteness you're concerned with.

17 MR. RUNYAN: Well, there are two issues. One is that
18 this -- first of all, I'm not really sure what the point is,
19 so I don't know the relevance. But assuming that it has
20 relevance, Mr. Beers, it looks like a portion of the page
21 stops where it shouldn't stop.

22 Second is, until I know context, I don't know relevance.
23 But I would say there's a relevance objection as well and
24 maybe he can clarify that.

25 MS. KOSTEL: Where does the page stop, Alan, where it's

1 not supposed to stop?

2 MR. RUNYAN: It ends as follows, colon, blank.

3 MR. BEERS: No, page 271.

4 MR. RUNYAN: Where's the rest of it?

5 MS. KOSTEL: But that's not the same subject. See the
6 hash mark?

7 MR. RUNYAN: Well, how do I know what the subject is?

8 MS. KOSTEL: Read it. There's a hash park on page 270.

9 There's a hash mark on page 271. It's beginning and end.
10 It's obvious.

11 MR. RUNYAN: Okay. I have a relevance and an
12 incompleteness objection.

13 MR. BEERS: Can I address the relevance first, Your
14 Honor?

15 THE COURT: Yes.

16 MR. BEERS: This is an amendment to the constitution to
17 make it clear that dioceses may not, on their own, change
18 their boundaries or cede territory back to the church without
19 the consent of the general convention.

20 MR. RUNYAN: I --

21 MR. BEERS: I'm not finished. It is the official
22 expression by the general convention that the general
23 convention controls the -- this aspect of the dioceses. The
24 dioceses may not change their boundaries without the consent
25 of the general convention.

1 MR. RUNYAN: And my objection on that basis is the
2 document speaks for itself. I don't believe how counsel read
3 that is what's in there, but that document speaks for itself.
4 The document's incomplete. Obviously it's an issue of
5 importance.

6 MR. BEERS: Well, seems to me he can't have it both
7 ways. He can't say, well, we object to its relevance, and
8 then I tell him why we think it's relevant and then he says,
9 well, you can't do that because the document speaks for
10 itself. That's a little circulative.

11 MR. RUNYAN: Mr. Beers' testimony is not in the record.
12 So to the extent the document is relevant, it speaks for
13 itself.

14 THE COURT: I understand.

15 MR. RUNYAN: And right now is incomplete.

16 THE COURT: I understand what you're saying. Now let me
17 ask you this question: Are pages 270 and 271 what are being
18 offered?

19 MS. KOSTEL: The text between the hash marks, so there's
20 a line on 270 where a new subject begins.

21 THE COURT: All right. So only Constitution Article 5
22 Section 8 is being offered?

23 MS. KOSTEL: Well, I think actually above that, Your
24 Honor, where it says the house of bishops received house of
25 deputies' message, just because it's saying that this came

1 forward to the house and so that's where the hash mark is and
2 I think the way the journals work is that sets out the topic,
3 so there's that hash mark.

4 THE COURT: So you would begin your offer from "the
5 house of bishops received"?

6 MS. KOSTEL: Yes.

7 THE COURT: And you would conclude it with "communicated
8 to the house of deputies"?

9 MS. KOSTEL: Yes.

10 THE COURT: Let me read it, then, and let me see.

11 (Brief pause.)

12 THE COURT: Okay. The objection is sustained. We'll
13 mark it for -- well, it will remain marked for identification
14 purposes and be an offer of proof.

15 MR. BEERS: Thank you, Your Honor. No. 464 I'll
16 represent to the Court is an excerpt of the journal of
17 general convention for 2009 on the same subject. And I'm
18 assuming we have the same objection?

19 THE COURT: I don't know. I don't know. I have to see
20 it.

21 MR. BEERS: Same objection?

22 MR. RUNYAN: Can you give me just a second?

23 MR. BEERS: Sure.

24 MR. RUNYAN: Your Honor, two points to make in addition
25 to that. I'm looking at the exhibit that they introduced

1 this morning, the 2009 constitution and canons, that the
2 proposed exhibit references Article 5, Section 8. There is
3 no Article 5, Section 8 in this constitution and canons.

4 THE COURT: Well, and I can't tell -- the reason I was
5 concerned about the other one is it was watching the sausage
6 being made. And this one, likewise, it gets referred to the
7 committee. It's passed by the house of bishops on the first
8 day, and then it is referred to the committee on amendments
9 to the constitution. And then I can't -- because this is
10 report number -- this is -- see, this is Message No. 8, and
11 then the rest of the page refers to Report No. 6, and it's
12 communicated as Message No. 8. And it just says that
13 Message No. 8 was received by the house of bishops and
14 referred to the committee. And then it goes on to other
15 matters.

16 MS. KOSTEL: Let's withdraw it.

17 THE COURT: Yes, okay.

18 MR. BEERS: Let's move to 466.

19 MS. KOSTEL: 465.

20 MR. BEERS: Whoops, sorry. 465, thank you -- no, that
21 was 465, Ms. Kostel.

22 MS. KOSTEL: I don't think so.

23 (Attorneys confer.)

24 MR. BEERS: Errors creeping in, Your Honor, sorry.

25 Q. 465.

1 A. I recognize this as an excerpt from the journal of
2 general convention of 2009.

3 Q. And comes from your files?

4 A. Yes, sir.

5 MR. BEERS: We offer this, 465, Your Honor.

6 MR. RUNYAN: Objection on the grounds of relevance.

7 MR. BEERS: Relevance?

8 THE COURT: Yes.

9 MR. BEERS: This is a decision by the highest
10 legislative authority in the Episcopal Church, the general
11 convention, that dioceses may not leave. This is a
12 recognition of the reorganized dioceses or continuing
13 dioceses in each of four dioceses who recognize that they are
14 the diocese and that they did that before South Carolina.
15 The diocese in South Carolina took its action. This is a
16 decision by the highest authority in the church.

17 THE COURT: You can't testify to that and he didn't
18 testify to that and it's not evident on its face, so what are
19 we going to do about that?

20 MR. BEERS: Well, let's take it on its face. The
21 general convention -- the general convention recognized the
22 continuing dioceses in four other dioceses. Leave it at
23 that.

24 THE COURT: Go to the top of it.

25 MR. BEERS: Yes.

1 THE COURT: Go to the top of the document.

2 MR. BEERS: Yes.

3 THE COURT: It says the bishop in northern Carolina made
4 a further resolution --

5 MR. BEERS: Oh, I'm sorry, Your Honor.

6 THE COURT: -- the motion's defeated, the question was
7 called.

8 MR. BEERS: Sorry, Your Honor, you do not have the hash
9 marks.

10 THE COURT: I'm sorry?

11 MR. BEERS: I'm looking at the bottom of the page, final
12 text of resolution that was adopted.

13 THE COURT: Okay. This document on its face says what
14 it says.

15 MR. BEERS: Yes.

16 THE COURT: It's got -- it has -- on its face, it has
17 absolutely nothing to do with South Carolina. Now, having
18 said that, if you want to identify it and have -- we've had
19 Mr. Duffy testify to the authenticity of it and then hold it
20 back and leave it marked for identification purposes and then
21 you have someone else who's able to testify to make it
22 relevant, maybe that's the appropriate thing to do.

23 You can't testify to what you just testified to because
24 none of that is stated in here. So it's authenticated. It's
25 in, in terms of authentication for identification purposes.

1 Perhaps someone else will testify to what it means. Yes?

2 MR. BEERS: Just one quick response.

3 THE COURT: Sure.

4 MR. BEERS: It has a great deal to do with the Diocese
5 of South Carolina in that -- in that --

6 THE COURT: I want to stop you there.

7 MR. BEERS: Okay.

8 THE COURT: Because it doesn't say that on its face and
9 you don't -- you have to have someone testify and connect
10 those dots. And I'm not saying that you cannot do that. I'm
11 just saying that it isn't evident on its face. It's just an
12 attaboy for folks in Fort Worth, Pittsburgh, Quincy, and
13 San Joaquin. It's a kudo, and that's what it says.

14 I'm not keeping you from calling or having additional
15 witnesses who can say this is what this is. You can't do
16 that because you're not a witness.

17 MR. BEERS: Fine. Thank you, Your Honor.

18 THE COURT: Yes. So let's do this, it's authenticated,
19 it's a piece of it and we'll leave it, at this point, for
20 identification purposes, and it's been identified, and it's
21 been authenticated.

22 MR. BEERS: Thank you, Your Honor. May we now turn to
23 466?

24 THE COURT: And the question is: What is it?

25 THE WITNESS: Okay. I recognize this as what we call

1 the certified resolutions that come out of executive council
2 that are found in the archives in the records of the
3 secretary of executive council.

4 Q. And do you recognize the signature?

5 A. Yes, sir, this is the signature of Gregory Straub, who
6 was the secretary of general convention and the secretary of
7 executive council.

8 THE COURT: Okay. Yes, sir.

9 MR. RUNYAN: It's identified as a letter in their
10 exhibit list. I don't see who it's to, for starters.

11 And secondly, it's obviously hearsay. Mr. Straub is not
12 here.

13 And third, I don't see the relevance to this diocese. I
14 don't see it. I don't see us listed there anywhere.

15 MR. BEERS: I think, Your Honor -- Your Honor, please --

16 THE COURT: Yes.

17 MR. BEERS: -- it does have a lot to do with this
18 diocese. First of all, just taking the text as it is with
19 regarding the four other dioceses, it is a clear expression
20 by the board of directors of the Episcopal national church as
21 to what is the policy and the polity of the church, and the
22 Court can give such weight as it wants to that, but it is an
23 official expression of the understanding of the church's
24 polity by its board of directors. That's number one. And
25 that applies beyond -- that applies to all dioceses.

1 And it says on its face, that any amendment to a
2 diocesan constitution that purports in any way to limit or
3 lessen an unqualified accession to the constitution and
4 canons of the Episcopal --

5 THE COURT: Oh, no, you can't go that fast.

6 MR. BEERS: I know, I suddenly just woke up.

7 -- unqualified accession to the constitution and canons
8 of the Episcopal Church is null and void.

9 And that is not limited to these four dioceses. It
10 does -- it is intended to cover other dioceses. That's
11 number one -- no, excuse me, number two.

12 MR. RUNYAN: Well, Your Honor, as to those points, first
13 of all, there's a conclusion at the bottom that is, at least
14 in this Court, a legal conclusion, which I don't believe
15 there's any foundation for this gentleman to offer.

16 MR. BEERS: He's not offering it. Mr. Straub's not
17 offering it.

18 MR. RUNYAN: Well, he is if this goes in.

19 MR. BEERS: Mr. Straub, as the secretary, is merely
20 certifying its authenticity.

21 MR. RUNYAN: Secondly, there is no relevance under the
22 standard of the United States Supreme Court on hierarchy
23 which requires that it must be the highest judicatory to
24 which the matter has been taken. "The matter" is the
25 departure of this church. And this is not a judicatory, so

1 on that basis, it's irrelevant as well.

2 THE COURT: All right. Here's what I'm going to do with
3 this document, it's going to be marked for identification
4 purposes only at this point. It's 2007. It says what it
5 says. It's hearsay. It's been authenticated in terms of it
6 is a document that was written and has been authenticated.

7 The relevance on its face is not apparent, but if it
8 could be made -- you know, sometimes to admit a document,
9 there have to be several steps. What I see at this point
10 does not get this document to have relevance with regards to
11 this case. Number one, I don't know who this went to; number
12 two, I don't know that it was ever communicated to the
13 plaintiffs; number three, I don't know whether or not there
14 was a -- it's 2007. And the relevance, while it certainly
15 might exist, it may become relevant. At this point, it isn't
16 relevant on its face for the reasons I've already mentioned.

17 MR. BEERS: If I may just respond to a couple aspects of
18 that.

19 THE COURT: Sure.

20 MR. BEERS: It's not a letter. It's a certified copy of
21 the resolution adopted by the board of directors.

22 MS. KOSTEL: I think Mr. Duffy testified to that.

23 MS. GOLDING: Your Honor, we received -- the list we
24 received from the defendants identifies this clearly as a
25 letter.

1 MS. KOSTEL: That was a mistake.

2 MR. BEERS: That was a mistake. We all make them.
3 What's funny about that?

4 THE COURT: Hey, stop.

5 MR. BEERS: Gee whiz.

6 MR. HOLMES: Your Honor, I'm sorry, would it be 803(6)
7 of the hearsay?

8 THE COURT: I'm going to handle what's going on out here
9 first. That's to stop. You all address me.

10 MR. BEERS: Yes, ma'am, I apologize.

11 THE COURT: Yes, sir. You don't practice law in the
12 state of South Carolina, but we have -- we have rules that
13 govern the means and the manner in which counsel speak with
14 one another, and they will be complied with.

15 You have to be sure that they are complied with. So
16 that's the first thing.

17 MR. HOLMES: Yes, ma'am. Thank you.

18 THE COURT: The second thing is you address the Court.
19 You do not address each other.

20 Thirdly, I've ruled. You need to explain that you don't
21 argue with the Court in South Carolina, right?

22 MR. HOLMES: Yes, ma'am.

23 THE COURT: Thank you kindly. You would like for me to
24 review a rule. Tell me that rule again, sir.

25 MR. HOLMES: 803(6), Your Honor.

1 THE COURT: Thank you. Let me take a look at it.

2 MR. HOLMES: Of the rules of evidence, of course.

3 THE COURT: Okay. I'm with you.

4 MR. HOLMES: If you'll give me the opportunity, I would
5 ask -- and I don't know it's important enough to raise, but
6 maybe the IRS' determination, I think that's 8038, I found a
7 federal district court case that would support that argument.

8 THE COURT: Okay. Now tell me which one. Give me a
9 number.

10 MR. HOLMES: With the 803 -- Rule 803(6), that being
11 that this report that's being offered in evidence is a record
12 of an activity conducted in the regular course of business of
13 the church, based on the testimony of the witness, the
14 archivist, and the content's consistent with that.

15 THE COURT: I agree with that part. That's the
16 reason -- that's the reason, Mr. Holmes, that I said that
17 it's an authenticated document.

18 MR. HOLMES: Yes, ma'am.

19 THE COURT: It wouldn't be excluded on the basis of
20 hearsay.

21 My concern -- and then I went on to say it ought --
22 because, as you know when you admit a document -- I know
23 you've done enough, particularly criminal law, that it takes
24 many steps.

25 The first step, this step, you're exactly correct, I

1 think it's authenticated. I think that Mr. Duffy can
2 authenticate it. The problem is that on its face, it doesn't
3 have relevance to these issues, but that doesn't keep someone
4 else from connecting those dots. The authentication dot,
5 done.

6 The problem is that we're talking about June the 25th,
7 2007. We're talking about other places. And because it
8 doesn't say "Charleston" on its face, there needs to be a
9 witness to connect those dots.

10 So what I'm saying at this point isn't that it is
11 excluded for all time. I'm just simply saying that at this
12 point the relevancy has not been established. Doesn't mean
13 at all that that can't happen. There may be somebody that
14 can come in and say, oh, well, boy, were we having trouble in
15 2007. Here's evidence of it. We issued this because we were
16 getting ready. You better believe this went out to
17 Charleston and we talked about it at the next convention.

18 In other words, there's lots of testimony that can come
19 out that will make this relevant, it just isn't on its face.
20 It is what it is. It may become relevant, but it isn't yet.

21 Do you see what I'm saying?

22 MR. HOLMES: Yes, ma'am.

23 THE COURT: But you are correct, I agree with you.

24 MR. HOLMES: Thank you.

25 THE COURT: And that's why I said, it is marked for

1 identification purposes because the hearsay now is handled.

2 MR. HOLMES: Thank you.

3 THE COURT: Yes.

4 MR. BEERS: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Q. 467.

7 MR. RUNYAN: Presuming that the witness will testify
8 that he got this out of the archives, our objection would be
9 relevance.

10 MR. BEERS: Your Honor, in order to speed things along,
11 may I suggest the following?

12 THE COURT: Okay.

13 MR. BEERS: Exhibit 467 --

14 Q. Mr. Duffy, would you just tell us what that document
15 appears to be.

16 A. This is a letter to bishop -- Presiding Bishop Schori
17 from Bishop Dorsey Henderson indicating the results of the
18 title 4 review committee decision.

19 Q. That's fine. And that comes from the -- that's kept in
20 the archives?

21 A. Yes, yes, sir.

22 Q. And 468?

23 A. This is a notification to a number of groups and
24 important bodies in the church regarding the deposition of
25 Bishop Schofield.

1 Q. And 469?

2 A. This, I believe, is the letter informing Presiding
3 Bishop Schori of the decision of the review board in the
4 case -- the disciplinary board in the case of Bishop Robert
5 Duncan.

6 Q. And 470?

7 A. And this is the notification to all the important bodies
8 of recordkeeping, what have you, of the deposition of Bishop
9 Duncan, all held in the archives.

10 MR. BEERS: Your Honor, we're offering all of these and
11 I'm grouping them together to try to move things along.

12 One has to do with charges against Bishop X, and then
13 the second one is the result of that -- the outcome of that
14 charge. And then the next one is the charge against Bishop
15 Y, and the outcome of that.

16 And I don't think there probably is going to be problems
17 with authenticity, but I figured the relevance objections
18 probably all could be dealt with together, if you have them.

19 THE COURT: So tell me, what is the relevance?

20 MR. BEERS: I'm sorry?

21 THE COURT: Let me ask you this question: It appears to
22 me that these are bishops somewhere else; yes, is that
23 correct?

24 MR. BEERS: Yes.

25 THE COURT: They're not in Charleston?

1 MR. BEERS: Correct.

2 THE COURT: Okay. So tell me, what is the relevance
3 with regards to these matters?

4 MR. BEERS: The general convention by canon allots to
5 the -- something called the disciplinary board -- well, a
6 disciplinary board --

7 THE COURT: Sure.

8 MR. BEERS: -- and to the house of bishops and to the
9 presiding bishop the authority to discipline bishops in
10 certain circumstances.

11 THE COURT: Right.

12 MR. BEERS: These documents show that this disciplinary
13 board, the house of bishops, and the presiding bishops dealt
14 with a charge about two bishops and, as the highest authority
15 in the church under the canons, made a decision in that
16 regard, and that decision was to depose them for violating
17 the -- violating the rules of the church or repudiating the
18 rules of the church. And that -- those are decisions by the
19 highest bodies in the Episcopal Church --

20 THE COURT: Yes.

21 MR. BEERS: -- in regard to those two bishops.

22 THE COURT: Yes.

23 MR. BEERS: And the charges are that those two bishops
24 attempted to lead their dioceses out of the Episcopal Church.

25 THE COURT: Okay.

1 MR. BEERS: And these documents talk about that, they
2 say that, and that's why they were deposed.

3 THE COURT: Got it.

4 MR. BEERS: That is a decision by the highest body in
5 the church that a bishop who tries to lead a diocese out of
6 the church is going to be deposed because that is contrary to
7 the rules of the church.

8 We're trying to establish, obviously, that
9 Bishop Lawrence tried to -- has tried to lead his diocese out
10 of the Episcopal Church, and this is a decision by the
11 highest body in the church that says that that is a violation
12 of our constitution and canons.

13 THE COURT: Got it. Okay. And that's the relevance of
14 these matters?

15 MR. BEERS: Yes.

16 THE COURT: Okay. Is there an objection?

17 MR. RUNYAN: Yes, Your Honor. If there's relevance, it
18 would be Bishop Lawrence and not the bishops in other
19 locations.

20 Secondly, this is, obviously, cumulative because, to the
21 extent there are any such rules, they're contained in the
22 constitution and canons which are already in evidence. So he
23 can use those to say that they say what they say.

24 These are replete -- the hearsay that's contained in
25 this is unbelievable. There's hearsay upon hearsay upon

1 hearsay, and, again, having to do with other people, not the
2 Diocese of South Carolina.

