

VOLUME XIII

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STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

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

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

TRANSCRIPT OF RECORD

JULY 24, 2014  
ST. GEORGE, SC

Plaintiffs,

vs.

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

Defendants.

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 ALLEN CARL GUELZO

MR. RUNYAN-VOIR DIRE 2330

5 MR. RUNYAN 2336

MS. KOSTEL 2365

6 MR. BEERS 2381

MR. TISDALE 2398

7

ROBERT STRATTON LAWRENCE

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WADE H. LOGAN, III

10 MS. GOLDING 2405

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11 MR. BEERS 2420

12 NANCY ARMSTRONG

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## E X H I B I T S

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NO. DESCRIPTION ID EVD

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1 THE COURT: All right. We were talking about documents  
2 yesterday and we were talking about witnesses and there was  
3 some concern about two particular witnesses yesterday that  
4 needed to be called, as I understand. We've got the 30(b)(6)  
5 deposition and those objections. Yes, you were going to meet  
6 last evening. Right?

7 MR. BEERS: We met last evening and this morning and  
8 we're making some progress. We're trying to devise some  
9 clever ways so that you don't have to look at every exhibit  
10 between 1800 and 1909, 2009, or every page and line in the  
11 30(b)(6).

12 THE COURT: I understand.

13 MR. BEERS: We're trying, but we'll see. But we're  
14 making some progress.

15 THE COURT: All right. Yes.

16 MR. HORGER: Your Honor, Bob Horger for the Redeemer. I  
17 understand there was some question about that one yesterday  
18 and I've taken care of that.

19 THE COURT: Thank you so much, Mr. Horger. That's  
20 wonderful. I do appreciate that so very much. Thank you.  
21 All right.

22 MR. BEERS: And I think Mr. Bryan and I have reached an  
23 agreement.

24 Haven't we?

25 MR. BRYAN: Yes, Your Honor. I kind of give up on the

1 logistics of my situation. I reviewed the deposition  
2 transcript and I'm not really concerned about -- it's a  
3 distinction without a difference perhaps as relates to the  
4 issues in the case. So I'm getting off my rule thing. And I  
5 told Mr. Beers that I, as counsel for this party, since it's  
6 a 30(b)(6), I believe I have the right to waive, and I'll do  
7 that.

8 THE COURT: Very well.

9 MR. BRYAN: And to the extent there was a motion to  
10 suppress on the record yesterday, I withdraw that.

11 THE COURT: Thank you so much.

12 MR. BRYAN: Yes, ma'am. Thank you for your  
13 accommodation too.

14 THE COURT: Absolutely. All right. So, Mr. Beers, this  
15 probably will go to you in terms of the work that you're  
16 doing on 30(b)(6). What I would like to do, if it suits, is  
17 I'd like to go ahead and take the testimony of those folks  
18 who I know that you were concerned about needing -- I don't  
19 know if they're catching flights, I don't know what's going  
20 on, but I sensed some urgency with two of the witnesses. I'd  
21 like to go ahead and get those done, the ones that you feel  
22 some urgency regarding, and then perhaps yield some time this  
23 afternoon so that you all can finish what you need to finish  
24 with regards to documents.

25 MR. BEERS: We'll try, Your Honor.

1 THE COURT: How does that sound to everyone? And work  
2 through lunch and then you all take some time this afternoon  
3 so that we get Court time in but maybe conclude a little bit  
4 early today. Does that sound like an okay plan?

5 MR. RUNYAN: Yes, Your Honor.

6 MR. BEERS: Yes, Your Honor.

7 THE COURT: Okay. Very well. All right. Have any live  
8 people, witnesses?

9 MR. RUNYAN: We do, Your Honor.

10 THE COURT: Okay.

11 MR. RUNYAN: The first one we would call would be Dr.  
12 Allen Guelzo.

13 ALLEN CARL GUELZO,  
14 being first duly sworn, testified as follows:

15 THE COURT: Your witness.

16 DIRECT EXAMINATION BY MR. RUNYAN - VOIR DIRE:

17 Q. Dr. Guelzo, would you just give us your name again,  
18 please?

19 A. My name is Allen Carl Guelzo.

20 Q. Thank you, sir. Where do you live?

21 A. I live in Philadelphia and in Gettysburg, Pennsylvania.

22 Q. And are you employed in Gettysburg, Pennsylvania?

23 A. Yes, I am. I am the Henry R. Luce professor of the  
24 Civil War era at Gettysburg College.

25 Q. Would you give the Court a sketch of your educational

1 background, please?

2 A. My undergraduate degree is from Cairn University in  
3 Langhorne, Pennsylvania. I have an M.A. and Ph.D. from the  
4 University of Pennsylvania. I have an M.Div. from  
5 Philadelphia Theological Seminary, the Theological Seminary  
6 of the Reformed Episcopal Church.