3 I mean, not to mention the lack of foundation on -- from
4 this witness except that they're in the archives. I mean,
5 there's just -- there's -- I don't even know where to begin
6 on these. They're just not relevant. I mean, that's the
7 simple idea, the idea that somehow the deposition of a bishop
8 on other charges from another part of the church has
9 relevance to whether a diocese can leave or whether they have
10 an interest in the property of the diocese and parishes is
11 just beyond me.

12 THE COURT: Well, here's what I'm going to do at this
13 point. Again, there are layers of hearsay. This document
14 will continue to be marked for identification purposes. And
15 at this point, there may be other layers of hearsay that must
16 be handled, but additionally, with regards to the relevance,
17 there very well may be someone, a witness who can speak to
18 that and tell me why these letters, these actions have
19 relevance with regards to South Carolina.

20 I can tell you this, that if there was simply a result
21 that was presented, Pearson says I must accept the result. I
22 can't go behind it, not going to go behind it, which I think
23 probably makes the issue of whether it is relevant or not --
24 which certainly bears on whether it's relevant or not, but
25 there's got to be somebody else that could testify to that.

1 For now it is one layer of the hearsay in that it is a
2 document that's handled and it remains marked for
3 identification purposes.

4 MR. BEERS: Could I ask a question for clarification,
5 Your Honor?

6 THE COURT: Sure.

7 MR. BEERS: 468 and 470 each embody, on their face, the
8 result.

9 THE COURT: Come on back to that because, you know, we
10 sort of went through them quickly. I didn't have a chance to
11 read that.

12 MR. BEERS: Sorry, if you would look at 468.

13 THE COURT: Okay.

14 Q. Mr. Duffy what is that?

15 A. This is a notification to various bodies of the
16 Episcopal Church of the deposition of Bishop John David
17 Schofield.

18 THE COURT: And tell me what it is that you want me to
19 do with this.

20 MR. BEERS: Admit it into evidence on the ground that --
21 on the ground that --

22 THE COURT: Yes.

23 MR. BEERS: -- the highest authority in the church under
24 our rules has deposed this bishop.

25 THE COURT: Okay.

1 MR. BEERS: Now, it doesn't have the charge itself,
2 which is why we introduced the charge so that one could see
3 why he was deposed, but we may be able to put in a witness on
4 that subject. But the action is deposition of that bishop.
5 And 470 is the deposition of the other bishop. That's the
6 official action. And it seems to me that's clearly
7 admissible.

8 And as to the relevance --

9 THE COURT: Yes, that's what I'm looking for.

10 MR. BEERS: Yes.

11 THE COURT: Tell me about that.

12 MR. BEERS: The highest body in the church deposes a
13 bishop because -- assuming we can connect this up --

14 THE COURT: Okay. I understand.

15 MR. BEERS: -- because the bishop attempts to lead the
16 diocese out of the Episcopal Church.

17 THE COURT: Right.

18 MR. BEERS: And he's deposed because he's charged with
19 violating the rules of our polity.

20 THE COURT: Right.

21 MR. BEERS: Okay?

22 THE COURT: Right.

23 MR. BEERS: All right. And in that way they're saying
24 that dioceses can't leave. That's our polity.

25 THE COURT: Got it.

1 MR. BEERS: And there are two of them. Now we have, in
2 this case, a case where we have a bishop who purported to
3 lead the diocese out of the church.

4 THE COURT: Right.

5 MR. BEERS: We have a ruling from the highest body in
6 the church that that conduct is not consistent with our
7 polity, it's a violation of our polity.

8 THE COURT: Got it.

9 MR. BEERS: That seems, to me, to be relevant.

10 THE COURT: But here's the interesting part --

11 MR. BEERS: Okay.

12 THE COURT: -- if we were hierarchical jurisdiction,
13 where the way that we, as a state, resolved the disputes with
14 churches was to enforce the hierarchical nature of a church,
15 and we assumed the hierarchical nature for purposes of
16 argument, then there would be one of two things. I presume
17 that at some point you're going to tell me this is what
18 happened to Bishop Lawrence. I guess I would say good-bye,
19 Bishop Lawrence. But we are not a hierarchical jurisdiction.
20 And Pearson would tell me that for whatever purposes, I guess
21 if -- that's where the relevance gets to be rather tricky.
22 Because while Pearson says that I must accept the Church's
23 determination, once the Right Reverend John Schofield is, I
24 gather, deposed, I can't go behind that decision, under South
25 Carolina law. But nobody's asking me to go behind that

1 decision. That's not what we're about here.

2 So then you take a look at the fact that whether or not
3 this action regarding John David Schofield has any relevance
4 with regards to South Carolina. I don't know. I mean, I'm
5 having difficulty finding that relevance because there are,
6 A, unanswered questions.

7 I know -- see, I know based on the All Saints case that
8 our churches are allowed to make amendments to their
9 constitution and their bylaws and allowed to take certain
10 steps which have a very dramatic effect on the way that
11 church disputes are resolved.

12 And while I am reluctant to exclude this piece of
13 evidence, other than the fact that at this moment it is
14 authenticated in that it is a document that is in the
15 archives, obviously regularly kept type of document within
16 the archives, and that level of hearsay has been met, and I'm
17 not at the conclusion of the case, it seems to me to be
18 appropriate at this point to leave it marked for
19 identification purposes only rather than to exclude it, only
20 because I hadn't heard all the testimony.

21 I can tell you, though, that, as you are well aware,
22 we're not a hierarchical jurisdiction.

23 MR. BEERS: Well, let me respond very briefly, Your
24 Honor.

25 THE COURT: Yes.

1 MR. BEERS: Just for clarification.

2 THE COURT: Sure, of course.

3 MR. BEERS: I'm not contending. Obviously, this is
4 helpful for the record because we contend that hierarchy is
5 important. But if we are able to show that, hierarchy or
6 not, that there was a mutual understanding between the
7 national church and the Diocese of South Carolina that in
8 return for the benefits of having an identity in the
9 Episcopal Church they agreed to abide by the constitution and
10 canons of the church, then we get over the hump on the
11 hierarchy and we are, it seems to me, entitled to win this
12 case on the grounds that they have breached their agreements
13 with the Episcopal Church.

14 And this evidence is relevant to that because this is
15 relevant to showing that the polity of the church -- to which
16 we say they agreed in return for benefits -- the polity of
17 the church is that a diocese cannot leave. We have to
18 establish that the polity of the church is that dioceses may
19 not leave, and we intend -- we intend -- we think the record
20 will show that, and it may be too coarse to say there was a
21 deal, but in return for coming into the church and receiving
22 its benefits over the years and growing as an Episcopal
23 Church they agreed, for all time, to abide by the polity of
24 the church, then we have a breach that's material. And that
25 breach is explained by these documents.

1 Now, I just needed to get that out for where we are.

2 THE COURT: I understand. I'm with you. And as I say,
3 that is exactly the reason why at this point it remains
4 marked for identification.

5 MR. BEERS: Thank you.

6 THE COURT: It is not excluded in the event that you can
7 connect those dots.

8 MR. BEERS: Thank you, Your Honor.

9 THE COURT: Yes.

10 Q. Mr. Duffy, would you now turn to Exhibit 479 --

11 MR. BEERS: Is that right, Ms. Kostel?

12 A. This is an excerpt from the journal of general
13 convention for 1964 and it's found in the archives.

14 Q. Yes.

15 MR. BEERS: We are not offering the whole volume.

16 THE COURT: Okay.

17 MR. BEERS: There may not be hash marks.

18 MS. KOSTEL: There is a hash mark on the left page.

19 THE COURT: I don't know what it is. What is this?

20 MS. KOSTEL: Mr. Duffy said it was an excerpt from the
21 journal of the general convention of 1964.

22 THE COURT: Oh, 1964, there's the date. It's a
23 resolution?

24 MS. KOSTEL: Yes.

25 MR. BEERS: It's a resolution adopted by the general

1 convention, which means adopted by both houses.

2 MR. RUNYAN: Well, that's not obvious from this
3 document, so I object on foundation.

4 THE COURT: It's adopted by the house and gets
5 communicated to the house -- all right. It's adopted by the
6 house of bishops and then it gets communicated --

7 MR. BEERS: No, I'm sorry, Your Honor, if you would look
8 at the -- below on the left, page 312, under levels of
9 authority within the church.

10 THE COURT: Okay.

11 MR. BEERS: Yeah, just before the all caps sentence,
12 levels of authority within the church, resolved, the house of
13 deputies concurring that this 61st general convention do now
14 adopt and publish the following statement.

15 Did you find that?

16 THE COURT: Not in the section that I'm looking at.

17 MR. BEERS: Go down to the bottom of page 312, if you
18 will, please.

19 THE COURT: I'm so sorry, but the pages aren't evident.

20 MR. BEERS: I'm sorry.

21 MS. KOSTEL: It's the left-hand page.

22 THE COURT: I see levels of authority within the church.
23 I've got that.

24 MR. BEERS: At the bottom of the page.

25 THE COURT: I see that. And then I see the resolution

1 was adopted.

2 MR. BEERS: Right.

3 THE COURT: And then I see -- let me ask you this
4 question: Is the up-above levels of authority within the
5 church, is that the process? Because I thought you said when
6 I saw the --

7 MR. BEERS: It is the process by which the resolution's
8 introduced and debated and so forth, but the actual text is
9 in the hash mark on the following page.

10 THE COURT: Okay. Then I need to see the following
11 page, I guess.

12 MR. BEERS: Oh, yes, I'm sorry.

13 MS. KOSTEL: Can you give the Court the hard copy,
14 please?

15 THE COURT: Great, thanks.

16 MR. BEERS: And the passages are highlighted.

17 THE COURT: And do you have page 314?

18 MR. BEERS: Sorry.

19 MS. KOSTEL: I don't believe so, Your Honor. We can get
20 it. I think it moves to another topic.

21 THE COURT: Okay.

22 MS. KOSTEL: But we can provide it.

23 THE COURT: Okay. Let me tell you what I'm reading.

24 MR. BEERS: Sure.

25 THE COURT: What I read this to say is that there's

1 certain bishops that have reviewed a statement which is a
2 public pronouncement that is about to be placed in what's
3 called the pastoral letter. And that they believe that the
4 information that ought to be -- that's about to go into the
5 pastoral letter is too weak, if you will, and that what ought
6 to go into the pastoral letter is much stronger language.
7 And so they make by resolution on, which they have refined,
8 the following language that they believe ought to go into the
9 pastoral letter. And then they set it out.

10 They have a resolution and the resolution is adopted
11 and, apparently, the upgraded language then is the language
12 which is then suggested go into the pastoral letter.

13 MR. BEERS: But it doesn't matter who thought it up and
14 who cared about it, who drafted it. It is a resolution
15 adopted by both houses --

16 THE COURT: Yes.

17 MR. BEERS: -- that states the understanding of the
18 church at its highest level as to the levels of authority.

19 Where it comes from is not relevant because the ultimate
20 action is that the convention as a whole, both houses, adopts
21 it as an official statement of the polity of the church.

22 THE COURT: Yes, to go into the pastoral letter. I
23 don't know what that means.

24 MR. BEERS: At that point it doesn't have anything to do
25 with the pastoral letter.

1 THE COURT: Sure it does, that's what it says.

2 MR. BEERS: Yeah, but whether or not it goes into the
3 pastoral letter, it is adopted by both houses as a statement
4 of our understanding of our polity.

5 THE COURT: You've got to read it.

6 MR. BEERS: Your Honor, of course. It may be to go into
7 a pastoral letter, but it stands on its own bottom.

8 THE COURT: Okay. All right.

9 MR. RUNYAN: Well, the first problem I have, Your Honor,
10 is I really can't tell if this passed by both houses.
11 Counsel represents that it was. It does have a recitation
12 that appears that it might be, but in order for a resolution
13 to pass, it has to, in identical form, pass both the house of
14 bishops and the house of deputies. And this document doesn't
15 seem to say that.

16 MS. KOSTEL: Yes, it does.

17 MR. RUNYAN: That's point one.

18 Point two, it's not -- it's not an amendment of the
19 canons, it's not an amendment of the constitution, which are
20 the governing documents to the Episcopal Church, at least
21 according to what we've heard so far, so I'm not really sure
22 what its relevance is.

23 MR. BEERS: All right. I thought I'd answered that,
24 Your Honor, and I can answer it some more, but I'll wait
25 until you're ready.

1 THE COURT: Okay. For what it's worth, I admit it for
2 what it's worth.

3 (Defendant's Exhibit 479 admitted into evidence.)

4 MR. BEERS: Thank you, Your Honor.

5 Q. Now turn to 503, and we only have one more.

6 A. So I am looking here at excerpts from the journal of the
7 general convention of 1922.

8 MR. BEERS: Mary, does the Court have the hash marks?

9 MS. KOSTEL: There are a number of different sections.

10 MR. BEERS: But does she have them?

11 MS. KOSTEL: It should be on the document, Your Honor.

12 The hard copy will be a lot easier than this one.

13 THE COURT: Do I have it?

14 MS. KOSTEL: No, I think it should be -- the marked
15 exhibit should be up there.

16 THE COURT: Oh, okay. I didn't think I did.

17 MR. BEERS: Well, here's mine (indicating.)

18 MR. RUNYAN: Your Honor, if it will speed things up, we
19 don't object.

20 THE COURT: Okay. 503 is in evidence without objection.

21 (Defendant's Exhibit 503 admitted into evidence.)

22 (Defendant's Exhibit 22 marked for identification.)

23 THE COURT: And then the last one is?

24 MR. BEERS: Exhibit 22.

25 MS. KOSTEL: Now we get out of the electronic and we go

1 back to the hard copy.

2 THE COURT: All right. And it's Exhibit 22, did you
3 say?

4 MR. BEERS: Yes.

5 THE COURT: Okay.

6 MR. RUNYAN: Your Honor, we do have an authenticity
7 objection to this document.

8 THE COURT: Okay.

9 Q. Mr. Duffy, what do you have before you?

10 A. So this is a record of the disciplinary board for
11 bishops signed by Bishop Dorsey Henderson and found in the
12 archives in the files of -- the bishop's files.

13 Q. Now, what do you mean by "bishop's files"?

14 A. Well, the presiding bishop maintains the equivalent of a
15 personnel file, for lack of a better word, on each bishop,
16 active and resigned, retired, of each bishop in the church
17 and to which is an accumulating file of all the relationships
18 and oversight and interactions and any event that may occur
19 in their incumbency.

20 Q. Including discipline?

21 A. Including discipline.

22 Q. Those are maintained by the presiding bishop?

23 A. That's right.

24 Q. And your role as archivist is?

25 A. We maintain the central -- it's our records management

1 function at the Episcopal Church center. We maintain -- we
2 assist in the maintenance of the central files and to make
3 sure that the confidentiality is protected and the privacy of
4 those records, and make sure that they are transferred to the
5 archives in stages so that everything is secured and well
6 cared for and we can -- we can do this kind of validation of
7 the document.

8 Q. Thank you.

9 MR. BEERS: We offer 22, Your Honor.

10 MR. RUNYAN: We still have an authenticity objection. I
11 don't know whether it's appropriate to deal with it now with
12 the witness or to wait, but we do have an authenticity
13 objection.

14 THE COURT: I think you've got to do it now because he's
15 going to catch a flight.

16 We have business records exception act. If there's an
17 objection with regards to the document, we need to go through
18 the inquiry with regards to our statute.

19 MR. HOLMES: All right. Well said.

20 THE COURT: Yes, thank you. Give them the statute.

21 MR. HOLMES: We want to look at the statute. I'm sorry,
22 Judge, because I am embarrassed to say that I was preoccupied
23 with another issue. 803(6), it's a regularly conducted
24 activity in any form. In terms of its authenticity, he's the
25 archivist, I can't -- I mean --

1 THE COURT: Give him the statute, let him ask the
2 questions, or you ask the questions, business records
3 exception.

4 MR. HOLMES: I'd be glad to.

5 DIRECT EXAMINATION BY MR. HOLMES:

6 Q. Mr. Duffy, the document you have before you -- well, the
7 document you see on the screen, where did it come from?

8 A. From the records of the bishop's office called the
9 bishop's files.

10 Q. And how did you get to it?

11 A. The archivist receives these files regularly as part of
12 its records management -- or oversees these records as part
13 of its records management responsibility for the Episcopal
14 Church.

15 Q. And you are the archivist --

16 A. Yes, sir.

17 Q. I think that's not at issue.

18 And this particular document is regularly kept in the
19 course of the business or -- if you want to call it that, of
20 the Episcopal Church of the United States --

21 A. Yes, that's right.

22 Q. -- the national church?

23 That's a regular practice?

24 A. Absolutely.

25 MR. HOLMES: I would submit --

1 THE COURT: Would you ask him if he is the custodian of
2 that record?

3 MR. HOLMES: I will.

4 Q. Are you the custodian of that record? As the archivist,
5 since you're the custodian of the archive, would you be the
6 custodian of that document in its archival form?

7 A. In its archival form, I would be, yes.

8 THE COURT: I don't know what that means. I don't know
9 what that means.

10 MR. HOLMES: Well, you mean its archival form?

11 THE COURT: Yes.

12 MR. HOLMES: Well, I think documents are kept by a
13 business in different places.

14 THE WITNESS: That's right.

15 Q. I'm sorry, where else is the document kept?

16 MR. BEERS: Let me ask a question here.

17 MR. HOLMES: Sure.

18 CONTINUED DIRECT EXAMINATION BY MR. BEERS:

19 Q. Well, you don't physically control every document in the
20 archives?

21 A. Exactly. We have up to six different locations where
22 archives are kept just by the archives. Then there are
23 records that we oversee throughout the building in our
24 records management role.

25 Q. But you're the boss?

1 A. Yes, sir.

2 Q. And you make sure that the rules for document management
3 are followed by your staff?

4 A. Exactly.

5 MR. BEERS: All right. Thank you, Your Honor.

6 MS. GOLDING: Your Honor, I continue to object. This
7 witness, obviously, does not have this document under his
8 custody, control, as a normal part of the business of the
9 defendant; and, therefore, he cannot testify with respect or
10 even to the document.

11 MR. HOLMES: If Your Honor wants argument on that, I'll
12 be glad to provide it. Well, in the sense that every records
13 custodian -- I mean, we have people come in here as records
14 custodians for businesses all the time.

15 THE COURT: That was my problem. He didn't answer that
16 question. And you switched into this thing called
17 archivist -- are you the archivist custodian -- and I don't
18 even know what that means.

19 And the question is: Are you the custodian of that
20 record? I got that. See, because here's my concern, my
21 concern is that there are very sensitive records that remain
22 with the bishop. I'm concerned that that's what this is.
23 That perhaps when that bishop retires or the bishop dies or
24 whatever happens, that there comes a point in time under
25 their doctrine or under their rules, that he gets them. But,

1 see, I feel like we are chicken-stepping around it.

2 MR. HOLMES: I guess what my problem is, and I would
3 just submit it to you.

4 THE COURT: Yeah, you don't know the answer to the
5 question.

6 MR. HOLMES: Pardon?

7 THE COURT: I don't think you know the answer to the
8 question so you don't want to ask it.

9 MR. HOLMES: I'll be glad to ask him any question that I
10 can think of.

11 THE COURT: Ask him that one. Are you the custodian of
12 this document?

13 FURTHER DIRECT EXAMINATION BY MR. HOLMES:

14 Q. Are you the custodian of that document?

15 A. Yes.

16 MR. HOLMES: There we go.

17 THE COURT: All right. Yes.

18 MR. HOLMES: Thank you, Your Honor.

19 MR. RUNYAN: Well, we still have an authenticity issue,
20 but I guess I can handle it on cross-examination.

21 THE COURT: All right. Very well.

22 MR. BEERS: It's admitted.

23 MR. ORR: Your Honor, may I interpose one slight --

24 THE COURT: Sure.

25 MR. ORR: Under Rule 803(6) that Mr. Holmes has been

1 citing, there is a proviso that says, provided, however, that
2 subjective opinions and judgments found in business records
3 are not admissible. So to the extent this document contains
4 opinions or judgments, I would submit that it would not be
5 admissible.