7 Q. What were your areas of study in history?

8 A. My areas of study were 18th and 19th century American  
9 religion, philosophy, and political history.

10 Q. Doctor, in addition to teaching at the Gettysburg  
11 College, have you taught in any other locations?

12 A. Yes, I have. I taught ecclesiastical church history for  
13 13 years at the Philadelphia Theological Seminary.

14 Q. Have you also taught courses in the Civil War history?

15 A. Yes. I taught those at Eastern University and at  
16 Gettysburg College.

17 Q. Have you taught courses that involve both American  
18 history and intellectual history?

19 A. Yes. I regard those as being my -- my staples, so to  
20 speak, in terms of courses taught.

21 Q. Have you had occasion to actually teach judges?

22 A. Excuse me, I did not hear the question.

23 Q. Have you had occasion to teach judges?

24 A. I have, in fact; at a number of judges conventions, both  
25 federal and state judges. They were very good pupils.

1 Q. Have you had the occasion to teach teachers in history?

2 A. Yes, frequently. I have worked with the Gilder Lehrman  
3 Institute of American History in New York City, which  
4 sponsors teacher seminars on American history throughout the  
5 country, and with the National Endowment for the Humanities  
6 most recently. I had not done work with NEH for some time  
7 because I was a member of the Council of the National  
8 Endowment of the Humanities, but having cycled off that  
9 counsel in 2013, I taught two NEH seminars this year.

10 Q. Dr. Guelzo, you have written a number of books; is that  
11 correct?

12 A. That is correct.

13 Q. Could you just give us a rough estimate of the books  
14 written involving history in general?

15 A. I can't say that I've actually sat down and counted each  
16 and every one of them, but there are, I would guess,  
17 something in the area of about a dozen.

18 Q. Have you written any books that deal with religious  
19 history?

20 A. Yes, I have. Two books in particular. The first two  
21 books spoke directly to issues of American religious history.  
22 The second of those two books in fact spoke to the history of  
23 the Episcopal Church in the 19th century, late 18th and early  
24 19th century, and to the 1873 disruption of the Episcopal  
25 Church which gave rise to the formation of the reformed

1 Episcopal Church.

2 Q. Is that this book (indicating)?

3 A. Yes, it is.

4 Q. Did this book win any prizes in church history?

5 A. Yes. It won the Albert C. Outler Prize in ecumenical  
6 church history awarded by the American Society of Church  
7 History in 1994.

8 Q. Do you regularly speak on topics involving 18th century  
9 American history as well as Civil War history?

10 A. Yes, I do.

11 Q. Have you studied as part of your work the historical  
12 origins of the Episcopal Church?

13 A. Yes, I have.

14 Q. Have you taught the history of the Episcopal Church?

15 A. Yes, I have.

16 Q. Have you written articles involving religious history  
17 and including the religious history of the Episcopal Church?

18 A. Yes, I have; in a variety of scholarly quarterlies  
19 ranging from the Filson Club Historical Quarterly to the  
20 Anglican -- to Anglican and Episcopal history, which is the  
21 quarterly of the Historical Society of the Episcopal Church  
22 of which I am also a director.

23 Q. Have you ever served on the National Council on the  
24 Humanities?

25 A. Yes. I served on the Council from 2006 to 2012.

1 Q. How did you get on that Council?

2 A. I was appointed by the president of the United States.

3 Q. Have you contributed articles to religious  
4 encyclopedias?

5 A. Yes, I have; to a number of them.

6 Q. And I believe I heard you say you were a member of a  
7 professional organization relating to the history of the  
8 Episcopal Church; is that right?

9 A. That's correct. I'm one of the directors of the  
10 Historical Society of the Episcopal Church.

11 Q. Dr. Guelzo, are you a member of the clergy of the  
12 Episcopal Church?

13 A. Yes, I am.

14 Q. What position do you hold as a clergyman?

15 A. I am a priest of the diocese of Chicago.

16 Q. And are you licensed currently to officiate in any  
17 dioceses?

18 A. Yes. I'm licensed to officiate in the diocese of  
19 Pennsylvania and the diocese of Bethlehem.

20 Q. Where were you ordained?

21 A. In Illinois, in Peoria, Christ Church Peoria.

22 Q. Do you from time to time participate in worship services  
23 as an assistant?

24 A. Yes. I'm frequently called upon in what has been for a  
25 number of years our home parish, St. David's, Radnor,

1 Pennsylvania, where I assist the other regular clergy. I'm  
2 in a nonstipendiary basis assisting in preaching,  
3 administration of the sacraments, leading of various  
4 meetings, conducting classes of various sorts, and in general  
5 being available whenever the regular members of the staff are  
6 simply too stretched in terms of schedule. I am, so to  
7 speak, well, you might say, a designated hitter.

8 Q. Doctor, is St. David's a parish within a diocese that is  
9 within the Episcopal Church?

10 A. Yes, it is. It is within the diocese of Pennsylvania  
11 and it is one of the oldest parishes in the diocese of  
12 Pennsylvania.

13 Q. And who is the present bishop of that diocese?

14 A. The present bishop is Clifton Daniels, who is the  
15 provisional bishop of the diocese.

16 MR. RUNYAN: Thank you.

17 Your Honor, at this time I would submit Dr. Guelzo as an  
18 expert in late 18th and 19th century American history,  
19 intellectual history, church history, and Civil War history.

20 THE COURT: Is there any voir dire?

21 MR. TISDALE: No, thank you, Your Honor.

22 MR. BEERS: No, Your Honor.

23 THE COURT: Is there any objection?

24 MR. BEERS: No, Your Honor.

25 MR. TISDALE: No objection.

1 THE COURT: Very well.

2 DIRECT EXAMINATION BY MR. RUNYAN:

3 Q. Dr. Guelzo, is the Episcopal Church organized in a  
4 hierarchical religious structure?

5 A. No.

6 MS. KOSTEL: Objection, Your Honor.

7 MR. BEERS: Objection, Your Honor. You have said 19  
8 times, at least, that hierarchy, the hierarchical nature of  
9 the Episcopal Church is not an issue in this case. We have  
10 not put in evidence on hierarchy because you've said under  
11 the law of this state hierarchy was not part of the game.

12 THE COURT: It is not. And I will not do any  
13 interpretation with regards to the hierarchical analysis. As  
14 you know, the Supreme Court in Jones versus Wolf discussed  
15 the two likely or available analyses when it comes to church  
16 disputes. One, of course, is the hierarchical analysis and  
17 the other is the neutral principles analysis. The  
18 hierarchical also being called the deferential or the  
19 deference procedure.

20 My concern is this, and direct this, direct your  
21 comments, and let me ask this: In terms of whether or not  
22 there is a constructive trust and, number two, whether or not  
23 there is confusion in the marks, as you will recall, Ms. Lott  
24 went on for a very long time in her testimony about the  
25 confusion that would occur in the marks. There has been an

1 awful lot of testimony from the defendants with regard to the  
2 control that the national church has over both the diocese as  
3 well as the parishes either directly or through the diocese,  
4 and that affects who owns the property or in whose trust the  
5 property is, as well as control as it relates to the  
6 utilization of the marks.

7         So in order to make out your case on those issues, a  
8 great degree of your proof has gone to the structure and the  
9 control that the national church, as we have called it --  
10 we've sort of morphed back into national Episcopal Church as  
11 I have become more educated, you all knew it ab initio, I  
12 have become more educated, and we have begun to talk to it in  
13 terms of that. Speak to me of this witness testifying  
14 regarding the structure, not as it relates to the  
15 hierarchical analysis, because we know that I'm not going to  
16 utilize that, but there has been an awful lot of proof which  
17 has been offered even into the documents yesterday because of  
18 the reference of the constitution and bylaws, the accession  
19 as it relates both to the diocese from parish to diocese and  
20 from diocese to national church and from parish to national  
21 church, does it have no relevance with regards to those  
22 issues. Boy that was a bunch.

23         MR. BEERS: I think the point we're trying to make is,  
24 Your Honor, that he can testify about specific examples of  
25 control, just as we put in evidence some specific acts of

1 control, but he's being called as an expert who's about to  
2 give an expert opinion on whether the church is hierarchical  
3 or not. That's a very different matter.

4 THE COURT: How so?

5 MS. KOSTEL: I think Your Honor has ruled us out from  
6 getting near the hierarchy issue, and that's how we have  
7 understood Your Honor's rulings throughout the presentation  
8 of our case. And so we kept away from the issue of  
9 hierarchy, understanding Your Honor's interpretation of the  
10 law, and kept -- tried to stay in the neutral principles area  
11 and proving specific instances of control.

12 THE COURT: Well, two things let me ask. Let's talk  
13 about it a little bit because I want to stay within the  
14 parameters of where we have been, clearly. But there were a  
15 couple of things. If you will remember and harken back to  
16 Professor McWilliams, he talks about that it is the  
17 constitution and the canons of the national church that  
18 become the neutral principles. Remember that?

19 MS. KOSTEL: Yes.

20 THE COURT: And he talks about that because of the  
21 structure of the church, because you've got the national  
22 church, then you've got, if you will, this ripple-down  
23 effect, and then you have these parishes that make reference  
24 to the constitution and the canons.

25 MS. KOSTEL: Well, I think -- excuse me.

1 THE COURT: Yes, so we've got that. We've got all of  
2 that testimony again of Ms. Lott when she talks about control  
3 and because of this control, the top-down control, the marks  
4 cannot be used that are registered with the State of South  
5 Carolina because of the confusion, and that arises out of  
6 this control of the national church over the diocese and the  
7 parishes.

8 And then we've got all this information that's just come  
9 in and yet coming in that talks about the reference and the  
10 vestry minutes and some of the deeds, and in all of this  
11 information harkening back to the constitution and the  
12 canons. We've even had the Book of Common Prayer come in as  
13 being evidence of control.

14 You're right, I'm not going to use the hierarchical  
15 analysis, yet this relationship, and you can call it  
16 something else, but this trickle down, to use a Reagan-ism --  
17 I guess it's a Bush-ism actually -- this trickle-down  
18 control, if you will, is very much a part of this case, not  
19 in terms of the analysis that I would use in terms of the  
20 separation, but certainly as it relates to ownership of  
21 property and certainly with regards to the marks. So how do  
22 I keep the plaintiffs from being able to answer that? Tell  
23 me.

24 MS. KOSTEL: Well, a couple things. First of all, I  
25 think what Professor McWilliams testified was that because of

1 the 1973 corporate incorporation document of the plaintiff  
2 diocese because of the way it used -- referred to the  
3 national church's constitution and canons, it essentially  
4 incorporated it. I did not understand him to be relying on  
5 the hierarchical nature of the church to spell out his  
6 analysis of the corporate issues. So that's number one.