6 THE COURT: I understand. I got it. All right.

7 MR. BEERS: Thank you, Your Honor.

8 THE COURT: Yes, cross-examination? I know he's got to
9 catch a plane. That's the only reason I'm being pushy,
10 pushy, pushy.

11 CROSS-EXAMINATION BY MR. RUNYAN:

12 Q. Mr. Duffy, you were not around when this was signed, if
13 it was signed, by Dorsey Henderson, were you?

14 THE COURT: What is "this"?

15 MR. RUNYAN: Exhibit 22.

16 THE COURT: Okay.

17 THE WITNESS: I'm not sure what you mean by "around."

18 Q. Were you present?

19 A. No.

20 Q. And you got this because it came in the mail to you?

21 A. No.

22 Q. How did it get to you?

23 A. Through the records of the office of the presiding
24 bishop.

25 Q. So the presiding bishop sent this to you?

1 A. Yes.

2 Q. In the form that it's presently in?

3 A. Yes.

4 Q. And you don't know the form it was in, do you, on
5 October the 15th, 2012?

6 A. No, I do not.

7 Q. What time's your flight?

8 A. 4:00.

9 Q. Oh, you've got plenty of time.

10 Do you know if the -- the UTO, what is that?

11 A. The United Thank Offering is an organization of the
12 Episcopal Church that raises money and distributes it to --
13 for our mission.

14 Q. And they meet at the same time the general convention
15 does at another location, don't they?

16 A. Generally at the same location.

17 Q. Do you go to the general convention?

18 A. Yes, sir.

19 Q. Okay. But not in the same place?

20 A. No, often very much right in the same building.

21 Q. Oh, so they meet with the deputies and they all meet
22 together there, the UTO and the general convention, in the
23 same room?

24 A. Usually it's a convention center and there are different
25 rooms, different chambers for different bodies.

1 Q. Okay. Do they meet in the same room or not?

2 A. In the same room, no, I don't believe so.

3 Q. Okay. Thank you.

4 You were asked some questions about an early set of the
5 constitution and canons, as I recall it, Exhibit 425. Do you
6 recall that? Do you have that in front of you?

7 A. No.

8 Q. There you go. First of all, is that complete or not?

9 A. This photocopy is not a complete record of what it
10 purports to be.

11 Q. Do you have a complete copy?

12 A. Yes, sir.

13 Q. Did you bring it with you?

14 A. No, I did not.

15 Q. All right. Do you have the manuscript that goes with
16 this?

17 A. No, I do not.

18 Q. Does anybody?

19 A. I don't believe so.

20 Q. There is no manuscript?

21 A. No.

22 Q. When was this transferred to printing?

23 A. As early as 1789.

24 Q. How do you know that?

25 A. Because we have an imprint dated 1789.

1 Q. All right. So there never was a manuscript?

2 A. I believe there were copy books, but...

3 Q. Okay. So you have a copy of this with a printer's
4 designation that says 1789?

5 A. I believe so.

6 Q. In the archives?

7 A. Yes.

8 Q. Did you bring it with you today?

9 A. No.

10 Q. Could you have brought it with you today?

11 A. No.

12 Q. You couldn't have?

13 A. No.

14 Q. Could you have brought a copy of it?

15 A. Yes.

16 Q. Why didn't you?

17 A. I was not asked to.

18 Q. Okay. Now I want to hand you another document, ask you
19 if you can identify this. I'll give you the color copy.

20 Could you identify that document for us?

21 A. Yes, sir.

22 Q. What is it?

23 A. It's the journal of general convention for the
24 Protestant Episcopal Church in the states of New York, New
25 Jersey, Pennsylvania, Delaware, Maryland, Virginia, and South

1 Carolina dated 1789.

2 Q. Look at the cover sheet of 425 and the cover sheet of
3 this one and tell me if they're the same.

4 A. I gave you back the other -- hold on a second. I think
5 I have that. Here it is. They are not the same.

6 Q. So what is the one I handed you that has not yet been
7 marked as an exhibit?

8 A. Not sure what it is. It's obviously a reprint, or a
9 second printing, or another printing.

10 Q. Are you familiar with the works of Mr. Perry?

11 A. Yes, I am.

12 Q. Does this appear to be from his book?

13 A. I would have to look at his book to know that, but I
14 don't -- it could very well be because it has the page
15 numbers consecutively at the top, which reminds me very much
16 of the Perry volume.

17 Q. Does it include in it the portion that you brought that
18 is in 425?

19 A. It appears at first glance to contain the list of the
20 members of the convention. It appears to have the same
21 information as found on page 57 of Exhibit 425, but it is on
22 Perry's page 78 -- or starts on that page in -- what -- if
23 this indeed is from Perry, the second item, forgive me.

24 Q. Here's the simple question: Would it appear to you that
25 the document that I handed you that's not in evidence is a

1 complete version of that particular convention, July 28 to
2 August 8, 1789, which includes the portion that you brought
3 with you today that is Exhibit 425?

4 A. Well, I can't state that affirmatively in this short
5 period of time. It looks -- it looks good.

6 MR. RUNYAN: Okay. We'll mark this as Diocese's next
7 for identification.

8 (Plaintiff's Exhibit DSC-68 marked for identification.)

9 MR. RUNYAN: Move it in evidence.

10 MS. KOSTEL: Objection, Your Honor, based on it looks
11 good. He didn't have enough time.

12 THE COURT: He said it looks good.

13 MS. KOSTEL: I don't think he said it was what
14 Mr. Runyan said it was. We may stipulate to it if he'd asked
15 us.

16 MR. RUNYAN: Well, I am asking you. I moved it in
17 evidence.

18 MS. KOSTEL: You moved it in based on what Mr. Duffy
19 said.

20 MR. RUNYAN: I move it in on its own right or based on
21 what Mr. Duffy said.

22 MS. KOSTEL: Yes, then, Your Honor, we'd like to see a
23 copy of what Mr. Runyan's offering. Thank you.

24 THE COURT: Sure, of course.

25 Q. While she is looking at that, to move along, we talked

1 about the Book of Common Prayer.

2 A. Yes, sir.

3 Q. It is not copyrighted, is it?

4 A. That's right, it's not.

5 Q. I can go right now and get on the Internet and buy it
6 from Amazon?

7 A. That's right.

8 Q. And buy it from Barnes & Noble and a lot of different
9 places, right?

10 A. Right.

11 Q. It's not exclusively sold by the Episcopal Church?

12 A. That's right.

13 Q. All right. I could go to New Zealand and find a Book of
14 Common Prayer there as well, correct?

15 A. The American Book of Common Prayer, you probably could.

16 Q. The New Zealand Book of Common Prayer?

17 A. You could do that as well.

18 Q. How about in Kenya?

19 A. You could find a Book of Common Prayer in a number of
20 different languages.

21 Q. Are you familiar with the Book of Common Prayer that is
22 not the Episcopal Church Book of Common Prayer that is
23 available all over the world?

24 A. Yes.

25 Q. All right. It originated from the 1662 Book of Common

1 Prayer in England, did it not? Do you know that?

2 A. Yes, I do. I'm thinking. Thank you.

3 Q. Okay. Did it?

4 A. Yes.

5 Q. And in its cover it says according to the use of the
6 Episcopal Church; is that right?

7 A. I believe so.

8 Q. Okay. And you know, of course, that bishops with
9 jurisdiction can authorize other things to be used as well?

10 A. Under the authorization of the general convention, texts
11 authorized by the general convention, that's how I understand
12 it.

13 Q. Are you familiar with what a bishop can do in terms of
14 authorizing other rites in a diocese?

15 A. I am familiar only with those rites and trial usages
16 that are authorized by general convention.

17 Q. Okay. Exhibit 431 marked for identification which
18 was -- I don't know if you have that in front of you. Here
19 it is. Blue book 1994, cover page, and then one more page,
20 page 99. Did you bring this with you?

21 A. No.

22 Q. This is found in its -- in the form that it is here in
23 the archives, correct?

24 A. Yes.

25 Q. Is there a page 100?

1 A. Yes.

2 Q. Did you bring it?

3 A. No.

4 Q. Would you agree with me that a resolution to be
5 effective has to be passed in the same form by both bodies of
6 the Episcopal Church?

7 A. I concur that a resolution has to be passed by both
8 houses.

9 Q. And would you agree with me that a modification of the
10 constitution, it takes two meetings of the general convention
11 for that to happen?

12 A. Yes, sir.

13 Q. Would you agree that in between that time, the proposed
14 amendment must go to the diocese and be read in convention so
15 that they will know what it is?

16 A. Yes.

17 Q. Would you agree with me that canons of the Episcopal
18 Church can, in fact, be passed at a single convention?

19 A. Could you repeat the question?

20 Q. Would you agree with me that canons of the Episcopal
21 Church may be passed by the general convention at a single
22 sitting?

23 A. Yes.

24 THE COURT: And you're talking about the national
25 church?

1 MR. RUNYAN: Yes, Your Honor.

2 Q. How would you define the word "autonomous"?

3 A. I would define the word autonomous as meaning having
4 some relevant level of independence from -- I'll leave it
5 there. Independence -- some level of independence.

6 Q. Independence. Okay.

7 Would you accept the dictionary version of that?

8 A. I'm sorry, what's your question again?

9 Q. I don't have another question. Thank you.

10 Just a moment. Yes, thank you.

11 I assume that in the archives you have records of how
12 much money the Episcopal Church has received from -- the
13 national church has received from the dioceses?

14 A. I have a number of records that might do that, yes.

15 Q. And if someone wanted to know that, you would be able to
16 provide that answer, would you not?

17 A. Yes.

18 Q. Were you asked to do that?

19 A. No.

20 Q. And you did not do it on your own?

21 A. No.

22 MR. RUNYAN: That's all I have.

23 MR. BEERS: Mr. Runyan, do you want to close the loop on
24 this (indicating)?

25 MS. KOSTEL: No objection on 68.

1 THE COURT: All right.

2 (Plaintiff's Exhibit DSC-68 admitted into evidence.)

3 REDIRECT EXAMINATION BY MR. BEERS:

4 Q. Did you testify earlier that, in your role as management
5 of the document retention program at the Episcopal Church,
6 that you receive documents from the offices in the church
7 frequently on a regular basis?

8 A. Yes, sir.

9 Q. You don't wait years or months or...

10 A. No.

11 MR. BEERS: Okay. That's it. That's all I have.

12 THE COURT: Okay. Recross?

13 MR. RUNYAN: One follow-up.

14 RECROSS-EXAMINATION BY MR. RUNYAN:

15 Q. With regards to the certificate, do you have that in
16 front of you?

17 A. Yes.

18 Q. Do you know when you received that document?

19 A. Not right now I don't, no.

20 Q. And your testimony is not that you received it the day
21 it was purportedly signed, is it?

22 A. That's right.

23 Q. You don't know how long after that it was that you
24 received it?

25 A. No.

1 MR. RUNYAN: Thank you.

2 MR. BEERS: I forgot. One more.

3 THE COURT: Okay. It's nonjury, I'll allow it and then
4 if there's any response, counsel can do that.

5 FURTHER REDIRECT EXAMINATION BY MR. BEERS:

6 Q. Who is Dorsey Henderson?

7 MR. BEERS: Three questions, I'm sorry.

8 THE WITNESS: He is the presiding judge [sic] of the
9 disciplinary board of review for the Episcopal Church.

10 Q. Was he that in that capacity in 2012?

11 A. Yes.

12 Q. And is he a bishop?

13 A. Yes.

14 Q. And where was he a bishop?

15 A. I can't remember.

16 Q. Okay.

17 THE COURT: That was question four.

18 MR. BEERS: Yeah, I know. This is the last one.

19 Q. Do you recognize his signature on Exhibit 22?

20 A. Yes, I do.

21 MR. BEERS: Thank you.

22 THE COURT: Yes.

23 MR. RUNYAN: Couple quick ones.

24 FURTHER RECROSS-EXAMINATION BY MR. RUNYAN:

25 Q. Do you get records of review committee decisions

1 regardless of whether they are -- a person is found to have
2 violated something or whether they are found to be innocent
3 of something?

4 A. Certain board of review records are confidential. Until
5 there's a finding they are not, they're not archival.

6 Q. So, for instance, if someone had charged a bishop in
7 2010 with, let's say, things that are identical to what you
8 have in 2012, and there was a finding that that was not an
9 offense, you would not have that in the archives?

10 A. I wouldn't have the review board's records.

11 Q. Would you have anything?

12 A. There would be perhaps some evidence of that in the
13 presiding bishop's personnel file.

14 Q. Were you asked to look for any proceedings against
15 Mark Lawrence in 2010?

16 A. In 2010?

17 Q. Yes.

18 A. No.

19 Q. Are you aware of any?

20 A. No, not off the top of my head.

21 Q. All right. Excuse me, 2011?

22 A. In clarification of your question, was I asked to look
23 for records in 2011 or records dated 2011?

24 Q. Were you asked to look for any records associated with a
25 charge against Bishop Lawrence for which the review committee

1 considered the charge in 2011?

2 A. I don't know.

3 Q. You don't know if you were asked?

4 A. I don't know. I'm unclear about the dates right now.

5 Q. Is there information about that in your file?

6 A. I just really, for the moment, don't understand exactly
7 what you're asking me. I mean, we have a -- there is a
8 file -- a bishop's file on Bishop Lawrence. I don't know
9 everything that's in the file. It is not my habit nor the
10 habit of any of my staff to browse those files.

11 If I'm asked for a record, I can produce it. It is done
12 usually under the oversight of someone in the staff. There's
13 always two people present when we do this.

14 Q. Okay. So --

15 A. And I have a staff person who does this for me who is
16 the records management officer for the church.

17 Q. So the reason that you have that one is you were asked
18 for that one?

19 A. Yes.

20 Q. Exhibit 22. Thank you, sir.

21 THE COURT: Okay.

22 MR. BRYAN: Your Honor, could you just give me a minute
23 or two? I haven't seen the documents. I don't have the
24 documents because of this paper problem. I want to talk to
25 counsel.

1 THE COURT: Because you might have a question, yes.

2 MR. HOLMES: There were a number of questions about the
3 form of the documents and so forth and I just thought that I
4 would make reference to the statute 19 -- 19, what is it?
5 510, it has to do with photographic copies of originals and
6 all that business, South Carolina statute. Not the rules of
7 evidence, but in the statute. If you don't have the original
8 it's okay, essentially.

9 MR. TISDALE: Photocopies are okay.

10 THE COURT: I gotcha. I'm with you. That really wasn't
11 the point.

12 MR. HOLMES: On cross there were a number of
13 questions --

14 THE COURT: I agree with you completely, but that wasn't
15 exactly the point.

16 MR. HOLMES: Thank you.

17 MR. BRYAN: None, Your Honor, thank you.

18 (Witness excused.)

19 THE COURT: Wonderful. Now we're going to have some
20 lunch. We'll start back at 3:15. And I need to have a
21 representation from both sides, and it's probably -- it
22 really needs to be with Mr. Platte and Mr. Smith for this
23 one. Y'all go on, go get some lunch, let me see the guys.

24 MR. TISDALE: What time, Your Honor?

25 THE COURT: 3:15, and let me see my guys a second.

1 (Lunch recess held.)

2 THE COURT: Call your next witness, please.

3 MR. BEERS: One preliminary matter on behalf of this
4 side of the courtroom. We very much appreciate you going
5 over and moving it along so we could get this guy out of
6 here.

7 THE COURT: Absolutely. I'm happy to do that.

8 MR. TISDALE: Your Honor, what we'd like to do, given
9 the schedule that you told us about, we'd like to read a
10 deposition in now, if we may --

11 THE COURT: Sure.

12 MR. TISDALE: -- as our next witness.

13 THE COURT: Sure.

14 MR. TISDALE: He was on the list we provided the last
15 time we provided one. And I'll ask Mr. Holmes to do the
16 honors.

17 MR. HOLMES: Your Honor, you'll want to imagine that I'm
18 a priest.

19 MR. TISDALE: Your Honor, I have the original here, may
20 I open it and give it to you?

21 THE COURT: Thank you kindly.

22 MR. TISDALE: Deposition of Thomas Rickenbacker. We're
23 using his deposition because he's unavailable. This
24 deposition was taken, for the record, on June 11th, 2014.
25 Ms. Golding represented the defendants on that occasion.

1 MS. GOLDING: I represented the plaintiffs, Your Honor.

2 MR. TISDALE: Did I say defendants? I don't know how I
3 made that mistake after 11 days. And I'll just start with
4 the questions on the bottom of page -- the first page, page
5 3, actually.

6 And, Henrietta, I'm going to do my best to stop whenever
7 you -- unless you handle that part.

8 MS. GOLDING: That would be fine. Thank you, kindly.

9 MR. TISDALE: And Mr. Holmes, Allan Holmes, is reading
10 the part of the witness.

11 THE COURT: Father Rickenbaker.

12 MR. TISDALE: Father Rickenbaker, okay, line 23.

13 (Deposition transcript of Thomas Rickenbacker read as
14 follows:)

15 DIRECT EXAMINATION BY MR. TISDALE:

16 Q. Father Rickenbaker, under the rules I'm required to say
17 to you that if you don't understand any of my questions,
18 please ask me and I will attempt to clarify. I don't think
19 this deposition's going to be very long, but if you need a
20 break at any time, just say so and we'll take one for any
21 reason.

22 And you're not, under the rules, allowed to talk to me
23 or any other lawyers while the deposition is going on to
24 ensure that the answers are your answers and not the
25 suggestion of someone else.

1 Also, I'm required under the rules to ask you if you are
2 healthy and not under the influence of any medication or
3 illness or anything that would impair your ability to answer
4 questions.

5 A. I'm healthy and not under any medication other than a
6 drug I take for diabetes.

7 Q. Okay. State your name for the record, please.

8 A. The Reverend Thomas M. Rickenbaker.

9 Q. What is your current address?

10 A. 369 Carlton Circle, Spartanburg, South Carolina, 29301.

11 Q. How long have you lived there, Father Rickenbaker?

12 A. About nine months.

13 Q. Are you a priest of the Episcopal Church?

14 A. I am a priest in good standing in the Episcopal Church.

15 Q. And to go back a little bit, when were you born?

16 A. I was born January 26th, 1956, in Cheyenne, Wyoming.

17 Q. Where did you grow up principally?

18 A. Principally, I grew up in Conway, South Carolina.

19 Q. Now, did you go to school there?

20 A. I did.

21 Q. Graduated Conway?

22 A. Conway High School.

23 Q. And for college, what did you do?

24 A. I graduated Coastal Carolina College at the University
25 of South Carolina, which is what it was called back then.

1 Q. When was that?

2 A. I graduated cum laude in 1978.

3 Q. Father Rickenbaker, did you -- you've already -- you've
4 said already you're a priest of the Episcopal Church. Did
5 you, after college, go immediately into seminary or do
6 something else?

7 A. No, I worked two different jobs, I worked for Milliken
8 in management, Milliken & Company, which is a textile firm
9 based out of Spartanburg, but I lived in Aberdeen, North
10 Carolina, which is near Pinehurst, and then I commuted to
11 Robbins, which was where our plant was located. I worked
12 there for about a year, then I took a position with the
13 Indian Waters Council Boy Scouts of America in Columbia,
14 South Carolina as a district scout executive.

15 Q. Boy Scouts of America?

16 A. Yes.

17 Q. How long did you work in that position?

18 A. A year.

19 Q. All right. Now, when you -- what led you to the
20 ministry of the Episcopal Church personally?

21 A. Well, I'm a lifelong Episcopalian. I had the great
22 privilege of my mother introducing me to Jesus Christ from
23 the earliest of days. She modeled that relationship and that
24 ministry for me. And then when I was in high school I
25 started to think about ordained ministry. My rector was the

1 Reverend Doctor, the R. N. Robinson, who was also the head of
2 the philosophy and religion department at Coastal Carolina.
3 And on May the 17th, 1974, at about 7:00 in the evening, the
4 Spirit called me into ordained ministry.