7 Number two, on the issue of control, I would echo what  
8 Mr. Beers says, which is that we put in evidence of control  
9 for a neutral principles purpose, which was to take on the  
10 trademark issue and perhaps also prove constructive trust.  
11 But we too have witnesses that could say that the church is  
12 hierarchical, but I think everyone in the room I think  
13 understood that Your Honor did not want to hear that kind of  
14 testimony based on your decision that whether or not the  
15 church is hierarchical didn't matter in this case. Specific  
16 evidence about control, that's a different thing, because  
17 that's a neutral principles concept. So that's the  
18 distinction we're drawing.

19 THE COURT: It's not a neutral. I don't see it as a  
20 neutral. I don't see it as a neutral principle.

21 MS. KOSTEL: Don't see what?

22 THE COURT: It's evidentiary. It certainly is  
23 evidentiary. But I've got to tell you I can't in fairness  
24 keep the plaintiffs from being able to meet the nature of the  
25 voluminous amount of evidence that the defendants have put in

1 regarding this control issue.

2 MS. KOSTEL: And I don't think we're trying to stop  
3 that. I think what we're saying is meet the control evidence  
4 but no conclusions about hierarchy.

5 MR. RUNYAN: Your Honor, may I speak to this?

6 THE COURT: Okay.

7 MR. RUNYAN: I generally agree with the concept that  
8 hierarchy should not -- is not relevant, but, however, two  
9 things give me pause. First of all, the only reason that  
10 control is really in this case is for them to argue  
11 eventually, as they have said they will do, for a change in  
12 the law in South Carolina. They've indicated they intend to  
13 make that argument. But more fundamentally Exhibit 431,  
14 which they introduced over my objection, talks about members  
15 of the clergy of this church and further represent the polity  
16 and order of this hierarchical church. There is an exhibit  
17 in evidence that speaks to the exact word that they say they  
18 don't seek.

19 MS. KOSTEL: What is that?

20 MR. RUNYAN: 431.

21 MS. KOSTEL: That's not in evidence yet.

22 MR. RUNYAN: We have it as in evidence.

23 MR. KOSTEL: No, it's not, because it wasn't complete,  
24 Alan. You objected that it wasn't complete so it's not in  
25 evidence.

1 THE COURT: We'll ask our court reporter to take a  
2 minute and just see.

3 MR. RUNYAN: I can adjust my question to the issue of  
4 control.

5 MS. KOSTEL: Thank you.

6 THE COURT: Okay.

7 Q. Dr. Guelzo, is the Episcopal Church organized in such a  
8 fashion that its governance controls the dioceses and the  
9 parishes?

10 A. No.

11 Q. How would you characterize how it is organized?

12 A. The organization of the Episcopal Church is something  
13 which has grown up over 200 years, so it isn't any single  
14 line of growth or nor does it follow a single line of  
15 development. It has tended to zigzag in various ways  
16 depending on circumstances. Therefore, there's many issues  
17 in the constitution and canons which it in fact does not  
18 address. We might expect a document like that would be  
19 comprehensive, but it is not, it is developed in response to  
20 situations. So there is no clear sense in which the  
21 relationships between dioceses and the national church  
22 represent what you could legitimately call control. If by  
23 control we are talking about authority and direction, then,  
24 if anything, the authority and direction has over the history  
25 of the Episcopal Church tended to flow from the bottom

1 upwards.

2 Q. Doctor, in terms of words of control, are words such as  
3 "supreme" or "supremacy" found in any of the organizational  
4 documents of the Episcopal Church?

5 A. I have never come across any such. In fact, if  
6 anything, the foundation of the Episcopal Church was  
7 struggling to avoid terminology of that sort in the 1780s  
8 when the Episcopal Church was organized.

9 Q. Doctor, let's back up and pick up with history a little  
10 bit. Does the word "Episcopal" predate the creation of the  
11 Episcopal Church?

12 A. Yes.

13 Q. What does it mean?

14 A. It means government by episcopacy, by overseers, by  
15 bishops.

16 Q. Are there other churches in the world that have the word  
17 "Episcopal" in their names other than the national church in  
18 this case?

19 A. Oh, yes, yes. I think, for one thing, of the Lusitanian  
20 Episcopal Church. That's one example in western Africa.  
21 There is a Portuguese Episcopal Church. There are Episcopal  
22 churches of various description, such as the Methodist  
23 Episcopal Church. And even in the 18th century the  
24 parliament of England recognized the Moravians as an ancient  
25 Protestant Episcopal Church.

1 Q. I'm going to hand you a document that I will mark for  
2 identification as 69 for identification. Just hold your  
3 thought for a moment, Doctor, while I give that to them.

4 (Plaintiff's Exhibit DSC-69 marked for identification.)

5 Q. Doctor, could you identify that document?

6 A. This document that I'm looking at here is an act of  
7 parliament with direct reference to the Moravians, who I  
8 mentioned before. If you would like, I could explain  
9 something about that connection.

10 MR. RUNYAN: Let's get it in evidence first if we could.  
11 We'd offer it in evidence, Exhibit 69.

12 THE COURT: Any objection?

13 MR. TISDALE: Give us just one minute, please, Your  
14 Honor.

15 THE COURT: Sure.

16 MS. KOSTEL: We've never seen this.

17 MR. TISDALE: No.

18 MR. BEERS: Is this being introduced as an exhibit?

19 MR. RUNYAN: It is.

20 MR. BEERS: We've never seen that before.

21 MR. RUNYAN: It's reply. Didn't know I'd need it.

22 MR. TISDALE: I don't know enough about what it is to be  
23 able to say whether we object or not.

24 MS. KOSTEL: It's hard to tell whether it's relevant at  
25 this point.

1 MR. RUNYAN: All right. Let's lay some more foundation.

2 Q. Doctor, is this a statue of the parliament in England.

3 A. Yes. It was passed by parliament in the reign of King  
4 George II.

5 MR. BEERS: Excuse me, Your Honor. Objection. I'd like  
6 to know to what issue in this case.

7 MR. RUNYAN: We're getting there, Mr. Beers. Just give  
8 me a second.

9 MS. KOSTEL: Ordinarily we weren't allowed to get there,  
10 so we'd like to know in advance.

11 MR. RUNYAN: It goes to the issue of the use of the name  
12 Protestant Episcopal Church many, many years before you guys  
13 used it.

14 MR. BEERS: I don't know about the guys part, but no  
15 objection to the rest.

16 THE COURT: Folks. Y'all.

17 MR. RUNYAN: Still object?

18 MR. BEERS: No.

19 MR. RUNYAN: Tom?

20 MR. TISDALE: No.

21 MR. RUNYAN: Your Honor, we'd offer this in evidence.

22 THE COURT: I think it's in evidence now without  
23 objection.

24 (Plaintiff's Exhibit DSC-69 admitted into evidence.)

25 Q. Doctor, would you turn, please, to the second page.

1 And, first of all, would you tell the Court whether there is  
2 an act of parliament set forth on that page and the  
3 succeeding two pages?

4 A. Yes, this is an act of parliament.

5 Q. What does the act relate to?

6 A. The act relates to a group known as the United Brethren  
7 or Unitas Fratrum, but more popularly known as the Moravians.  
8 This was a group of Protestant pietists in Moravia, today we  
9 would call that area the Czech Republic. The Moravians were  
10 a Protestant pietist group in the domains of the Austrian  
11 empire, and especially the domains known as Bohemia, now  
12 today the Czech Republic. This Protestant group was  
13 persecuted by the state authorities in the Austrian empire.  
14 They moved into Germany into the Duchy of Saxony to find  
15 refuge there. But eventually the Duke of Saxony wanted them  
16 to conform to the state Lutheran church.

17 At this point they fled to other points where they could  
18 have religious freedom, to England and to England's North  
19 American colonies. The Moravians who moved to London and  
20 those who moved to North Carolina and Pennsylvania petitioned  
21 for recognition by the Church of England and were granted  
22 this by act of parliament on the grounds that the Moravians  
23 were, like the Church of England, an ancient Protestant  
24 Episcopal Church, since they were governed by bishops, and  
25 was granted equal status and exemption from any taxation or

1 other ecclesiastical difficulties and liabilities that would  
2 otherwise have been laid upon dissenter churches in England  
3 in the 18th century.

4 Q. Thank you, Doctor. Let's focus on just the words  
5 "Protestant Episcopal Church" if we could for a moment. If  
6 you would look at roughly at the center of that page, 463.  
7 Could you just tell us what is set forth there, using those  
8 words?

9 A. The aim here is to identify the Moravian congregations  
10 as ancient, not literally going back into Roman or Greek  
11 times but having a lengthy history. Protestant, in other  
12 words, part of the family of Protestant churches that stem  
13 from Martin Luther and the Protestant reformation, and  
14 Episcopal in that the Moravians were governed by bishops.

15 Q. Doctor, would you refer down to the lower part of the  
16 page. Does that phrase "Protestant Episcopal Church" appear  
17 one other place?

18 A. Yes, it does; towards the bottom of Page 463 as copied  
19 from the statute book. And it says: Every person being a  
20 member of the said Protestant Episcopal Church known by the  
21 name of Unitas Fratrum or the United Brethren.

22 Q. Doctor, leaving the UK and coming over to the United  
23 States was the phrase "Protestant Episcopal Church" used for  
24 any church other than the Protestant Episcopal Church in the  
25 United States prior to its existence?

1 A. Yes. The term and title "Protestant Episcopal Church"  
2 was used by the parishes of Maryland in the 1770s as they  
3 attempted to organize themselves during the upheavals of the  
4 Revolution. They assembled and described themselves as the  
5 Protestant Episcopal Church as they were appealing to the  
6 Maryland General Assembly for recognition of the titles of  
7 their properties. They did this because during the  
8 Revolution many of the state governments of the United States  
9 enacted confiscatory statutes, confiscating the properties of  
10 Tories and sympathizers with the British. These parishes in  
11 Maryland wished to establish that they were not in sympathy  
12 with the British occupation forces, and so they appealed to  
13 the Maryland General Assembly for recognition as a separate  
14 entity and gave themselves the title Protestant Episcopal  
15 Church.

16 Q. Doctor, prior to the creation of the Episcopal Church,  
17 how were the post-revolution churches in South Carolina  
18 referred to?

19 A. They also used the title Protestant Episcopal Churches.

20 Q. Doctor, would you take a moment, please, and describe  
21 for the Court how the Episcopal Church came to be the  
22 national church?