5 Q. Where were you physically at that moment?

6 A. I was seated in the Coastal Carolina gymnasium for the
7 Horry County Quest for Christ. And if the call hadn't been
8 that clear, I would not have taken it.

9 Q. Okay. So that was in '74?

10 A. '74, yes.

11 Q. Now, Father, how long after that experience did you
12 begin seminary?

13 A. I began seminary in the fall of 1980.

14 Q. And so six years after that --

15 A. Uh-huh.

16 Q. -- experience?

17 A. Yes.

18 Q. And what diocese did you enter -- sponsor you for the
19 seminary?

20 A. The Diocese of Upper South Carolina.

21 Q. Is that headquartered in Columbia?

22 A. It is.

23 Q. All right. And which seminary did you go to?

24 A. The Protestant Episcopal theological seminary in
25 Alexandria, Virginia.

1 Q. Did you do a normal three-year course there?

2 A. Yes.

3 Q. And what degree did you end up with?

4 A. A master's of divinity.

5 Q. When was that?

6 A. 1983.

7 Q. Just tell us briefly, we don't need a lot of detail, but
8 what was the course of your ministry from then to now,
9 progression-wise?

10 A. I was assigned as a deacon to St. Christopher's
11 Episcopal Church here in Spartanburg, working with Rogers Ed
12 Harris who later became bishop of southwest Florida.

13 After completing my diaconate, which was 11 1/2 months,
14 the bishop assigned me to start a new congregation in Boiling
15 Springs, South Carolina.

16 Q. Who ordained you to the diaconate?

17 A. William A. Bennett.

18 Mr. Tisdale: I think that's supposed to "Beckham," but
19 that's all right.

20 Q. Bishop of South Carolina?

21 A. At that time he was, yes.

22 Q. Go ahead, sir.

23 A. So he sent me to start a new congregation which later
24 became St. Margaret's Episcopal in Boiling Springs, and I
25 served there from June -- or maybe it's mid-May 1984 until

1 sometime in July of 1998.

2 Q. Go back a minute. When were you ordained to the
3 priesthood?

4 A. I think it was May the 12th, 1984.

5 Q. Okay. So after Boiling Springs, what did you do?

6 A. I received a call to be the rector of St. Paul's
7 Episcopal Church in Edenton, North Carolina by the Diocese of
8 East Carolina --

9 Q. And what year -- excuse me -- and what year was that?

10 A. That was -- I started July the 15th, I think it was,
11 1998.

12 Q. And how long did you serve in that position in
13 St. Paul's?

14 A. A little over 15 years. I officially retired from
15 St. Paul's and from active full-time ministry October the
16 1st, 2013.

17 Q. Now, in your retirement, are you living in Spartanburg?

18 A. I am.

19 Q. And are you working in any church-related activities
20 here?

21 A. I've been licensed by the bishop of Upper South
22 Carolina. I've worked with three different parishes filling
23 in when the rectors have been on vacation; getting ready to
24 do a fill-in for a rector who's going to be on sabbatical.

25 I've also done some consulting work in Indiana with a

1 congregation that's doing a building program. And I've also
2 helped to lead a stewardship campaign for the Episcopal
3 Church in Highlands, North Carolina.

4 Q. But as I gather, you're not engaged in any full-time
5 singular --

6 A. No.

7 Q. -- position?

8 A. No.

9 Q. And retired?

10 A. Yes.

11 Q. All right. Going back some time now, do you recall when
12 Bishop Edward Salmon was about to retire as bishop of South
13 Carolina, and the Diocese of South Carolina was about to
14 engage in a search process for a new bishop?

15 A. I do recall that.

16 Q. And do you know whether or not you had been nominated by
17 anyone?

18 A. Yes.

19 Q. As a possibility to fill the bishop's -- that bishop's
20 post?

21 A. Yes.

22 Q. And when did that occur?

23 A. I don't know exactly, but if I had to say, I would say
24 it was sometime probably in early 2005.

25 Q. And do you know how you were nominated?

1 A. Well, I was told by a priest, who was my former rector,
2 that there were one or more nominations that came from his
3 parish, and I had other people who said that they were
4 intending to nominate me. But whether they actually followed
5 through with that, I don't know.

6 Q. But the priest who you said was -- had been your rector?

7 A. Yes.

8 Mr. Tisdale: Ms. Golding?

9 MS. GOLDING: I objected, but you can go ahead.

10 MR. TISDALE: Okay.

11 Q. Okay. The purpose of this deposition is to -- is
12 *de bene esse*, Father Rickenbaker. Who was it that nominated
13 you, as far as you know?

14 A. The Reverend Harry Lawhorn spoke to several people in
15 the congregation that he was serving in. One or more of
16 them, I was told, nominated.

17 Q. Where was --

18 Mr. Tisdale: Ms. Golding?

19 MS. GOLDING: You can go down to page 13, line 1, the
20 question.

21 MR. TISDALE: Thank you.

22 Q. Where was Harry Lawhorn serving at the time?

23 A. He was serving in two small churches in the Diocese of
24 South Carolina. I think one was Rembert.

25 Q. Hagood Ascension, probably, Hagood, South Carolina,

1 Church of the Ascension?

2 A. And then there was --

3 Q. I didn't mean to answer the question.

4 A. There was another one that he was linked with, but I
5 don't recall the name of the bishop.

6 Q. Right. Is he any longer with us?

7 A. He is among the saints in heaven.

8 Q. All right. Now, as a result -- strike that.

9 After that, you said you -- you said was sometime in
10 perhaps 2005. Did you hear from anybody at the Diocese of
11 South Carolina about your nomination?

12 A. Yes, I received some information from the search
13 committee saying that my name had been placed among those to
14 be considered and was I interested.

15 Q. And do you recall who that communication came from?

16 A. I don't recall the name, but it was the person who was
17 doing the communication for the search committee, which I
18 think was the -- either the secretary or parish administrator
19 at St. Luke's in Hilton Head.

20 Q. Right. In Hilton Head, South Carolina?

21 A. Yes.

22 Q. And so how did you respond to that communication?

23 A. I said yes, I was willing to enter into a dialogue about
24 that.

25 Q. And give us the course of the dialogue, and I'm leading

1 up to whether or not you were ever interviewed for that
2 position.

3 A. Yes, after they sent me the letter saying are you
4 interested, and I sent a something, I'm interested in a
5 dialogue, then they sent some questions that they wanted
6 answered. I assume it was to all the candidates, but I know
7 I got it. So I submitted my answers to those questions and
8 then later received a phone call from St. Luke's parish
9 indicating that they wanted to come and make a visit with lay
10 and clergy representatives.

11 Q. All right. And Father Rickenbaker, St. Luke's parish
12 you said?

13 A. Yes.

14 Q. Why was it coming from St. Luke's parish, if you know?

15 A. I think all the communication for the search committee
16 was coming out of that parish because Greg Kronz was the
17 chair of the search committee and I think that's the way that
18 diocese had chosen to --

19 MS. GOLDING: You can go to line 13.

20 MR. TISDALE: Thank you.

21 Q. Okay. And who is Greg Kronz?

22 A. He was then the rector of the parish. He may still be.
23 I'm not exactly sure where he is now.

24 Q. Right, but did you understand he was also chair of the
25 search committee?

1 A. He was the chair of the search committee.

2 MS. GOLDING: Go to line 2470.

3 Q. Okay. Did you receive a call or a letter or what kind
4 of communication from --

5 A. Well, the visit, it was a phone call.

6 Q. Okay. From whom -- from who?

7 A. The lady that was doing the communication.

8 Q. Okay.

9 A. I don't know what her name was.

10 Q. But, okay, what was the outcome of the phone call?

11 A. They arranged to come for a visit.

12 Q. Who is they?

13 A. Well, they had said that they were going to or I was
14 told when they called --

15 MS. GOLDING: You can go to line 19.

16 MR. TISDALE: Thank you.

17 Q. You stated a few minutes ago in answer to my question
18 that someone from St. Luke's who was handling the search
19 committee activities called you?

20 A. Yes, that's correct.

21 Q. And what did that person say?

22 A. They wanted to establish a time to come and visit me at
23 St. Paul's Edenton to be interviewed as a candidate.

24 Q. All right. And did the person who called you say who
25 would be coming to see you?

1 A. They did not say names, they just said there would be
2 clergy representatives and lay representatives.

3 Q. All right. And was this still in 2005 or later?

4 A. No, it was still in 2005.

5 Q. All right. And was such a visit arranged?

6 A. It was.

7 Q. Do you remember the exact date of that visit?

8 A. I don't. And since I retired, I've gotten -- retired
9 and moved, I've gotten rid of my calendars from that time
10 period.

11 Q. All right. Did there come a time that you received a
12 visit from representatives of the search committee?

13 A. Yes.

14 Q. Do you remember which day of the week it was?

15 A. They arrived on a Saturday.

16 Q. All right. Now, when you say they, who is they?

17 A. The Reverend Greg Kronz and Reverend Paul Fuener.

18 Mr. Tisdale: They pronounce that "Fee-ner," but --

19 THE WITNESS: "Fee-ner," thank you.

20 Q. And that's spelled -- excuse me -- and you already, I
21 think, have told us about Greg Kronz's position as chair of
22 the search committee and rector of St. Luke's. Who was Paul
23 Fuener? And that's spelled F-U-E-N-E-R.

24 A. He was a member of the search committee.

25 Q. Is he a layperson or a priest?

1 A. He's a priest and he was the rector then of Prince
2 George Winyah parish in Georgetown, South Carolina.

3 Q. Right. Where was this interview to take place?

4 A. It took place in my office.

5 Q. All right. Do you recall roughly, or exactly if you
6 remember, what time this interview took place in your office?

7 A. I don't recall exactly, but I would say somewhere in the
8 neighborhood of 10 o'clock.

9 Q. In the morning?

10 A. Yes.

11 Q. Okay. Was there any layperson in attendance?

12 A. No.

13 Q. And was that in any way significant to you -- of any
14 significance to you?

15 MS. GOLDING: I objected to that form of the question,
16 Your Honor, I didn't think that that was a proper question
17 and, therefore, I'd move to strike the deponent's response.

18 MR. TISDALE: That's fine, and I'll just move down to
19 line 15, if that's okay.

20 MS. GOLDING: That's good.

21 THE COURT: Okay.

22 Q. Okay. Do you remember which one of the two said that?

23 A. Not specifically.

24 Q. All right. Now, is your office -- where is your office
25 in Edenton, or was it at the time?

1 A. It's located in the parish hall complex, which is 100
2 West Gate Street, G-A-T-E -- excuse me -- West Gale Street,
3 G-A-L-E, Edenton.

4 Q. I think you said you didn't remember the exact date
5 because your records were at St. Paul's, but was it still in
6 2005 you think?

7 A. When they made their visit?

8 Q. Yes.

9 A. It was either late 2005 or early 2006. I don't recall
10 specifically.

11 Q. All right. Now, would you please relate, as narrowly as
12 you can and as clearly as you can, the interview, from the
13 beginning to the end, in your office? First of all, was
14 anybody else present other than the two priests and you?

15 A. No.

16 Q. All right. Tell us what was said by who.

17 A. Okay. We came into the office. I had things set up so
18 they could have something to drink, something to eat, if they
19 wanted, knowing that these interviews tend to last a fairly
20 lengthy time. We sat down. I think they asked me to open
21 with a prayer.

22 Q. Did you?

23 A. Yes. And then Father Kronz said, we've got some
24 questions that we want to ask you and we'd appreciate your
25 answering them forthrightly. The first question that was

1 asked --

2 Q. By who?

3 A. Father Kronz.

4 -- was, what can you do to help us leave the Episcopal
5 Church and take our property with us.

6 Q. How did you answer that question?

7 A. I answered him by saying I was shocked and surprised
8 that even such a question was being asked and that -- that it
9 was the first question.

10 So after noting that, I followed that up with, why in
11 the world would anybody even be asking a question like that?

12 Q. Did you say that?

13 A. Yes.

14 Q. All right.

15 A. To which Father Fuener said, well, we're interested in
16 having a bishop who is -- who either will or is willing to
17 lead us out of the Episcopal Church.

18 Q. All right. After that response to your question, how
19 did the interview go?

20 A. Well, one, I was -- that was the last question in the
21 world I expected to be asked.

22 Q. Why?

23 A. Well, it's difficult for me to imagine, in the election
24 process of a bishop, the first question is to take the
25 diocese out of the denomination of which it is a part of --

1 excuse me -- of which it is part of, so that was a shock and
2 a disappointment, so I kind of mentally processed -- was
3 processing through that. They asked some other questions,
4 but the first question was so overpowering that I'm not sure
5 I entirely processed much of the rest of that.

6 They asked questions about what I knew about the
7 diocese. They asked questions had I read the diocesan
8 profiles, what I thought about that. Those are the main
9 questions that I can remember being asked, although I'm sure
10 there were others.

11 Q. How long do you think that interview lasted?

12 A. That part of the interview was probably a little more
13 than an hour.

14 Q. All right. Now, I want to go back. I think I
15 understand what you said, but I want to be certain for the
16 record. After Father Kronz asked you or made the first
17 statement or questioned you about looking for a bishop to
18 take them out of the church, what was your response to that?
19 That's what I was not clear about.

20 Mr. Tisdale: And Ms. Golding?

21 MS. GOLDING: You can go to -- the witness can go to
22 line 2 of the next page.

23 MR. TISDALE: The deponent.

24 MS. GOLDING: The deponent, excuse me.

25 Mr. Tisdale: Thank you.

1 A. My response to that was, why is this question even being
2 asked, and that I was surprised, shocked, disappointed that
3 that question was being asked and certainly that it was the
4 first question.

5 Q. Right. Did you ever say directly to them one way or
6 another whether you had any interest in such a plan?

7 A. Yes. I mentioned to them that they had traveled a long
8 way and I invested a lot of time in the search process up to
9 that point, because if that's what they were looking for,
10 they were looking for the wrong guy -- looking to the wrong
11 guy.

12 Q. Okay.

13 A. That they, in essence, had wasted their time and my
14 time.

15 Q. All right. And you said that just now that the
16 interview lasted for little over an hour?

17 A. Uh-huh.

18 Q. What next occurred in connection with your relationship
19 with these two gentlemen or the search committee?

20 A. We, my wife and I, were invited out to supper with the
21 two of them, Father Kronz and Father Fuener. We selected --
22 Cindy and I selected a restaurant in Elizabeth City, because
23 when you're going through a search process like that in a
24 small town like Edenton, you don't want to have that out on
25 display, so we went over to Elizabeth City.

1 Q. Was that made in advance of the interview, that
2 reservation?

3 A. Yes, and I made that reservation.

4 Q. And did you have dinner with these two gentlemen?

5 A. We did.

6 Q. Anyone else present other than you, your wife, and they?

7 A. No.

8 Q. Did you say your wife's name was Cindy?

9 A. Cindy.

10 Q. Okay. Was there any further discussion of the contents
11 of the interview after the interview?

12 A. I'm not sure what you're --

13 Q. Well --

14 A. If you could restate.

15 Q. You said you had conversations with them for little over
16 an hour?

17 A. Yes.

18 Q. Including what you directly quoted?

19 A. Yes.

20 Q. Was there any other conversation about the search
21 process at dinner or any other time after the interview?

22 A. Yes. There were questions of Cindy, how did she like
23 being married to a priest, what was our time in Edenton like.
24 We talked about -- Cindy and I talked about what it would be
25 like if I were to be elected bishop in the Diocese of South

1 Carolina. They talked about their parishes. I remember
2 Father Kronz talking about his son who, I think, played
3 football. That was just general conversation.

4 Q. Yes.

5 A. There were not a set of prescribed questions that I'm
6 aware being asked at supper, although it was more than just a
7 casual conversation.

8 Q. Right. Father Rickenbaker, did you have any other
9 meetings with these two during the course of that weekend?

10 A. They came to church.

11 Q. The next morning?

12 A. The next morning on Sunday morning.

13 Q. What time -- do you recall when that service was?

14 A. They came to both of them. They came to the 8 o'clock
15 service and they came to the 11 o'clock service.

16 Q. 8 o'clock is the Holy Eucharist?

17 A. Both of them are Holy Eucharists with sermons.

18 Q. All right. Did they -- did they attend?

19 A. They both attended both. They both sat together at
20 both.

21 Q. Was anyone else with them on that occasion?

22 A. No.

23 Q. Did you have any further conversation with them during
24 the course of the weekend?

25 A. Just a short conversation after the last service where

1 they said, basically, that they would be getting in touch.

2 Q. All right. Did they get in touch?

3 A. They did.

4 Q. When did that occur?

5 A. Probably within a month after their visit.

6 Q. And what was that in the form of; a letter, email, a
7 call or what?

8 A. I think I received both. I think the call came first
9 and then the letter.

10 Q. Who was the call from, if you -- if you remember?

11 A. Greg Kronz.

12 Q. Greg Kronz, K-R-O-N-Z. What did he say?

13 A. They appreciated my participation in the process, but
14 they were moving forward with other candidates.

15 Q. Did he give you a reason other than -- I mean, any
16 reason at all?

17 A. No.

18 Q. Did you ask?

19 A. No, I didn't ask for one.

20 Q. All right. What did you say?

21 A. I said thank you very much.

22 Q. All right. And did you say you thought you got a letter
23 as well?

24 A. Yes.

25 Q. Who was that from?

1 A. It would have been from the search committee, basically
2 saying, thank you for your participation in the process, but
3 we're moving forward with other candidates.

4 Q. How long after the interview do you think both of those
5 communications came?

6 A. A month or so.

7 Q. All right. Did you have any other contact with this
8 interview -- after this interview weekend and visit weekend
9 with anyone in connection with the search committee, except
10 for the phone call and letter you just mentioned?

11 A. Not with the search committee.

12 Q. Well, what did you have -- what -- well, did you have
13 any communication with anyone else about it?

14 A. Not from the Diocese of South Carolina. I immediately
15 spoke to my bishop about it.

16 Q. And who was that?

17 A. The Right Reverend Clifton Daniel, III.

18 Q. All right. Did you share your experience with
19 Bishop Daniel?

20 A. I did.

21 Q. Okay.

22 A. I also spoke with, sometime later, the Right Reverend
23 William Skelton, who was -- I don't know if he is a suffragan
24 bishop or assisting bishop in South Carolina, and shared my
25 experience, and his basic response was --

1 MS. GOLDING: Your Honor, I objected on the basis of
2 hearsay at that time.

3 THE COURT: You wish to have it ruled on at this point?

4 MR. TISDALE: Well, I think I'll just move on.

5 THE COURT: All right.

6 Mr. Tisdale: Then line 15.

7 Q. Right, all right. So you spoke with Bishop Daniels,
8 spoke with Bishop Skelton?

9 A. Yes.

10 Q. Anyone else that you can recall?

11 A. I spoke with one of my wardens, Mr. Earl Willis from
12 St. Paul's Edenton, obviously spoke to my wife,
13 Cindy Rickenbaker.

14 Q. And you shared the experience of what had happened?

15 A. I did. I did. Sometime some years later, probably
16 2011, the Reverend Jimmy Taylor called me to ask about his
17 concerns about what was going on.

18 Q. And --

19 MS. GOLDING: I objected based on hearsay, Your Honor.

20 MR. TISDALE: Okay. And I'll just move on from that.

21 THE COURT: Okay.

22 MR. TISDALE: And go down to line 19.

23 Q. Did you share with him the contents of the interview --

24 A. Yes.

25 Q. -- that you had described here today in this deposition?

1 A. That's correct.

2 Q. In your office in Edenton?

3 A. Yes.

4 Q. With Father Kronz and Fuener?

5 A. Yes.

6 Q. Anyone else that you had any conversation with in which
7 you shared the experience that you can recall?

8 A. No one else comes to mind at the moment.

9 Q. All right. Have you had any contact, other than with
10 anyone in the search process or anyone in the leadership of
11 the South Carolina Lawrence group, other than what you've
12 described?

13 A. Not in reference to the bishop search stuff.

14 MR. TISDALE: Okay. All right. Father Rickenbaker, I
15 would appreciate your answering any questions Ms. Golding
16 might have of you.