23 A. At the end of the American Revolution the Church of  
24 England congregations in what became the United States were  
25 pretty much thrown on their own resources. Of the 286 clergy

1 resident in America, 131 of them went into exile, and many of  
2 these congregations simply dissolved because it was felt that  
3 these were appendages of the British government.

4 A number of congregations, though, began organizing  
5 themselves. They created, actually borrowed, a mechanism  
6 from the Revolution itself which was to organize as state  
7 conventions. The Revolution had begun by states resolving  
8 themselves as conventions. Maryland in 1779 is one of the  
9 first and actually elects William Smith as their leader, as  
10 their bishop, as their overseer. William White, the rector  
11 of Christ Church Philadelphia, issued in 1782 a pamphlet  
12 entitled The Case of the Episcopal Churches Considered in  
13 which he outlines a plan for organizing these church of  
14 England congregations on what he called the federal plan.  
15 And he in fact called for the assembling of a Pennsylvania  
16 state convention in 1784 in Philadelphia. That Pennsylvania  
17 state convention in turn issues a call for the meeting of  
18 nine state conventions which assembled in 1785 in  
19 Philadelphia.

20 Summing it up, the long and short of it is that the  
21 Episcopal -- the national church really comes into being by  
22 the action of individual state church organizations  
23 organizing themselves, then coming together, and then  
24 proceeding to do business.

25 Q. So did the Episcopal Church create the state

1 organizations or did the state organizations create the  
2 Episcopal Church?

3 A. Well, the state organizations were responsible for  
4 creating the Episcopal Church. There was no Episcopal Church  
5 beforehand to call it into being. Episcopal congregations  
6 had received no oversight or instruction from the Archbishop  
7 of Canterbury or the Bishop of London in England and,  
8 curiously, it's not even on William White's authority that  
9 the call goes out to the state conventions to come. It is  
10 the Pennsylvania convention which invites the other state  
11 conventions to assemble together.

12 Q. Dr. Guelzo, what was the attitude, if you can tell us,  
13 of the former Anglican parishes to the idea of an episcopacy?

14 A. Dicey, the reason being mostly political. Anglican  
15 churches were seen both before the Revolution and during the  
16 Revolution as a kind of religious fifth column of the British  
17 empire. So those who were loyal to Anglican worship and the  
18 Anglican ethos had to walk a very narrow path for fear of  
19 exciting hostility and retribution by people who would assume  
20 that any attempt to organize a full-blown Episcopal church  
21 would attract a great deal of negative publicity and maybe  
22 even spark mob actions and riots.

23 Tories, of course, had been tarred and feathered with  
24 some regularity during the Revolution, and these marooned  
25 Church of England parishes were not eager to have the same

1 thing happen. So what they proposed by way of an  
2 organization stays as far away from the vocabulary of a full  
3 hierarchical structure or a full control structure, they're  
4 even hesitant to use the word "bishop." When William White  
5 lays out his case for the Episcopal churches considered, he  
6 suggests that the term "overseer" be used rather than  
7 "bishop" for fear of implying that some kind of top-down  
8 control is being imposed from England.

9 Q. Were there any components of William White's proposal  
10 for this type of a church in the case considered that  
11 suggested that when these entities came into union, they  
12 would only give so much authority as was needed for that  
13 organization but retain the rest?

14 A. The only authority that the various state conventions  
15 seemed to give at all to judge by the record of the original  
16 convention, original national convention, was for the purpose  
17 of electing bishops. And that, curiously enough, is an  
18 authority which that same convention devolves back onto the  
19 diocese in 1799.

20 Q. Bishop -- excuse me -- Dr. Guelzo, I'm going to show you  
21 what's marked in evidence as Diocese Exhibit 41, which is a  
22 copy of the Constitution, first Constitution, of the Diocese  
23 of South Carolina. Have you seen that before?

24 A. I have seen this document.

25 Q. Do you see any of the principles that you just discussed

1 contained in any of the articles in Exhibit 41?

2 A. In the very first article: That the Protestant  
3 Episcopal Church in these states is and ought to be  
4 independent of all foreign authority, ecclesiastical or  
5 civil. This is an attempt to establish that although  
6 Episcopalians are coming together as Episcopalians, they  
7 should not be mistaken as a branch of the Church of England,  
8 they should not be mistaken as attempting to create any kind  
9 of monarchical form of government.

10 Q. All right. Any others?

11 A. Moving on here, I point out that the doctrines of the  
12 gospel should be maintained as now proposed by the church of  
13 England and uniformity of worship to be continued as near as  
14 possible.

15 MR. TISDALE: Your Honor, we object. Excuse me, Doctor.  
16 Put an objection on the record that the document speaks for  
17 itself. I think you've ruled that in other cases, similar  
18 cases in the case.

19 MR. RUNYAN: I'll rephrase the question.

20 THE COURT: All right.

21 Q. Doctor, I'm going to read you a couple of things from  
22 this document and then ask you a question about them. There  
23 is Article IV -- I'm going to have a hard time reading it  
24 actually -- that something in the ministry be agreeable to  
25 the usage which require the three orders of bishops, priests,

1 and deacons, parentheses, with an exception, however, to the  
2 establishing of bishops in the state, closed parentheses.