17 THE COURT: Cross-examination.

18 MS. GOLDING: Thank you.

19 CROSS-EXAMINATION BY MS. GOLDING:

20 Q. Thank you, Father Rickenbaker. Am I pronouncing -- it
21 is Rickenbaker?

22 A. Yes, ma'am.

23 Q. Very good. Thank you.

24 My understanding is that you were baptized by
25 Mr. Tisdale's father?

1 A. That's correct.

2 Q. Okay. And that is the Tom Tisdale sitting here that
3 took your deposition; is that correct?

4 A. The deponent moves his head up and down, yes.

5 MS. GOLDING: Thank you.

6 Q. Also, I note that you're just shaking your head, and you
7 need to make verbal responses to all my questions so the
8 court reporter can pick that up. Do you understand?

9 A. I do.

10 Q. Okay.

11 A. If I don't do that, you let me know.

12 Q. I will. Thank you.

13 You took no notes of any kind that you had in this
14 meeting in late 2005 or early 2006 with Father Kronz and
15 Father Fuener, did you?

16 A. That's correct, I took no notes.

17 Q. And after that meeting, you did not put the contents of
18 this conversation you had with Father Kronz and Father Fuener
19 in any type of a diary or anything of that nature, did you?

20 A. That's correct.

21 Q. Okay. So there's basically no written documentation
22 that exists today which in any way reflects the
23 communications that occurred during this interview in late
24 2005 or 2006 that you personally saved; is that correct?

25 A. That's correct.

1 Q. Okay. And you did not record this interview that you
2 had in late 2005 and 2006 with Father Kronz and
3 Father Fuener, did you?

4 A. No.

5 Q. Okay. There was nobody else in the room with you when
6 Father Kronz and Father Fuener conducted this interview with
7 you in late 2005 or early 2006, was there?

8 A. That's correct, there was not anyone else there.

9 Q. Okay. And this interview lasted at least an hour; is
10 that correct?

11 A. Yes.

12 Q. Okay. And this interview could have lasted close to two
13 hours; is that correct?

14 A. No, I don't think it lasted that long.

15 Q. Okay. And why do you say it did not last close to
16 two -- two hours, excuse me?

17 A. Because I remember going over to our house and my wife
18 had fixed lunch and lunch wasn't ready, and if it had been
19 two hours, lunch would have been ready.

20 Q. Did Mr. Kronz -- excuse me, Father Kronz and
21 Father Fuener also go to your house for your lunch?

22 A. No.

23 Q. Okay. So what did -- to your knowledge, did
24 Father Kronz and Father Fuener do after this interview that
25 was about an hour in late 2005 and 2006?

1 A. They said they were going back to their motel room.

2 Q. When was the next time that day that you saw
3 Father Kronz and Father Fuener?

4 A. We went out for supper, I know that. We may have met
5 for a period of time, possibly in the afternoon before we
6 went out with Cindy.

7 Q. And this meeting that was in the afternoon that you had
8 with Father Kronz and Father Fuener, was that meeting also in
9 your office or was that in the sanctuary?

10 A. No, it would have been in the office.

11 Q. And how long was the afternoon meeting with Father Kronz
12 and Father Fuener?

13 A. I don't recall exactly.

14 Q. Okay. Other than exactly, what do you recall?

15 A. I would think less than an hour.

16 Q. Now, in this afternoon meeting that you had with
17 Father Kronz and Father Fuener in late 2005, early 2006, did
18 you take any notes of that meeting?

19 A. No.

20 Q. Did you record that meeting in any way?

21 A. No.

22 Q. Did you in any way transcribe in a personal diary the
23 communications that occurred in this afternoon meeting with
24 Father Kronz and Father Fuener?

25 A. No.

1 Q. With respect to the dinner that you had that evening
2 after you had those two interviews with Father Kronz and
3 Father Fuener, did you all ride together in a vehicle?

4 A. I don't recall.

5 Q. But you selected the restaurant or your wife selected
6 the restaurant in Elizabeth City; is that correct?

7 A. Yes.

8 Q. And what's the distance between Elizabeth City and your
9 church?

10 A. About 30 miles.

11 Q. Do you recall the name of the restaurant?

12 A. Montero's.

13 Q. And how do you spell that for the court reporter?

14 A. I'm a lousy speller, but I think it's M-O-N-T-E-R-O,
15 apostrophe S.

16 Q. Is that a Mexican restaurant?

17 A. No.

18 Q. What type is it?

19 A. Classic American cuisine.

20 Q. Had you been there before?

21 A. Many times.

22 Q. And after that day in late 2005 and early 2006 when you
23 had dinner with Father Fuener and Father Kronz, had you been
24 to the restaurant many times; is that correct?

25 A. Been back, I'm sorry.

1 Q. Been back.

2 A. Yes.

3 Q. Now, the dinner that you had with Father Fuener,
4 Father Kronz, and your wife that latter part of 2005 or early
5 2006, that dinner lasted for approximately an hour or so.

6 MR. TISDALE: I withdraw an objection.

7 THE WITNESS: I would say it probably is more like
8 closer to two hours.

9 Q. Was this dinner set up before you interviewed on the
10 first hour session of the interview you had that morning,
11 that Saturday morning?

12 A. Yes, I made reservations prior to that point.

13 Q. Was it an enjoyable dinner that you had with
14 Father Kronz and Father Fuener?

15 A. Not particularly.

16 Q. And why not?

17 A. Well, I presume that, after that first answer I had
18 given them, we were all wasting our time.

19 Q. Did you advise that or say anything to Father Kronz and
20 Father Fuener that you felt like you were all wasting
21 everybody's time?

22 A. No, I did not say that at supper. What I did say was,
23 when they asked the question, that I was shocked and
24 disappointed that the question was asked and that they had
25 driven a long way, I'd invested a lengthy amount of time

1 preparing my answers to the questions, and they had driven a
2 long way, so I indicated it at that point.

3 Q. Well, did you tell Father Kronz and Father Fuener that
4 they were wasting their time?

5 A. Did I use those exact words?

6 Q. Yes, sir.

7 A. No, ma'am, I did not use those exact words.

8 Q. Okay. Did you at any time even imply to Father Kronz
9 and Father Fuener that they were wasting their time?

10 A. I felt like my statement was pretty clear.

11 Q. With respect to your statement, and you believe that you
12 then implied that to them, that they were wasting their time?

13 A. It certainly stated that I was wasting my time.

14 Q. Did you force Father Fuener and Father Kronz to take you
15 to dinner that night?

16 A. No, ma'am.

17 Q. Did you force Father Kronz and Father Fuener to
18 interview that Saturday afternoon and spend an hour with you?

19 A. No, ma'am.

20 Q. Did you force Father Kronz and Father Fuener to go and
21 attend two of your services the next day?

22 A. No.

23 Q. Did you force Father Kronz and Father Fuener to have a
24 discussion with you after your second service the next day?

25 A. No.

1 Q. To your knowledge, Father Kronz and Father Fuener were
2 cordial and respectful at all times, were they not?

3 THE WITNESS: I think that's supposed to be Mr. Tisdale.

4 MR. TISDALE: Yes, I think that's a -- but I withdraw it
5 if it's me.

6 A. Reasonably.

7 Q. You just stated that you spent a great deal of time in
8 preparing your documents that you submitted for the position
9 of bishop; is that correct?

10 A. Yes, ma'am.

11 Q. Okay. Did you want to be bishop, the 14th bishop of the
12 Protestant Episcopal Church of South Carolina?

13 A. Want is not the right word. I was willing to have a
14 dialogue.

15 Q. Okay. So it would be fair to state that you were
16 disappointed when you did not become the bishop?

17 A. I think I was more relieved than I was disappointed.

18 Q. Did you at any time withdraw your name from
19 consideration as the 14th bishop?

20 A. No, I did not.

21 Q. Nobody prevented you from withdrawing your name as the
22 14th bishop after this meeting that you had with Father Kronz
23 and Father Fuener in late 2005 or 2006, did they?

24 A. No one prevented me from doing that.

25 Q. Okay. With respect to the application process for the

1 bishop, I think you indicated earlier you had to fill out a
2 questionnaire?

3 A. Uh-huh, there was a series of questions that were asked,
4 I was told, of all of the candidates.

5 Q. And this questionnaire was in written -- was in written
6 form; is that correct?

7 A. It was a series of questions.

8 Q. And this questionnaire was a number of pages; is that
9 correct?

10 A. Yes.

11 Q. Okay. With respect to this questionnaire, do you know
12 how, over a time period -- do you know how over a time
13 period, the time between you filing out -- filling out the
14 questionnaire and the being notified that you would be
15 interviewed?

16 A. Something more than a month, maybe a couple of months.
17 I don't remember exact timeframe.

18 Q. Other than filling out this questionnaire, what other
19 information did you provide to the search committee for your
20 candidacy as the 14th bishop?

21 A. I don't recall anything else in written form.

22 Q. With respect to this questionnaire, when you responded
23 to the questionnaire and filled it out, did you make any
24 notations on the questionnaire that you objected to any of
25 the questions?

1 A. No.

2 Q. Okay. Did you, in fact, find any of the questions on
3 that questionnaire to be offensive in any way?

4 A. No.

5 Q. Did you save the -- make a copy of the questionnaire
6 that you filled out?

7 A. I did.

8 Q. And where -- okay, and where is that questionnaire that
9 you saved?

10 A. That, I don't know. We moved, so it's possible it might
11 be in my attic, but I can't lay my hands on it.

12 Q. Is this the first time that you applied for a position
13 as a bishop in the diocese?

14 A. Was this position the first time?

15 Q. Yes, sir.

16 A. Well, I didn't make an application, I was nominated, but
17 yes.

18 Q. Was this the first time you agreed to be nominated for
19 bishop in any diocese?

20 A. Yes.

21 Q. And since this nomination to be the 14th bishop, have
22 you been nominated subsequently?

23 A. Yes.

24 Q. What other bishops?

25 A. The Diocese of Upper South Carolina.

1 Q. And when did that occur?

2 A. Whenever they elected their last bishop, which was
3 probably 2008, 2009, somewhere in there.

4 Q. And were you interviewed for that process?

5 A. I was.

6 Q. Do you know if your nomination to be bishop of the
7 Diocese of Upper South Carolina, if you became one of the top
8 five?

9 A. No, I think it was -- there were seven or eight of us
10 that were in the semigroup.

11 Q. But you did not make it into the final group to be voted
12 on?

13 A. No.

14 Q. With respect to your nomination for the bishop for the
15 14th bishop, do you know how many nominees there were when
16 you were interviewed in late 2005 or early 2006?

17 A. I think they alluded to there were maybe about eight.

18 Q. And when you say they, you're referring to Father Kronz?

19 A. Father Kronz, yes.

20 Q. Now, my understanding is that you spoke to Mr. Tisdale
21 sometime the summer or fall of 2013; is that correct, last
22 year?

23 A. It was the fall.

24 Q. The fall?

25 A. Uh-huh.

1 Q. Did Mr. Tisdale meet with you?

2 A. Yes, we met.

3 Q. Okay. And where was this meeting?

4 A. I think we had it at Olive Garden.

5 Q. And who was present at the meeting?

6 A. The two of us.

7 Q. And how long did that meeting last?

8 A. Including the meal, it was probably a little over an
9 hour.

10 Q. And tell me what you recall about that meeting you had
11 with Mr. Tisdale in the fall of 2013 at Olive Garden.

12 A. He basically asked me what -- he was aware that I had
13 had a conversation with the priest from North Charleston
14 and --

15 Q. Was that Mr. Taylor, Father Taylor?

16 A. Yeah, and -- yes, ma'am, and wanted to talk with me
17 about that and ask me if I'd be willing to give a -- it's not
18 a deposition. What's it called?

19 Q. Give an affidavit?

20 A. Affidavit, yes.

21 Q. Now, the communications or conversations you had with
22 Father Taylor that I was -- that was, I believe you
23 testified, in 2011; is that correct?

24 A. Uh-huh.

25 Q. You'll have to make a verbal.

1 A. Yes, ma'am.

2 Q. Okay. Do you know when in 2011 you had this
3 communication with Father Taylor?

4 A. I don't know exactly. I don't recall.

5 Q. Other than exactly, approximately?

6 A. Maybe the summer.

7 Q. Okay. So the summer of 2011?

8 A. Yes, ma'am.

9 Q. Would that be correct?

10 A. (Deponent moves head up and down.)

11 That would be an approximation. As I said, I didn't
12 know exactly.

13 Q. Okay. So if you believed your interview with
14 Father Kronz and Father Fuener occurred in, let's say, the
15 early part of 2006, the conversation you had with
16 Father Taylor in the summer of 2011, that would have been at
17 least a five-year period between those two events; is that
18 correct?

19 A. Yes, ma'am.

20 Q. Okay. And during that time period, you were fully
21 employed as a rector; is that correct?

22 A. That's correct.

23 Q. And during those five years, your church was in Edenton,
24 North Carolina; is that correct?

25 A. Yes, ma'am.

1 Q. And that was a full-time position; is that correct?

2 A. It's almost 900 members. I'd say that's pretty
3 full-time with one priest.

4 Q. And that's pretty demanding on your part, isn't it?

5 A. Yes, ma'am.

6 Q. Okay. Now, this telephone conversation you had with
7 Father Taylor in the summer of -- probably the summer of
8 2011, did you take any notes of that conversation?

9 A. No, ma'am.

10 Q. Okay. Did you write any letters to Father Taylor or
11 make any confirmation of that conversation you had with --

12 A. No, ma'am.

13 Q. You retired relatively young?

14 A. Uh-huh.

15 Q. How old were you when you retired?

16 A. 57.

17 Q. Any special reason why you retired at the age of 57?

18 A. Because I can.

19 Q. And what do you mean by that?

20 A. I mean, I have more than 30 years' full-time service in
21 the Episcopal Church and because I don't have to do that
22 anymore.

23 Q. You're financially well off; would that be fair to
24 state?

25 A. I don't know that I'd say that, but I would say that I

1 was financially able to retire.

2 Q. Any other reason why you retired at age 57?

3 A. Not really.

4 Q. Okay. Not really seems to me there might have been some
5 other reasons.

6 A. Well, we did move back to Spartanburg so my wife could
7 be nearer to her now 93-year-old mother and her family.

8 Q. Any other reasons?

9 A. Not really.

10 Q. Now, you said -- you testified on direct examination
11 that after this interview with Father Kronz and Father Fuener
12 in the latter part of 2005 or early 2006, you spoke to your
13 bishop; is that correct?

14 A. That's correct.

15 Q. And you spoke to your bishop about this conversation, it
16 was a month or so later; is that correct?

17 A. Yes, ma'am.

18 Q. Okay. So you didn't immediately call your bishop that
19 day or the next day or even the following week to report that
20 conversation?

21 A. He was gone.

22 Q. My question is: Did you immediately call your bishop?

23 MR. TISDALE: Okay. I withdraw now my comment.

24 THE COURT: Okay.

25 Q. My question is: Did you immediately call your bishop?

1 A. I did not.

2 Q. Okay. And, in fact, it was at least a month, if not
3 more, before you called your bishop; is that correct?

4 MR. TISDALE: I withdraw my comment again.

5 THE COURT: Okay.

6 Q. Is that correct?

7 A. Yes.

8 MS. GOLDING: Line 23.

9 Q. With respect to the Sunday following the interview in
10 the latter part of 2005 and early part of 2006, do you recall
11 that the subject -- do you recall the subject of your sermons
12 in the two services that Reverend -- excuse me --
13 Father Kronz and Father Fuener attended?

14 A. Do I recall the content?

15 Q. Yes, sir.

16 A. No, ma'am.

17 Q. Okay.

18 A. I don't think I know any priest that would remember a
19 sermon that long ago.

20 MS. GOLDING: Your Honor, I just want the record to
21 reflect that we just published a deposition that was taken on
22 June 14, 2014.

23 THE COURT: Thank you.

24 MR. HOLMES: I've got June 11.

25 MS. GOLDING: June 11, excuse me, June 11, 2014.

1 MR. TISDALE: And I said at the end, "Thank you very
2 much, Father Rickenbaker, appreciate your time coming here
3 today."

4 THE COURT: All right.

5 MR. TISDALE: Your Honor, we're trying to meet 4 o'clock
6 that you mentioned for working on the documents, so we did
7 pretty good.

8 THE COURT: You did very well. All right.

9 MR. TISDALE: Thank you very much.

10 THE COURT: So you all are prepared at this time to
11 continue working on your documents; is that right?

12 MR. TISDALE: That's what you said Your Honor would like
13 to do and that's what we're prepared to do.

14 MS. KOSTEL: I think we're pretty close to being able to
15 talk with the Court about relevance objections.

16 MR. TISDALE: We'd be prepared to proceed with a witness
17 first thing in the morning.

18 THE COURT: All right. Very well. Well, do you think
19 that you would be ready to handle the objections in
20 30 minutes, handle some of them?

21 MS. KOSTEL: I think we'd be ready in 10.

22 THE COURT: That would be excellent. I will take a
23 break, and you all call me when you're ready. We'll try to
24 knock those out this afternoon.

25 (The Court's Exhibit 7 marked for identification.)

1 (Recess held.)

2 THE COURT: All right.

3 MS. KOSTEL: Just to bring Your Honor up-to-date, I
4 think I've talked to every lawyer -- a lawyer for every
5 parish, and what -- so we had an original set of lists that
6 we gave to Your Honor and everybody.

7 THE COURT: Right.

8 MS. KOSTEL: And we have winnowed it down quite a bit,
9 removed all the duplicate exhibits. And what I've done is
10 relied on the plaintiffs' counsel to tell me what's been
11 duplicates and we've taken those out.

12 We have also removed other things on our own volition
13 and have largely winnowed down the documents that are left on
14 our list to some documents that are -- where there's no
15 objection; other documents that fall into categories -- and I
16 can discuss that in a minute. And then about with ten, about
17 ten parishes, there are one or two documents that we may need
18 argument on. I mean, they're very specific, narrow --

19 THE COURT: Sure.

20 MS. KOSTEL: -- and they don't really fall into
21 categories.

22 THE COURT: All right.

23 MS. KOSTEL: So probably -- well, it's up to Your Honor.
24 We could do the specific ones first or we could take the
25 categories, which will --

1 THE COURT: Which one? I don't have an opinion.

2 MS. KOSTEL: Okay. Well, I think it's possible that
3 with the categories -- or with the specific things, we can
4 still work some things out.

5 THE COURT: Okay.

6 MS. KOSTEL: So perhaps that should be reserved for
7 tomorrow morning and maybe we'll get through it.

8 THE COURT: That would be fine.

9 MS. KOSTEL: So then let's turn to the categories.

10 THE COURT: Good.

11 MS. KOSTEL: So what we did is that we categorized the
12 different types of documents, parish-specific documents,
13 documents they produced to us, each parish, and so that --
14 that they understood -- plaintiffs' counsel understood that
15 was the basis for our argument, they're relevant.

16 The first category was what I called "organic
17 documents," and that's -- and I'll read what I said to
18 them -- how I described this category. Documents such as
19 bylaws, parish constitutions and canons, corporate charters
20 or articles incorporating statutes, amendments to any of
21 these, and documents showing adoption of any of these.

22 It's my understanding that on the whole -- well -- and,
23 you know, they'll have something to say, but in large
24 measure, most of these are not objected to. A lot of them
25 are in, so I've took them off my list. And the ones that

1 aren't in, in large measure, are not objected to. But some
2 of the parishes, I believe, have an argument about
3 cumulative -- the cumulative nature of these documents; in
4 other words, if the 1980 bylaws were already in, I want to
5 put in the '54 and the '65 ones. And my suggestion is, no,
6 they actually matter at each point in time because each --
7 you know, there's arguably a promise at each point in time,
8 so I think that's the only issue about the organic documents.

9 But I yield -- should we take the issues one at a time?

10 THE COURT: Yes, one at a time.

11 MS. KOSTEL: One at a time, okay.

12 THE COURT: Who would like to speak to that?

13 Mr. Mark.

14 MR. PHILLIPS: Your Honor, I think in my case, we
15 literally have a single document to discuss, one.

16 THE COURT: Go for it.

17 MR. PHILLIPS: I'll tell you what I'll do, if you like,
18 I can read into the Court's record what we agreed on.

19 MS. KOSTEL: Which one are you talking about?

20 MR. PHILLIPS: This consecration certificate.

21 MS. KOSTEL: We're talking about organic documents.

22 MR. PHILLIPS: Oh, geez, you and I already agreed on all
23 of those. Okay. Never mind.

24 MS. KOSTEL: I was wondering what you were doing up
25 here. So maybe we're done with that. I don't know.

1 MS. DURANT: Thank you, Your Honor.

2 THE COURT: Everybody who's got concerns, come up here
3 and hang out in the jury box.

4 MS. DURANT: Your Honor, Bess Durant for Church of the
5 Holy Comforter.

6 THE COURT: Okay.

7 MS. DURANT: And Ms. Kostel probably explained my
8 objection better than I could. She wants to introduce a --

9 MS. KOSTEL: Darn.

10 MS. DURANT: Thank you kindly. I appreciate it.

11 But she wants to enter to a -- or enter into evidence a
12 1968 constitution. We've already admitted a 1989
13 constitution and a 2010 and 2013 constitution. And, Your
14 Honor, I just think it's cumulative and not relevant to the
15 matters at hand. And I'll rely on Ms. Kostel's explanation
16 of my objection as well.

17 THE COURT: Let me just ask you this question, if the
18 argument is -- and I'm not ruling, but assuming there is an
19 argument that the duration of the -- I'm looking for the
20 right word -- the duration for which the national church's
21 constitution and canons were accepted or acceded to, if that
22 has meaning, then arguably the meaning is greater if it goes
23 from 1968 through whatever year than if it just existed for
24 one year. See what I'm saying?

25 MS. DURANT: Yes, Your Honor, I see what you're saying.

1 I do see what you're saying.

2 THE COURT: And so for that purpose, I think it could
3 have some relevance.

4 MS. DURANT: That's fair enough, Your Honor. Thank you
5 for listening to me.

6 MS. MACDONALD: Susan MacDonald, Trinity Myrtle Beach.

7 We had several amendments along the years and I have no
8 objection, as I've told Mary. I'm fine with putting in the
9 very first articles and bylaws for us in 1939 and the last
10 ones, but there's a '72, there's a '93, there's several in
11 between that really are, in my opinion, cumulative.

12 If that's the reason, you know, the duration is
13 important and relevant; if it is, then I have no trouble with
14 the first and the last. But having the Court wade through
15 four additional sets of amended bylaws over 75 years just
16 seems cumulative, and that would be our objection.

17 THE COURT: I understand. And, again, at this point, I
18 certainly don't want to be in a position of telegraphing what
19 my opinion may or may not be. But if the argument is that
20 there is importance to the number and the period of -- the
21 number of times and the periods of time over which a parish
22 said we accede to the constitution and canons, we accede to
23 the constitution and the canons, and that happens not only
24 over time but repeatedly, for whatever merit that argument
25 has, if it has none, then there's no harm done. It's just --

1 you know, I have done terrible -- you know, Westvaco should
2 probably put my picture up. But, you know, if it's an
3 argument which has merit which should be considered by the
4 Court, then I have then worked an injustice. And it seems to
5 me, certainly at this juncture, that it makes more sense to
6 make Westvaco happy at this juncture than it is to put the
7 potentiality of committing an error at this point.

8 MS. MACDONALD: Thank you, Your Honor.

9 THE COURT: So that's sort of where it is for me.

10 MR. OXNER: Your Honor, Harry Oxner for Prince
11 George Winyah. Same issue, but we don't have the accession
12 clause. Never had one. Never put one in. Never been there.

13 THE COURT: Okay.

14 MR. OXNER: Going with your ruling, and if that makes
15 the difference, I just --

16 THE COURT: Well, so you wouldn't have that?

17 MR. OXNER: No, ma'am. So we don't think it's relevant.
18 We think it's cumulative.

19 THE COURT: Are you like bragging or what?

20 MR. OXNER: I am bragging. Absolutely, I am. I'm glad.

21 THE COURT: Okay. So then this is not an issue that
22 involves you?

23 MR. OXNER: I don't think so.

24 THE COURT: Okay. Go have a seat.

25 MR. OXNER: I've got other issues with this church, but

1 I think -- are we just dealing with that one issue on bylaws?

2 THE COURT: Hang on one second. Okay. Mr. Campbell.

3 MR. CAMPBELL: Pierce Campbell, All Saints. One organic
4 document. All Saints has a school on the property. Since at
5 least 2001, it has been a completely separate operation with
6 its own corporation, bylaws, no control by the vestry. I
7 mean, there are minimal contacts like a 99-year ground lease
8 that they built a building on, but it's no longer a
9 church/school, it's a separate private school.

10 And there's a set of bylaws, looks like maybe proposed
11 original bylaws of that school. The copy that's presented
12 says on it in writing, this is the copy of bylaws presented
13 to the vestry in April '01 for final approval; however,
14 revisions were made and amendments were added, refer to
15 minutes, and it's unsigned.

16 I don't represent the school. I don't have their
17 records. They are not in the church office. They are their
18 own entity. I can't make any representation about what the
19 school did in their bylaws.

20 We had this draft in our file, but otherwise, I just
21 don't know that that's admissible to prove anything about the
22 church.

23 MS. KOSTEL: Which exhibit number is that?

24 MR. CAMPBELL: This is All Saints D-AS-29.

25 MR. KOSTEL: We struck that one.

1 MR. CAMPBELL: Okay. I didn't have it stricken, so that
2 takes care of it.

3 THE COURT: Cool.

4 MS. KOSTEL: I withdrew that one.

5 MR. BRYAN: May I address Ms. Kostel just to confirm
6 something?

7 THE COURT: Yes, organic stuff.

8 MR. BRYAN: D-R-20 is out.

9 MS. KOSTEL: D-R-20 is not, no. I don't think we
10 discussed D-R-20 coming out. I have 21 out because 21 was a
11 duplicate.

12 MR. BRYAN: Then I have an issue with D-R-20. We talked
13 about it yesterday.

14 MS. KOSTEL: I forgot what it was regarding.

15 MR. BRYAN: Okay.

16 MS. KOSTEL: What's the issue?

17 MR. BRYAN: The issue, Your Honor, is that that is a
18 document that is -- Church of the Resurrection, Surfside, I'm
19 sorry, I'm William Bryan.

20 That's a document that purports to be a revised set of
21 bylaws adopted in 1972, it also has the date 1959, and has no
22 signatures on it. And I, as chancellor, in the past in my
23 parish, don't consider unsigned -- we don't use unsigned
24 documents, as far as I'm concerned, and there has to be some
25 evidence of adoption or something. And I don't have any

1 indication these were ever adopted. I just have no way to
2 verify what they are.

3 We sort of disgorged ourselves of whatever we could find
4 when we answered discovery. That's where these came from.
5 So I can't say, and I would then question, and I would
6 question my own parish -- that these are ever the bylaws of
7 my parish. And we talked about that last night and I think
8 we agreed they were out.

9 THE COURT: And so you don't know how they can be
10 authenticated because you don't even think they're authentic?

11 MR. BRYAN: No. And I had an instance in my situation
12 when I got to the amendment process for the foundation of
13 this case where I saw some unsigned documents and I did some
14 digging, and I couldn't find any evidence they were ever
15 passed, adopted, or anything and they were unsigned.

16 I didn't go all the way back to '72 and do the same
17 thing, but that's what this is, Order 59, I went back to '83,
18 found some bylaws that were adopted, and we changed those.

19 But anyhow, I think they're not just duplications,
20 they're just -- there's no -- they're questionable.

21 THE COURT: I understand.

22 MR. BRYAN: -- and that's the problem. And I don't
23 think there's any way to have a witness in here. Even if
24 they subpoena somebody, I don't think they're going to get
25 anybody that's going to prove them in.

1 THE COURT: Okay, okay.

2 MR. BRYAN: So they ought not be in for that reason.

3 MS. KOSTEL: And as I look at my -- what was on the hard
4 drive, we didn't even put it on the hard drive, so I think it
5 might be on the list in error.

6 MR. BRYAN: Okay.

7 MS. KOSTEL: Maybe we discussed it and I just didn't
8 mark it out.

9 MR. BRYAN: We did and I thought you said out and I'm
10 just --

11 MS. KOSTEL: I probably did and didn't mark it out
12 myself.

13 MR. BRYAN: I'm just scared about these documents, what
14 is in and what --

15 THE COURT: Put O-U-T, put O-U-T.

16 MR. BRYAN: I've got it with a question mark. I'll just
17 delete my question mark.

18 THE COURT: Exactly.

19 MR. BRYAN: Great.

20 THE COURT: Anything else, organic? Mr. Campbell?

21 MR. CAMPBELL: I'm sorry, I meant to say this before,
22 and I just want to make this clear on the record. Ms. Kostel
23 and I have talked about it, but this is St. Bartholomew's
24 proposed Defendants' SB-14. It's some old bylaws, which
25 sounds like Your Honor wants to let those in, and that's

1 fine. The problem is, these had some proposed amendments
2 attached to the back, but it doesn't say whether those
3 proposed amendments were attached -- were voted on, passed,
4 included, not included, or anything else. And so I'm fine
5 with the bylaws coming in and I know they've already kind of
6 prepared the set of documents that they want to come in. I
7 just want to make sure that, you know, she said, well, we're
8 not arguing about those amendments because we can't tell, but
9 I don't have any way to protect myself on that in an appeal
10 if they try to point to that and it comes into evidence. And
11 so --

12 THE COURT: So you would like to not submit the proposed
13 amendments that you have no way of knowing if they became
14 amendments?

15 MR. CAMPBELL: If they did, they're incorporated in one
16 of these sets of bylaws; and if they didn't, they didn't.

17 MS. KOSTEL: I mean, two things. First, that's fine.
18 If you remind me tomorrow, we'll remove the pages. But it
19 says "proposed amendments," so clearly they were not. I
20 mean, as I said to Pierce, there's the bylaws, and then
21 there's another page that says proposed amendments. But, you
22 know, if I had the gumption to cite them, I think he would
23 have the gumption to say they were only proposed, so it's
24 whatever. But we'll take the pages off.

25 THE COURT: Okay. Good. Done. Great. But you're

1 responsible for the, I call them snake teeth, pulling out
2 the...

3 MR. CAMPBELL: Will we have actual documents?

4 MS. KOSTEL: Yes, tomorrow we'll have actual documents.

5 THE COURT: Great.

6 MR. MARVEL: Your Honor, David Marvel for St. Luke and
7 St. Paul, Radcliffeborough.

8 THE COURT: Right. All right. Are we still organic or
9 not?

10 MR. MARVEL: We are still organic.

11 THE COURT: Okay. Yes.

12 MR. MARVEL: And I -- we essentially have the same issue
13 as to their Exhibit 6, 7, and 8, which are -- you know, these
14 were copies of constitutions and bylaws from probably -- the
15 earliest, I believe, is 1926, and then through there through
16 1950. And I have no verification or information that these
17 are actually correct copies of true bylaws. They're not
18 signed or anything. They were in our files. We produced
19 them in the course of discovery and, you know, we believe
20 they're wholly irrelevant. And so I still have that same
21 objection that I can't verify that they're authentic and,
22 therefore, we've got an issue with them.

23 And I understand Your Honor's ruling and I just wanted
24 to make sure that that was ruled upon in the process.

25 THE COURT: Well, Mr. Marvel, tell me what you've done

1 to ascertain whether or not they are -- in fact, can be
2 authenticated as a document.

3 MR. MARVEL: Well, Your Honor, there is no person who
4 can verify that they were authentic as they were.

5 THE COURT: How about minutes?

6 MR. MARVEL: We don't have any minutes from that time
7 period, Your Honor.

8 THE COURT: And what is the beginning time period that
9 you have minutes?

10 MR. MARVEL: 1987.

11 THE COURT: 1987?

12 MR. MARVEL: Correct, Your Honor.

13 THE COURT: Okay. And tell me what you have done to
14 assure the defendants that you have no minutes pre-1987 and
15 why do you have no minutes pre-1987 that you've been able to
16 determine?

17 MR. MARVEL: My best determination, Your Honor, is that
18 we do not have any paper copies of minutes pre-Hugo. We
19 started taking -- we have electronic versions of minutes
20 since we had a server which collected those, and so we
21 originally produced those. And if you recall, it became an
22 issue because we ultimately located binders of minutes as
23 they were kept by the individual vestry members. The reason
24 why we have them from 1987 on is there was a vestry member
25 who had their personal set of minutes that went from '87 to

1 1990. And when they rolled off, that starts the new period
2 and so --

3 THE COURT: What was the damage that was done to -- and
4 tell me your parish is --

5 MR. MARVEL: Yeah, St. Luke and St. Paul
6 Radcliffeborough, Your Honor, which is the Cathedral.

7 THE COURT: What was the damage that was done during
8 Hugo?

9 MR. MARVEL: I think what happened to these minutes and
10 some other documents, that we would certainly like to have
11 for lots of different reasons, is not necessarily during the
12 storm, although, we had some roof issues. We have a
13 brand-new roof that did not do what roofs are supposed to do
14 in a hurricane, essentially, but that roof was less than two
15 years old. And we lost some portion of it during that. And,
16 frankly, we think we lost some portion of it during
17 reconstruction as well. Reconstruction was pretty chaotic at
18 that point, so for whatever reason, we do not have paper
19 copies of those documents now.

20 THE COURT: All right. Here's what I think I'm going to
21 need you to do, is lay a foundation for that and just bring
22 somebody that can make that -- that's familiar with that
23 history and can give us some information, maybe that was
24 involved in the building process, just someone who could lay
25 that foundation.

1 And let me tell you about that. Let me tell you what
2 happened. Unfortunately, we all experienced it and what
3 Mr. Marvel is saying is -- rings true because even though our
4 office was in Summerville, and what was unique about
5 Summerville as opposed to Charleston is that the plantation
6 owners came to Summerville, because of the height of
7 Summerville, to get away from mosquitoes in the summertime
8 and that's why it's called Summerville. Oh, how quaint.

9 And so when Hugo came along, everybody had turned tin
10 roofs. Y'all probably did too. And what happened was we had
11 a turned tin roof on our brand-new office building in
12 downtown Summerville, at which point Hugo rolled it up,
13 literally rolled it up like it was opening a can of sardines,
14 and threw it on the other side of town behind the dry
15 cleaners.

16 And the day after Hugo, we had a day, sun was shining,
17 it was beautiful, and it gave us an opportunity to move out
18 our files. We were able to do that only because our staff
19 had chainsaws and could cut through, and were willing to cut
20 through to get to the office and help us do that.

21 We were actually able to take out, and all we could take
22 out were the files. Then the rain started and then
23 continued. And it was a nightmare. We took out everything
24 in our law office in buckets. We took out our law library.
25 We took out our sheetrock. We took out our desks.

1 Everything went out in buckets.

2 So what Mr. Marvel is saying actually does ring true.
3 There was a day, and then after that it was the monsoons
4 after that. So Hugo, as devastating as it was to begin with,
5 it really was, but I think so that these defendants have got
6 a basis as they scratch their heads and say, well, how can
7 you not have the minutes? I think we need to lay a
8 foundation for that so they've got that.

9 MS. KOSTEL: Your Honor?

10 THE COURT: Yes.

11 MS. KOSTEL: Could I also say -- could we ask
12 Mr. Marvel, I mean, these, I think, they produced -- they
13 did, obviously, have these old constitution and canons. And
14 I can show them to Your Honor. I mean, they look like they
15 have the name of the church and they say constitution and
16 canons. Where were they kept?

17 MR. MARVEL: In a folder of bylaw amendments. And some
18 of them are -- they have handwritten notes on them and things
19 along those lines.

20 THE COURT: They just need to have somebody to talk
21 about that.

22 MS. KOSTEL: But if they're in a folder, that's kept in
23 the regular course of business containing --

24 THE COURT: What I'm hearing -- what I'm hearing is they
25 may be personal to individualized vestry members; is that

1 what you're telling me?

2 MR. MARVEL: I can't tell you where they came from, Your
3 Honor.

4 THE COURT: You've got to find out between now and
5 tomorrow. And you're right, if they're in folders somehow in
6 the church, you know, it's all we've got. It is what we --
7 you have what you have.

8 MS. KOSTEL: Right.

9 THE COURT: But Mr. Marvel, you're just going to have to
10 find out where they came from so that we've got that
11 information. If they came from individualized vestry
12 members, then it's impossible to know and the vestry member
13 may or may not be able to shine some light, so see what you
14 can do to find out the origin of it.

15 MR. MARVEL: All right. Thank you, Your Honor.

16 THE COURT: Yes, absolutely. All right.

17 MR. RUNYAN: Parish Church of St. Helena, Mary,
18 D-PCSH-2.

19 THE COURT: And what is it?

20 MR. RUNYAN: It is bylaws of the preservation trust for
21 Historic St. Helena's Episcopal Church. The bylaws of a
22 separate entity with no control over it by the Parish Church
23 of St. Helena and not a party to this lawsuit.

24 THE COURT: Oh, okay. Who is it?

25 MR. RUNYAN: Preservation Trust for Historic

1 St. Helena's Episcopal Church.

2 THE COURT: What is it?

3 MR. RUNYAN: It is a corporation created to gather money
4 to help defray the costs of operation of the old church and
5 old church yard, separate 501(c)(3), we don't control the
6 board.

7 THE COURT: And the objection is relevance?

8 MR. RUNYAN: Relevance.

9 THE COURT: Got it.

10 MR. WALL: Your Honor, John Wall, Church of the Good
11 Shepherd.

12 THE COURT: Wait, I've got to handle this one.

13 MR. WALL: Oh, I'm sorry.

14 THE COURT: No, no, you're fine. Don't go anywhere.
15 Stop. Don't go anywhere.

16 Okay. So who's agent for service or process; do you
17 know? Do you happen to know?

18 MR. RUNYAN: Pardon me?

19 THE COURT: Who's the agent for service or process for
20 the preservation? And you may not know.

21 MR. RUNYAN: I don't really.

22 THE COURT: Okay.

23 MR. RUNYAN: I don't.

24 THE COURT: Okay.

25 MR. RUNYAN: I mean, anybody could go to the Secretary

1 of State's office and find out.

2 THE COURT: Okay.

3 MS. KOSTEL: So I'm looking at the bylaws, Your Honor.
4 And they state -- I can flash them up if you'd like, but I'm
5 too tired to do that.

6 THE COURT: I know.

7 MS. KOSTEL: This was page 2, Article 3, Section 31,
8 authority and responsibility of the board of trustees, subA,
9 the authority of the church preservation trust and the
10 government and management of the affairs of the church
11 preservation trust shall be vested in the board of trustees.
12 And all the powers, duties and functions of the association
13 conferred by the parish bylaws, these bylaws, the
14 constitution and canons of the Protestant Episcopal Church in
15 the Diocese of South Carolina or otherwise shall be
16 exercised, performed, or controlled by the board of trustees.

17 Yes, it's funky, but it does suggest that the trustees
18 have to conform to those rules.

19 THE COURT: Okay.

20 MR. RUNYAN: Well, then she needs to lay a foundation
21 for this because that's just not the case. I mean, I -- as
22 part of the problem of doing it this way, she needs to see
23 the present articles of incorporation, present board, the one
24 that -- the articles that existed then. This is just not --
25 it's an insufficient foundation for this document. It is a

1 separate corporation, separate board, easily discovered by
2 the defendants, had they chosen, easily made a party, not a
3 party.