3 How does that exception relate to what you've just testified  
4 about?

5 A. The exception suggests that in the original document  
6 people were dicey, even very hesitant, even about the area of  
7 suggesting that bishops were necessary to the reconstitution  
8 of their association, that they could in fact move on quite  
9 happily and continue to think of themselves legitimately as  
10 Anglicans only with the orders of priests and deacons.

11 Q. I'll read you another article, article fifth: That to  
12 make regulations, rules, and laws there be no other authority  
13 than that of a representative body of the clergy and laity  
14 conjointly.

15 Does that speak to the issue of a centralized authority?

16 A. I think very clearly what Article V is saying  
17 unmistakably is that whatever authority there is, that the  
18 authority remains within these representatives in South  
19 Carolina.

20 Q. And the last article: That no power be delegated to a  
21 general ecclesiastical government except such as cannot be  
22 exercised by the clergy and vestries in their respective  
23 congregations.

24 My first question is: Was that one of the elements of  
25 William White's The Case?

1 A. This was, because White was very sympathetic to the  
2 notion that the individual state organizations and dioceses  
3 should have the full and open control of their property and  
4 of their own government. White was looking less to create a  
5 national church government than he was simply to secure a  
6 legitimate succession of the episcopate, which he hoped to  
7 obtain from the Bishop of London or from the Archbishop of  
8 Canterbury. He also recognized that that might not be  
9 forthcoming because there was no precedent at that point in  
10 Church of England history for consecrating bishops for a  
11 province outside the political of boundaries of the British  
12 empire. So White, always hedging his bets by saying, well,  
13 if this is possible, if we can obtain the episcopate; if we  
14 can't, we will move ahead nevertheless on our own authority.

15 Q. Dr. Guelzo, what was South Carolina's initial position  
16 on whether they desired a bishop or not?

17 A. South Carolina was not entirely sure -- and this in this  
18 respect is very similar to Maryland -- as to whether they  
19 should even talk about bishops simply because the word itself  
20 might conjure up much too much in the way of hostility to  
21 their parishes and to their clergy and people.

22 Understand, the term "bishop" in America in the 1780s is  
23 a loaded term because prior to the Revolution there had been  
24 a good deal of discussion about the creation and consecration  
25 of a bishop for the American colonies. There had been none

1 up till that point. In fact, the Bishop of London had the  
2 overall oversight authority for the American parishes. He  
3 never visited America, he stayed in London. He sent a  
4 representative, a commissary, who lived in Virginia, but that  
5 was about the extent of that representation. Many people  
6 agitated strenuously for the appointment of a colonial  
7 bishop, but it never actually happened because, well, in  
8 large measure no one was willing to pay for it.

9 But it was suggested that the discussions, the attempts,  
10 the plans to create a bishop for America were of a piece with  
11 British imperial attempts to strengthen fiscal and political  
12 control over the colonies so that, for instance, at the time  
13 of the Stamp Act it was said by John Adams that the stamping  
14 and episcopizing of America were two parts of the same  
15 program, which, of course, the Revolution opposes. So,  
16 therefore, using the term "bishop," that had to be done very,  
17 very carefully because that term had a -- it had a history  
18 among Americans that was not very, very tasty.

19 Q. Doctor, in fact, does the governance of the Episcopal  
20 Church today require that a diocese even have a bishop?

21 A. Strictly speaking, no. It's one of the ironies of the  
22 way that the documents themselves have been constructed over  
23 the years, that the constitution and canons both of the  
24 national church and the dioceses tend to respond to specific  
25 situations and specific questions. And if it doesn't occur,

1 if it's not a particular challenge, then there tends not to  
2 be legal material on that or statutory material on that. So  
3 the exact idea that you must have a bishop in order for the  
4 diocese to function itself doesn't really appear in the  
5 documents.

6 Q. Doctor, are you familiar with a work known as "The  
7 Episcopal Church And Its Work" authored by Powel Mills  
8 Dawley?

9 A. Yes.

10 Q. Is that a work that you consider to be reliable as it  
11 relates to the general history of the Episcopal Church?

12 A. Yes. It's one of a number of standard references and  
13 surveys of the history of the Episcopal Church.

14 Q. Okay. I'm going to read a couple things and ask you a  
15 question if I could. On Page 75 of that work the following  
16 quote appears: The constitutional articles are the most  
17 important laws of the church, and like those laws called  
18 canons, which may be altered at any session of general  
19 convention, the provisions of the constitution may be amended  
20 only by the action of two successive conventions.

21 MS. KOSTEL: I'm sorry to interrupt. Is this an  
22 exhibit?

23 MR. RUNYAN: No. I don't think I can introduce it. I  
24 will if you'll consent to it.

25 MS. KOSTEL: Why are you reading it then?

1 MR. RUNYAN: That's the way we do it.

2 MS. KOSTEL: Only on reply, is that -- got it. Excuse  
3 me.

4 Q. I'll start over, Doctor.

5 THE COURT: Hold on.

6 (Brief pause.)

7 THE COURT: Cross, not reply. I took your question to  
8 be cross, not reply. I think you meant reply. I'm looking  
9 at cross. I'm looking at cross. Hold on.