4 THE COURT: Okay. We'll just deal with it at that
5 point, I mean, if you offer it.

6 MS. KOSTEL: I think I'm -- well, I'm offering all of
7 them now, so I think I'm offering the organic --

8 THE COURT: Stuff.

9 MS. KOSTEL: -- stuff now.

10 THE COURT: Okay. I would tell you that -- give me the
11 name of the corporation.

12 MR. RUNYAN: The Preservation Trust for Historic
13 St. Helena's Episcopal Church.

14 THE COURT: Is it a corporation?

15 MR. RUNYAN: It is a South Carolina nonprofit
16 corporation in good standing, the last I checked.

17 THE COURT: And the date of the bylaws that you're
18 interested in?

19 MS. KOSTEL: October 10, 1989.

20 THE COURT: Okay. I'll let you know in a little bit.
21 Yes, now, moving right along.

22 MR. WALL: Thank you, Your Honor. John Wall, Church of
23 the Good Shepherd. Three organic documents generally labeled
24 16, number 37, and 36. Two of them are bylaws. 36 and 37
25 are okay, I'm not objecting to those. No. 16 is our vestry

1 minutes and I don't understand the relevance. They're not
2 really organic documents. They -- and I didn't know what the
3 reason for the admission.

4 THE COURT: Okay. First of all -- first of all, let
5 Ms. Kostel just have -- 36 and 37 are --

6 MR. WALL: Are okay.

7 THE COURT: -- are fine.

8 MS. KOSTEL: Which church are you from?

9 MR. WALL: Good Shepherd.

10 THE COURT: Which Good -- we've got a couple of them.

11 MS. KOSTEL: All right. Good Shepherd.

12 THE COURT: Got it.

13 MS. KOSTEL: And which numbers are they, John?

14 MR. WALL: 36 and 37.

15 THE COURT: Which are fine.

16 MS. KOSTEL: Yes.

17 THE COURT: Is it 16 that you have a concern?

18 MR. WALL: Correct, that's the vestry minutes.

19 THE COURT: Okay. And those are vestry minutes, and
20 they are relevant. And authenticity is not the problem, it's
21 the relevance?

22 MS. KOSTEL: Yes.

23 THE COURT: Okay. How are you percolating over there?

24 MR. RUNYAN: Your Honor, by what I can see, it's a 2002
25 incorporated corporation.

1 MR. PLATTE: '04.

2 MS. KOSTEL: Alan, are you talking about the
3 preservation trust?

4 MR. RUNYAN: (Nodding.)

5 MS. KOSTEL: We can withdraw that one.

6 MR. WALL: Thank you.

7 MS. KOSTEL: That's 16.

8 MR. WALL: 16 is withdrawn. Thank you.

9 MS. KOSTEL: Okay. Is that it for organic, the organic
10 category?

11 THE COURT: Okay. Well, the only one we're left with,
12 Mr. Runyan, is yours. Now, the Secretary of State says that
13 the corporation was incorporated 2/2/04, it was amended
14 5/19/04, and the amendment was the bylaws.

15 So how long are those bylaws? How many pages?

16 MR. RUNYAN: I really don't know. I haven't had that
17 much involvement with them. I know of them.

18 THE COURT: Well, the Secretary of State says they're 13
19 pages long.

20 MR. RUNYAN: As far as I know, it was an unincorporated
21 association for a while and then it incorporated. It's had
22 bylaws and bylaws amendments, but I don't know any more about
23 them than that.

24 MS. KOSTEL: This is 18 pages, for what it's worth, Your
25 Honor, this document.

1 THE COURT: Oh, it's 18 pages, the one that you want in
2 is 18?

3 MS. KOSTEL: Yes.

4 THE COURT: Okay, okay. Great.

5 MS. KOSTEL: The year of these is '89.

6 THE COURT: '89?

7 MR. TISDALE: Does it say it's a corporation?

8 MS. KOSTEL: No, it says it's an unincorporated
9 association.

10 MR. RUNYAN: What I'm looking at is a document, refers
11 to it as an unincorporated association, unsigned, and you
12 know, there's just not enough foundation for it. I can't go
13 beyond that. It is currently a separate 501(c)(3)
14 corporation. What it was in '89, I'm not really sure, except
15 for it was an unincorporated association.

16 THE COURT: And how did you all get the document?

17 MS. KOSTEL: He produced it to us.

18 THE COURT: Okay. And where'd you find it?

19 MS. KOSTEL: Where'd you find it?

20 THE COURT: What box?

21 MS. KOSTEL: They didn't come in boxes. You mean from
22 him?

23 THE COURT: Yes.

24 MS. KOSTEL: They didn't come in boxes, they just came,
25 I think electronically. It wasn't in boxes, Your Honor.

1 THE COURT: I bet you dollars to donuts down in
2 St. Helena it was in a box.

3 MS. KOSTEL: But I don't know the answer to that.

4 THE COURT: I know. I wasn't even looking you. Listen,
5 I wasn't even bothering you about this one.

6 MS. KOSTEL: Sorry, I just can't...

7 MR. RUNYAN: I'm confident the document came from the
8 Parish Church of St. Helena's files in some fashion.

9 THE COURT: Got it.

10 MR. RUNYAN: I'm confident of that.

11 THE COURT: Here's what I'm going to do, I'm going to
12 accept it for what it's worth, understanding that the
13 foundation is -- it is what it is. It is what it is. It was
14 in the documents. It speaks for itself and it may speak
15 nothing. It may merely whisper, and why would I accept it at
16 all? The only reason, the only reason that I would accept it
17 at all is because it makes reference to being governed by the
18 parish bylaws, and that is the only reason. The quality of
19 it, it's not worth keeping out because it makes that
20 reference, to be honest with you. Is it earth shattering?
21 Is it a smoking gun? It ain't even a smoking match, but
22 there we have it. I think you're entitled to have it in
23 evidence.

24 MS. KOSTEL: Okay. Thank you.

25 MR. OXNER: We only have just one question. Somebody

1 else mentioned vestry minutes, are we calling vestry minutes
2 organic?

3 MS. KOSTEL: No.

4 MR. OXNER: I didn't think so.

5 MS. KOSTEL: Just to be clear, right, no, vestry minutes
6 we are offering only if they contain information on specific
7 subjects.

8 THE COURT: I bet.

9 MS. KOSTEL: Yes, we don't want all the vestry minutes.

10 THE COURT: We're no longer organic now. We're back to
11 just good ol' won't rot in the landfill stuff.

12 MS. KOSTEL: All right. So the next category of
13 documents are documents, I call them "consecration," and
14 these are documents showing that church property was
15 consecrated. A lot of these documents we've struck, we've --
16 at the other side's request because they're in -- they're in
17 documents that just -- you know, they can't be authenticated
18 basically.

19 But there are some where there's a sentence of
20 consecration where it says, you know, the bishop came and
21 consecrated this building on such and such a date. And the
22 reason we think that's relevant is that, first of all, the
23 church has certain special rules for property that has been
24 consecrated.

25 THE COURT: Okay.

1 MS. KOSTEL: And we also think it's, you know, another
2 indicium of the parishes, right.

3 THE COURT: Okay.

4 MS. KOSTEL: I don't even need to finish that sentence.

5 THE COURT: Got it.

6 MS. KOSTEL: Okay.

7 THE COURT: Okay. So like who's worried about
8 consecration?

9 MR. BRYAN: I'm worried about everything.

10 THE COURT: Good.

11 MR. BRYAN: We have one, Church of the Resurrection,
12 Surfside, Bill Bryan. This is D-RS-32.

13 THE COURT: Okay.

14 MR. BRYAN: It's just a record of a church proceeding
15 where the bishop did come, sang at a service when they opened
16 up the new church building back in '79 -- no, excuse me,
17 excuse me -- '99, but I just don't see where that's relevant
18 at all to the issue of whether there's a trust on church of
19 the resurrection, and that seems to be what's in the
20 pleadings.

21 THE COURT: Okay. Yes.

22 MS. KOSTEL: I'm sorry, I missed some of that because
23 Mr. Marvel was talking to me.

24 THE COURT: That's okay. 1999 the bishop came and sang
25 songs and --

1 MS. KOSTEL: Resurrection.

2 THE COURT: Right. And they had a service and it has no
3 relevance regarding any indicia of ownership or trust.

4 MS. KOSTEL: Well, consecrated property is subject to
5 certain specific rules. And as I said, the church's canons
6 place particular rules on consecrated property that are in
7 addition to rules that are on unconsecrated property. And so
8 we think it's relevant to the extent that the rules may be
9 binding or the course of conduct between the parties show
10 that the rules were binding or agreed to. And then it's
11 relevant that a particular part of their property was
12 consecrated.

13 THE COURT: Okay.

14 MR. BRYAN: I do have one other thing.

15 THE COURT: Yeah.

16 MS. KOSTEL: What number is that, Bill, just quickly?

17 MR. BRYAN: D-RS-32.

18 MS. KOSTEL: Okay.

19 THE COURT: You had something else.

20 MR. BRYAN: I did.

21 MS. KOSTEL: On consecration?

22 MR. BRYAN: Yes, on this particular document. In the
23 discovery exchange, of course, I provided this whenever --
24 more than a year ago. I then sent discovery requests to the
25 -- both defendants and asked specifically about any documents

1 they had specific to Resurrection that showed any property
2 interest or trust or words to that effect. And this has
3 never been listed or disclosed, even though it's my document.

4 I mean, I'm the fellow that came in here and asked about
5 chapter and verse way back, and we're getting chapter and
6 verse in this trial, but that's really not appropriate, I
7 don't believe. So I think that's an additional basis for
8 Your Honor to understand that this is just in this list, I
9 think, this week, maybe last, whenever, that it's come up
10 that they think this is relevant. And, you know, I'm
11 thinking it's a trust case or a property case and here's this
12 church stuff so --

13 MS. KOSTEL: Well, I don't think that when we're asked
14 to produce documents in discovery we're under the obligation
15 to produce documents that were produced to us because that's
16 not what we're being asked to do.

17 THE COURT: It wouldn't be except in the instance where
18 there is a request for the defendants to explain to them and
19 share with them the documents and the theories upon which the
20 defendants would base a property claim or trust claim. And I
21 think that's what I'm being told, is that although they -- no
22 question they provided the document, in essence they asked
23 back for information regarding the basis for any ownership
24 interest, be it either in fee simple or trust or otherwise.

25 MS. KOSTEL: Right.

1 MR. BRYAN: I have an interrogatory as well, Your Honor,
2 and I'd be glad to read it.

3 THE COURT: Yes.

4 MR. BRYAN: Says Interrogatory 8 --

5 THE COURT: You've got to go slow, you know that right?

6 MR. BRYAN: What?

7 THE COURT: Slow.

8 MR. BRYAN: I'm sorry. Set forth all facts, legal or
9 ecclesiastical authority relied upon by the defendants to
10 support any claim by defendants of any interest or control
11 over the real or personal property of Resurrection and
12 identify all such property.

13 The response was facts and legal and ecclesiastical
14 authority known to the church at this time that underlie the
15 church's claim of an interest in real property titled to the
16 Church of the Redeemer are found in the church's historical
17 constitution and canons through 2012, the historical versions
18 of the Book of Common Prayer, the diocese historical
19 constitution and canons through 2012, the historical
20 relationship between Resurrection and the larger church and
21 South Carolina law as bounded by the First Amendment to the
22 U.S. Constitution. The church at this time lacks information
23 sufficient to enable it to identify the property at issue.

24 That was in an original response to the discovery, so
25 amen.

1 THE COURT: Okay. Now let me ask this question of you:
2 Let me see the quote/unquote consecration document, which at
3 this point is marked, I gather, as D-RS-32; is that right?

4 MR. BRYAN: 32.

5 MS. KOSTEL: Yes.

6 THE COURT: Okay. Great. All right. Let me just...

7 (Brief pause.)

8 THE COURT: I'm going to share this with the group and
9 because it is my -- this is the tenant of law that I intend
10 to follow, and I will share it with you. And to some extent,
11 it may or may not dictate whether some of these documents are
12 made for the purposes of offers of proof or whether or not
13 they are admitted into evidence. And this is clearly a
14 document that my determination and my view of the law will
15 affect. And I'm so excited that you give me this opportunity
16 to do it at this juncture. I didn't really want to do this
17 now, but here we are: Jones versus Wolf is, of course, the
18 case, it's a United States Supreme Court case where it
19 discusses pretty fully about the relationship between the
20 hierarchical church and the rules of neutrality and the
21 doctrine of neutrality, neutral-based principles of law. And
22 it really talks to, might even say warns those that wish to
23 continue with a hierarchical-based church. Because it says
24 that -- it's really a discussion that's found -- I'm not
25 going to read it to all of you, but it's found in the

1 decision on page 606. Of course, 443 US 595 is the cite for
2 Jones versus Wolf. And it basically says if a church wants
3 to enforce the hierarchical nature of the church, that's
4 fine, but you're going to have to do that exercising the
5 neutral principles of law and -- meaning, that you better
6 have your -- you need to have your churches, if you will,
7 take legally cognizable forms of creating ownership interests
8 in property.

9 So I do not believe that the consecration ceremony as
10 shown in D-RS-32 is a legally cognizable form under South
11 Carolina law that would grant an interest in property, either
12 a fee simple or a trust interest; meaning, I don't think this
13 document creates a trust either by declaration or by transfer
14 of property.

15 So I don't know what you want to do with that. I don't
16 know if you want to have an offer of proof with that or -- or
17 that at this point you just simply want to mark it for
18 identification purposes.

19 MS. KOSTEL: May I confer for a moment?

20 THE COURT: Absolutely.

21 MS. KOSTEL: Thanks. I think we offered it, he
22 objected, you sustained the objection, and that's all in the
23 record. So I think we're --

24 THE COURT: Let's mark it, then, for identification
25 purposes so it's in the record as ID.

1 MR. BRYAN: Would you mind if I have mine back if she
2 marks hers?

3 MS. KOSTEL: Oh, well, they'll be here tomorrow.

4 THE COURT: I have a copying machine too. That's one
5 dispute that I can settle easily.

6 MR. BRYAN: Well, I'm a paper guy, Judge, I have a hard
7 time with all this electronic stuff. I have another.

8 MS. KOSTEL: I have one favor I would ask of Bill, if he
9 would tomorrow when all the massive paper arrives, will you
10 make sure that that happens so that it gets marked for
11 identification?

12 THE COURT: We're doing it right now.

13 MS. KOSTEL: Okay. You're using his? You are using
14 his?

15 THE COURT: I'm going to copy it --

16 MS. KOSTEL: Okay, fair enough.

17 THE COURT: -- and I might give you the long one back
18 but I might keep his copy.

19 MR. BRYAN: Thank you, Judge. I have one more
20 consecration document.

21 THE COURT: Sure. Go right ahead, trouble-maker.

22 MR. BRYAN: I'll hand it to you. This is D-RS-35. I'm
23 just following the list we were given by categories.

24 THE COURT: Sure, okay. And --

25 MR. BRYAN: That is listed as a consecration document

1 that the defendant national church wants to enter in evidence
2 about the pancake suppers and the Girl Scouts.

3 It's a -- it purports to be a history by somebody, but I
4 don't know. It was in my church records that I, again,
5 disgorged for these folks.

6 THE COURT: And it's a history of the Episcopal Church
7 of the Resurrection written for the occasion of the 50th
8 anniversary by Delores Hess Butler in 2008.

9 MS. KOSTEL: Yes. Your Honor, we'll withdraw that one.

10 THE COURT: Okay.

11 MR. BRYAN: Thank you. That's all I have on
12 consecration, Judge.

13 MR. CAMPBELL: Thank you, Your Honor, on the
14 consecration. To save time, Your Honor, if that's your
15 ruling on consecration documents, there are many amongst many
16 parishes, and so do we need to go through each one for you to
17 say that you are not going to admit it and they can decide
18 whether to put it in as an offer of proof or mark it?

19 MS. KOSTEL: He's right, yeah.

20 MR. CAMPBELL: There are many.

21 THE COURT: With this caveat, if there is language --
22 trust happens in South Carolina in two ways, a declaration of
23 trust, or transfers of property to a trust.

24 MS. KOSTEL: Actually, I did a little bit of research on
25 that, Your Honor.

1 THE COURT: I did too. And one of the things I've been
2 listening for, too, I don't think there's any way in the
3 world we've got a resulting trust, but I have been listening
4 very carefully for the theory of constructive trust, which is
5 why some of the things I've had come on in and had people go
6 there because I wanted to hear about that.

7 MS. KOSTEL: Right.

8 THE COURT: Which is another reason why I wanted to see
9 that document that I had just looked at. I am a little bit
10 concerned about, with the consecration, just making that
11 blanket statement, but if there's something in these
12 consecration documents that say -- because I looked. I mean,
13 they're singing songs and having a good ol' time.

14 MS. KOSTEL: Right. How about this, to keep things
15 rolling --

16 THE COURT: Yes.

17 MS. KOSTEL: -- if I go through the consecration
18 documents this evening, if I think any of them say anything
19 more, I'll bring them up tomorrow.

20 THE COURT: That would be perfect.

21 MS. KOSTEL: Okay.

22 THE COURT: That would be perfect. Because I don't want
23 to miss those because I think that's important. I mean, say
24 it gets worked up and says, you know, we give this in
25 trust --

1 MS. KOSTEL: My guess is that most of them will not.

2 THE COURT: I don't know.

3 MS. KOSTEL: But I need to make sure.

4 THE COURT: And here, you know, all these songs just are
5 flying off in my head. Okay. So this is marked for
6 identification. Ruth will mark that. It's already got it
7 written on it, what it's supposed to be.

8 MR. PLATTE: Your Honor, it's my understanding of the
9 consecration documents that they -- if Ms. Kostel over
10 tonight, if they have some language that might be relevant,
11 she'll bring it to the Court, but otherwise they will not be
12 entered in?

13 THE COURT: They'll be marked for identification
14 purposes only because I want them part of the record.

15 MR. PLATTE: Thank you, Your Honor.

16 (Defendant's Exhibit D-RS-32 marked for identification.)

17 MS. KOSTEL: So I'll report to the Court tomorrow about
18 that.

19 Okay. Next topic: This one is called compliance. And
20 I'll read what I've -- how I've described this category to
21 the plaintiffs.

22 THE COURT: Sure.

23 MS. KOSTEL: Documents showing compliance with national
24 church or diocesan rules or acknowledging the need to do so.

25 So this is -- this is a wide range of stuff. It occurs

1 to me that there are a couple categories later that are
2 actually subcategories of this, but they're their own special
3 categories. But this is just a broad category, like in the
4 vestry minutes we have to make sure we obey the national
5 church canon on remarriage or we have to make sure we do our
6 audits according to the national church business methods,
7 or -- it's that kind of stuff. That's what it is.

8 THE COURT: Got it. And there are objections to the
9 relevancy of those documents?

10 MS. KOSTEL: Correct. I think we've gotten rid of
11 everything except relevance.

12 THE COURT: I understand.

13 MR. RUNYAN: I just have an inquiry. You mentioned
14 diocesan canons and the national constitution and canons.
15 Are all the diocesan canons derivative of something in the
16 national canons? Because if they're not, then I think that's
17 a different issue. I don't think it's relevant.

18 MS. KOSTEL: Right. Some probably are. I'm not sure I
19 can answer that.

20 THE COURT: Yes.

21 MS. KOSTEL: If it just shows that they obey the
22 diocesan canons, who cares? And I can't show that it's
23 derivative.

24 THE COURT: Yes.

25 MR. HOLMES: May I make a suggestion, Your Honor? Those

1 come in for what they're worth.

2 THE COURT: You know, how many times have you heard that
3 in a nonjury case, you know what I'm saying?

4 MR. HOLMES: Many.

5 THE COURT: And I have resisted saying that because what
6 used to happen to me as a lawyer, I'm like, what does that
7 mean? Does that mean I go down that road or I don't go down
8 that road? And so I understand now it's like, you know,
9 riding down the road, when will we be there? Soon.

10 MS. KOSTEL: Yes.

11 THE COURT: Help me with this issue. Because while
12 though all of those issues, I think, are very important in
13 terms of the establishment of a hierarchy, there are a couple
14 of other things going on, and I need to ask because here's
15 what I was listening for very carefully when we went through
16 that lovely four days of each parish coming up and going
17 through the corporate changes, and we went through those
18 corporate changes. And while I have not -- I haven't gotten
19 down with my jeweler's loupe on it, it appears at this
20 point -- and let's just say for argument's sake that,
21 understanding the dictates of the statute, the pre-1900,
22 post-1900 corporations, the charters, and the ability to make
23 changes to the constitution and bylaws, if in fact that has
24 occurred, and let's just say for the sake of that argument
25 that it did occur.

1 MS. KOSTEL: That the corporate amendments --

2 THE COURT: Yes, that they occurred.

3 MS. KOSTEL: Okay. Thank you.

4 THE COURT: And then we go to taking a look at the
5 compliance documents.

6 MS. KOSTEL: Yes.

7 THE COURT: The real core issue, the real core issue is,
8 why not? What is the vehicle that forbids the parishes
9 vis-à-vis All Saints and the diocese. And I think that
10 argument would be separated. Because, obviously, the
11 diocese's position is that, by analogy, what is true of the
12 parish is true of the diocese. What is the vehicle with the
13 national church that forbids that from happening?

14 Because I'm very mindful of the testimony last week
15 where the bishop says there is nothing in the constitution
16 and the bylaws of the national church that forbids an
17 amendment to the individual parish, the individual diocese's
18 constitution and bylaws that forbids a change and a
19 separation. And that goes to the core.

20 MS. KOSTEL: Okay. So let me -- couple of things.

21 THE COURT: Yes.

22 MS. KOSTEL: First, even if, for the sake of argument, a
23 parish could leave, I think we're talking about parishes
24 here, not the diocese, because this is parish specific.

25 THE COURT: Okay.

1 MS. KOSTEL: Even if a parish could leave, it may
2 have -- it may have -- there may be a trust interest in its
3 property; for example, let's say, you know, that could be
4 agreed to, there could be a trust instrument, there could
5 be -- and there are, in some cases, agreements or statements
6 that some of the parishes have made after the adoption of the
7 church's trust canon in 1979, the Dennis canon saying we
8 agree to those rules; some of them say we agree to the
9 property rules post-'79.

10 My understanding is that in South Carolina before 2006,
11 a trust is irrevocable unless expressly stated otherwise.
12 So, arguably, you have a promise to make a trust if that's
13 what's happened.

14 THE COURT: Well, there are a couple of hoops. There
15 are several things that would have to happen for there to be
16 a trust created. Number one, whoever -- as I understand it,
17 the canons that were passed that created the trusts, if you
18 will, those were done at conventions.

19 MS. KOSTEL: There was a general convention one and then
20 the diocesan convention actually adopted a sort of mirror one
21 in 1987.

22 THE COURT: Okay.

23 MS. HOSTEL: I think, yes.

24 THE COURT: Okay. So the people, the individuals who
25 are attending those have to be clothed with the authority to

1 do two things: One, to have the authority to transfer
2 property or create a trust.

3 MS. KOSTEL: Right.

4 THE COURT: Erstwhile, if it doesn't happen when they go
5 home, then I think it's incumbent upon the national church to
6 come marching down to South Carolina and say (indicating) and
7 then see what happens. And so I don't think that that --
8 number one, I'm suspicious that the authority to which
9 deputies or delegates are clothed doesn't include that.

10 MS. KOSTEL: Well, I agree with you, Your Honor. We're
11 not -- that's not our argument.

12 THE COURT: Okay. And then secondly, secondly, if that
13 is correct, under South Carolina law you get a trust, in
14 these circumstances, in one of three ways; by declaration, by
15 transfer, arguably by the operation of law in the terms of a
16 constructive trust.

17 MS. KOSTEL: Right.

18 THE COURT: Now --

19 MS. KOSTEL: I understand that the Court's looking at
20 constructive trust. And so what this body of -- well, some
21 of this body of compliance stuff would arguably show is
22 that -- so the general convention adopts a canon that says
23 the property's held in trust -- and well, the diocese does
24 too, but set that aside for a moment -- and then we come back
25 and a few years later the parish revises its -- well, no, not

1 its bylaws. It does something in its minutes that says when
2 we have to do -- we have to remember that we're obeying the
3 national church's rules about property. We have to do things
4 in compliance with the national church's rules about property
5 post-'79.

6 THE COURT: Be sure I get those.

7 MS. KOSTEL: Yeah, that's what I'm talking about.

8 That's -- to me, those are the most critical compliance
9 documents.

10 THE COURT: I agree.

11 MS. KOSTEL: Yes, and there are those. Now -- and I'm
12 talking about separate from organic documents. That happens
13 with the organic documents too. Post-'79 they amend their
14 bylaws and they say, we're obeying the national church's
15 rules, and it's post-Dennis canon. Okay. I'm talking about
16 here, not the organic documents but in vestry minutes or, you
17 know, a vestry handbook saying, you know, one of the vestry's
18 responsibilities is to comply with the national church's
19 rules governing property. That kind of stuff. Now, that's a
20 subset of the compliance.

21 There's also, as I say, this sort of bigger category
22 which is, you know, we have to obey the rules on weddings, we
23 have to obey the rules on ordinations and all that stuff.
24 And that -- I don't think that goes to this narrow issue. I
25 think that goes to the larger issue of -- setting hierarchy

1 aside -- it goes to the larger issue of control of the nature
2 of services, which goes to our trademark defense; in other
3 words -- yes, so, you know, right.

4 THE COURT: Okay.

5 MR. RUNYAN: Your Honor, could I just speak to the
6 framework that she's working under?

7 THE COURT: Sure.

8 MR. RUNYAN: Because I think there's an important issue
9 here that needs to be understood.

10 In the absence of a parish saying, I adopt the national
11 church's rules, or I agree with the national church's rules,
12 they have no relationship with the national church at all.
13 The relationship they have is through the diocese, and they
14 have a relationship with the diocese, and they deal with that
15 relationship, and the diocese has one.

16 I stand to be corrected, but I don't know of any of
17 these compliance things that are directly associated with the
18 national church. I think most of them are from the diocese
19 and I question whether they are, in fact, compliance. But in
20 any event, there's no -- there's no day-to-day relationship
21 between a parish and the national church.

22 The parish operates in union with the diocese, and it
23 operates consistently with its view of the diocese's
24 constitution and canons to the extent it's applicable. So
25 the idea that they're trying to create this relationship

1 through a diocesan relationship has just got a whole bunch of
2 problems, even for a trust, an implied trust or whatever.
3 Because in the parish's mind, to the extent they're doing
4 anything, they're doing what they're doing in relationship to
5 their diocese, not the national church, unless they've
6 expressly said, we're going to do -- we're going to follow
7 the national church on something, so --

8 MS. KOSTEL: I think we're talking about documents that
9 say we're going to expressly follow the national church.
10 That's what we're -- that's exactly what we're talking about.

11 I mean, it's true there are some that say diocesan, and
12 if it's diocesan it can't be traced to the national church,
13 fine. But the bulk of this is about calling out a national
14 church canon, calling out a national church rule. It's
15 national church stuff.

16 MR. RUNYAN: I think what's missed with that comment is,
17 the canon in question is not a national church canon.

18 MS. KOSTEL: Yes, it is, actually.

19 MR. RUNYAN: Okay. Well --

20 MS. KOSTEL: Yes, it is. They're cited.

21 MR. RUNYAN: Excuse me.

22 MS. KOSTEL: They're cited in the --

23 THE COURT: Okay.

24 MS. KOSTEL: Yeah.

25 MR. RUNYAN: It would be easy to show, then.

1 MS. KOSTEL: It will be, indeed.

2 THE COURT: Okay.

3 MS. KOSTEL: So that's compliance. I don't know if
4 anybody has anything else.

5 THE COURT: Got it.

6 MR. MCCARTY: I've got a question, maybe, on this. I've
7 got one document that has to do with compliance.

8 THE COURT: Okay.

9 MR. MCCARTY: Sorry I've got a little bit of laryngitis,
10 so --

11 THE COURT: That's okay.

12 MR. MCCARTY: Most of my colleagues are applauding.

13 Christ St. Paul's, CSP-17. It's just a question, has to
14 do with the vestry handbook. There was a vestry handbook in
15 the documents that I turned over. My priest had never seen
16 it. I've questioned my vestry. They have never seen it.
17 They have never operated with a vestry handbook. They have
18 never sought any kind of authority from the vestry handbook.
19 He was questioned at his deposition and on the stand and said
20 he didn't know anything about it.

21 I don't think it's relevant, I mean, any more than if I
22 took a book and laid it over on the church property and told
23 them, you know, now those rules in that book are -- you've
24 got to comply with. I just have a serious question about the
25 relevance of the vestry handbook that happened to make its

1 way onto our property in 2006 and nobody knew it was there
2 until we got our documents together and sent them in.

3 THE COURT: Well, does it say -- does it identify your
4 parish and your vestry on like the handbook?

5 MR. MCCARTY: Not that I know of. I don't have it with
6 me, and I apologize. But, no, evidently it's just a general
7 vestry handbook from the Episcopal Diocese in South Carolina.

8 MS. KOSTEL: Why don't we check that out.

9 THE COURT: Yes, who knows, at some point maybe they
10 were toying with the idea of having one and they had one for
11 an exemplar and they never meant to use it.

12 MR. MCCARTY: I questioned them and that's not the case.

13 THE COURT: We'll take a look and see if we can't work
14 that one out. All right. Great.

15 MR. CAMPBELL: Your Honor, I just want to make sure I
16 understand because there are so many different categories in
17 this compliance, and I don't want us to lose our chance to go
18 on the record here and all of a sudden tomorrow get a
19 document dump where we had problems with compliance, specific
20 issues such as Mr. McCarty just raised. I don't want to stay
21 here all night, I know Your Honor doesn't, but I don't know
22 how to protect ourselves really if we don't do that
23 because --

24 THE COURT: In fact, we're going to leave here by
25 6 o'clock and if we pick up tomorrow, we pick up tomorrow. I

1 mean, we just do. That's just where we're going to be.

2 So how many documents do you have compliance-wise that
3 you're concerned about?

4 MR. CAMPBELL: I have many amongst several parishes that
5 are compliance but they're all different.

6 THE COURT: Okay.

7 MR. CAMPBELL: Some fall into the wedding category. I
8 don't think any fall under the "we follow the national
9 church's real property rules category" but maybe I've missed
10 one. Some of them just reference, hey, maybe we should look
11 at our bylaws to see how they look against the constitution
12 and canons. Is that really relevant to anything? I don't
13 think it is. So it's hard to generalize, I guess, is my
14 point, but I don't want to waste the Court's time on that
15 either.

16 THE COURT: Sure. Now, here's what -- I don't think
17 that we can generalize. I think I've got a fairly decent
18 idea of what we're talking about and I'd rather do this when
19 I'm fresh and y'all are fresh rather than trying to do it now
20 because I don't want to lump stuff together on folks. That's
21 very difficult.

22 After we do compliance, what's our next category?

23 MS. KOSTEL: Aid. So documents from the parishes that
24 show aid from the national church or the diocese, financial
25 aid.

1 THE COURT: Okay.

2 MS. KOSTEL: So we've already been over this ground
3 before, I mean, essentially.

4 THE COURT: Yes, we sort of have been. Okay. Great.

5 MS. KOSTEL: Would you like me to tell you the other
6 categories?

7 THE COURT: Yes.

8 MS. KOSTEL: One is self-representation, which, in other
9 words, is documents showing how the parish held itself out.

10 THE COURT: Okay.

11 MS. KOSTEL: Another one is consent, which really should
12 be a subcategory of compliance, but it's documents showing
13 the seeking or receiving of consent to alienate or encumber
14 property or acknowledging the need to do the same because
15 that's required by the national canons.

16 THE COURT: Isn't that -- they're doing that, though,
17 through the diocese.

18 MS. KOSTEL: Yes, yes, the national canons require them
19 to get the consent from the diocese. And the diocese, I
20 believe, had its own canon.

21 MR. RUNYAN: There is no national canon requiring the
22 parish to give consent to the national church.

23 MS. KOSTEL: No, no, no.

24 MR. RUNYAN: There is a canon that says alienation or
25 get consent from the standing committee of the diocese.

1 MS. KOSTEL: That's what I'm talking about. That's what
2 I'm talking about, is the national canon requiring a parish
3 to get a consent from the diocese before it alienates or
4 encumbers property.

5 THE COURT: Got it.

6 MS. KOSTEL: It's a compliance type of thing with regard
7 to property.

8 Okay. The next one is admission. These are documents
9 showing the request of the parish to become a mission or a
10 parish, the steps taken to admission into union with the
11 diocese. So this is -- it's kind of like a formation. It's
12 not exactly organic, but it's -- it goes to the steps the
13 parish took to get let into the diocese. And so, you know,
14 for example, you saw evidence, I can't remember when,
15 sometime this week, that there was a canon that said you have
16 to say you're willing to conform, that stuff.

17 Okay. Disaffiliation, I think probably most of these
18 are -- were already in from the other side, but there are
19 some stray documents that we wanted to put in showing the
20 decision to disaffiliate, the process or the reasons.

21 And then, finally, deeds -- deeds, titles, attachments
22 to them and other documents discussing the deeds. Discussing
23 them is pretty narrow, like cover letters and stuff like
24 that. Those are the subjects.

25 THE COURT: Okay, okay.

1 MR. BRYAN: Just so we'll have some order, my
2 understanding is that those categories that she has just
3 recited to Your Honor were identified on a list Ms. Kostel
4 provided per --

5 MS. KOSTEL: Yes.

6 MR. BRYAN: -- each document so that the parish lawyers
7 can look at your list and see where you're going with these
8 categories; is that right?

9 MS. KOSTEL: Exactly. I provided each lawyer -- once we
10 struck out the ones we were striking out, they have the
11 exhibit that we've proposed, and I've essentially given them
12 my relevance argument for each document so they know --

13 THE COURT: Where you're coming from.

14 MS. KOSTEL: -- where I'm coming from.

15 THE COURT: Aren't we going to have the loveliest time
16 in the morning?

17 MR. BEERS: There's a separate exhibit issue I need to
18 raise.

19 THE COURT: Okay.

20 MR. BEERS: Several days ago we advised plaintiffs'
21 counsel that we were going to introduce the 30(b)(6)
22 deposition transcripts. And we raised the question of
23 whether we should do it by page and line or whether -- and
24 some people on the other side said, well, maybe we should
25 just put the whole thing in.

1 We're prepared to do either, but we want to move those
2 into evidence. And we can either move them in *in toto*, or we
3 can move them in by page and line, but we want to do that.
4 And I have not heard any response from the -- we have not
5 heard any response from the plaintiffs, so I don't know what
6 their position is.

7 THE COURT: Okay. Well, let me tell you what it is.
8 Let me tell you what the law is. The law says that a party
9 is entitled to put in the deposition testimony of an opposing
10 party as though that party was testifying; meaning this: If
11 it is admissible, if they were testifying, then you are
12 allowed to put that in.

13 Now, I'm going to just tell you -- and first of all,
14 thank you for being ready to put it in by line and page
15 number, I appreciate that greatly, and that's how we're going
16 to do it.

17 MR. BEERS: We will tender the page and lines to the
18 other side immediately.

19 THE COURT: That would be wonderful. And then they have
20 some time, if they wish, to have responsive page and line to
21 put those in as well.

22 MR. BEERS: All right. Now, Your Honor, what we've done
23 is we've actually marked the pages rather than just give them
24 a list of page, line, page, line. We've actually marked the
25 sections.

1 THE COURT: That's great. And you've done yours in,
2 what, in a highlighter?

3 MR. BEERS: Pencils in the margin, the old-fashioned
4 way.

5 THE COURT: Pencils in the margin. Wonderful.

6 Well, let me tell you how you all might like to respond
7 is take a highlighter, any color suits me. Since they've
8 done pencil, you all can do a highlighter on the ones that
9 you guys want, and that will be how I will review them.

10 MS. KOSTEL: I just want to point out, that's our only
11 copy of each one of them.

12 THE COURT: So if they lose them they're in deep poo.

13 MS. KOSTEL: We will be very sad.

14 MR. BEERS: And since I marked them, I would cry.

15 THE COURT: Mr. Phillips?

16 MR. PHILLIPS: Mark Phillips for St. Philip's Church.
17 Only for consideration of arguably burdening the record, in
18 my case -- and I dare say in 95 percent of the cases -- the
19 persons who you heard from on the stand were the persons who
20 gave the 30(b)(6) depositions Monday, I think two weeks ago
21 yesterday, so I would suggest that the best evidence is the
22 testimony that the Court heard live. And that's not to say
23 that I'm fearful of Myron Harrington's deposition testimony
24 given on Monday, July the 7th, but I do suggest that it would
25 be a larger burden on the Court and on its record than is

1 necessary since the Court heard from each of these parishes.

2 THE COURT: It's tempting. It's yummy. I appreciate
3 it. Unfortunately, it would be a violation of the rules and
4 I've just got to deal with it.

5 MR. CAMPBELL: The only other point I would make, Your
6 Honor, several of the topic areas are -- fall into the same
7 categories that Ms. Kostel just went through, you know, what
8 were you doing with the national church; what were you doing
9 with the national church, so if we determined that that's
10 irrelevant, if Your Honor determines that, then I think it
11 would apply to these depositions too.

12 I'm just trying to save them time and us time. I don't
13 know how to best do that, but somehow there's got to be a way
14 where Your Honor doesn't have to go through every single
15 question and figure this out. But Your Honor made a lot of
16 statements yesterday about, you know, I'm not really -- I
17 don't really care about whether you did this or that because
18 you were with them at that time, I believe was the phrase
19 Your Honor used, and so I guess we're just looking for any
20 guidance you may want to give on any of these points to save
21 them the effort and save Your Honor the effort of having to
22 go through that.

23 THE COURT: I think I've done a fair amount of that. I
24 mean, we just talked about that. I mean, South Carolina, you
25 create a trust in one of three ways.

1 Okay. Yes. I kind of want to tell you that with
2 regards to the marks, some of them are not similar, but
3 that's enough for today.

4 MR. BRYAN: Your Honor, my understanding of this rule is
5 that the adverse parties should submit something in writing
6 to the Court and at least one day in advance and we would
7 have a day to respond. I'd like to get a paper copy of
8 whatever it is they intend to submit.

9 THE COURT: Oh, they're going to give it to you.

10 MR. BRYAN: I wasn't sure about that.

11 THE COURT: I'm sorry, they're going to show those to
12 you. Listen, this is nonjury. You all have got a lot going
13 on. You're going to have some time to take a look at it and
14 submit it.

15 The only fear -- and I think it's legitimate on behalf
16 of the defendants -- is that we forget about it and you guys
17 go trucking out of here with the 30(b)(6) depositions and
18 they never get back here.

19 The only rule is that they're going to try to submit
20 those to you all tomorrow, and it's going to be impossible
21 for you to do that tomorrow with everything else we're going
22 to be doing. You'll have overnight to take a look at your
23 30(b)(6) deposition. And then instead of having to type,
24 you'll just take a highlighter, bam, bam, bam. And if you
25 color the rest of all of it, oh, I'm going to come after you

1 with a highlighter, except mine's going to be a Sharpie,
2 permanent ink. But I just think that makes it so much easier
3 like, okay, this is a partial sentence, instead of you having
4 to go find your computer and then you just take your
5 highlighter, and since I'm going to have the deposition --
6 and the reason I said a highlighter is because I know that
7 the defendants want me to look at what's in pencil. And
8 irrespective of what the color is, I know that the
9 highlighted portion is what the parish wants me to look at
10 for completeness or -- I'm going to say for completeness and,
11 therefore, I've got it.

12 And I think Mr. Phillips is exactly correct, an awful
13 lot of it is going to be repetitive. Okay. That's my
14 problem, not yours. See what I'm saying? You are going to
15 have time to do that.

16 (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 22nd 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 September 14, 2014

16

17 Ruth L. Mott

18 Official Court Reporter

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