10 MS. KOSTEL: Okay.

11 MR. RUNYAN: Your Honor, I believe that this is  
12 appropriate examination under Rule 803(18).

13 THE COURT: Well, I finally got it. I got right there.  
14 Thank you. I'll put the rule on the record so we're all on  
15 the same page. It is 803(18). To the extent called to the  
16 attention of an expert witness upon cross-examination, which  
17 is where my mind went, or relied upon by the expert witness  
18 in direct examination; statements contained in published  
19 treatises, periodicals, or pamphlets on a subject of history  
20 is established as a reliable authority by the testimony; if  
21 admitted, the statements may be read into evidence but not  
22 received as evidence.

23 There you go. You may proceed.

24 Q. Doctor, let's refresh our recollection. The Episcopal  
25 Church and Its Work, is this a part of the Episcopal Church

1 teaching series?

2 A. Yes, it is, to the best of my understanding.

3 Q. All right. Back to where we were, I'm going to read a  
4 statement from Page 75 and ask you a question. The  
5 constitutional articles are the most important laws of the  
6 church, unlike those laws called canons, which may be altered  
7 at any session of the general convention. The provisions of  
8 the constitution may be amended only by the action of two  
9 successive conventions. Changes of a serious nature in the  
10 structure or order of the church may not be made until there  
11 has been ample time for study and deliberation.

12 Do you agree with that, Doctor?

13 A. Yes.

14 Q. I'll ask you another question from Page 106 concerning  
15 the office of the presiding bishop of the Episcopal Church.  
16 While the presiding bishop is invested with the prestige that  
17 surrounds the archbishops and metropolitans in other churches  
18 of the Anglican Communion, few of his canonical duties are  
19 those historically associated with the office of archbishop.

20 MS. KOSTEL: Objection, Your Honor. The authority of  
21 the presiding bishop is not an issue in this case.

22 THE COURT: Let me hear the question.

23 MS. KOSTEL: Okay.

24 MR. RUNYAN: I may not go there if she is conceding that  
25 the presiding bishop has no authority over dioceses and

1 parishes at all.

2 MR. BEERS: That's not what we said at all.

3 MS. KOSTEL: The presiding bishop's authority is not at  
4 issue, the general convention's authority is at issue.

5 THE COURT: To me, read. Let me hear the question.

6 MR. RUNYAN: What I am quoting from is as follows:

7 While the presiding bishop is invested with the prestige that  
8 surrounds the archbishops and metropolitans in other churches  
9 of the Anglican Communion, few of his canonical duties are  
10 those historically associated with the office of archbishop.  
11 He exercises no direct pastoral oversight of a diocese of his  
12 own, nor does he possess visitorial or juridical powers  
13 within the independent dioceses of the Episcopal Church.

14 THE COURT: And what is the nature of the objection?

15 MS. KOSTEL: That the authority of the presiding bishop  
16 is not at issue in this case. Any authority of the presiding  
17 bishop, I think that the testimony derives from the general  
18 convention. And the issue in this case is the general  
19 convention's authority over the diocese.

20 THE COURT: Got it. Overruled.

21 Q. Doctor, do you agree with that statement?

22 A. Yes, I do.

23 Q. From Page 115: At the time that the American Revolution  
24 forced an independent organization upon the Anglican Colonial  
25 parishes, the first dioceses existed separately from each

1 other before they agreed to the union in 1789 into a national  
2 church. That union, like the original federation of our  
3 states, was one in which each dioceses retained a large  
4 amount of autonomy. And today the dioceses still possess an  
5 independence far greater than that characteristic in most  
6 other churches with Episcopal polity.

7 Do you agree with that?

8 A. Yes, I do.

9 Q. Page 116 of the same book: Diocesan participation in  
10 any national program or effort, for example, must be  
11 voluntarily given, it cannot be forced. Again, while the  
12 bishop's exercise of independent power within the dioceses is  
13 restricted by the share in church government possessed by the  
14 diocesan convention or the standing committee, his  
15 independence in respect to the rest of the church is almost  
16 complete.

17 Do you agree with that statement?

18 A. Yes, I do.

19 Q. And finally, from the same page: Neither the general  
20 convention nor the National Council lacking control over the  
21 larger part of the church's resources --

22 THE COURT: The national church's?

23 MR. RUNYAN: Resources.

24 THE COURT: Thank you.

25 MR. RUNYAN: -- can put men and money to work in

1 missionary districts or other areas of crucial challenge  
2 without the voluntary cooperation of the dioceses.

3 Do you agree with that statement?

4 A. Yes, I do.

5 Q. You obviously have some familiarity and expertise with  
6 the American Civil War, do you not?

7 A. That is true.

8 Q. Would you tell the Court what happened to the southern  
9 dioceses that were a part of the -- in union with the  
10 Episcopal Church when the Civil War broke out?

11 A. With the outbreak of the Civil War the dioceses  
12 represented in the seceding states of the confederacy came  
13 together to form their own organization, and that was styled  
14 the General Council of the Protestant Episcopal Church in the  
15 Confederate States. This was a motion arising from the  
16 dioceses themselves to federate in this fashion and they  
17 functioned through the Civil War on that basis.

18 At the end of the Civil War representatives of these  
19 dioceses appeared at the next general convention of the  
20 Episcopal Church in 1866 and were welcomed back as dioceses.  
21 In other words, by detaching themselves from the Protestant  
22 Episcopal Church in the United States, they had not acquired  
23 some entirely new identity which forced them to be redefined  
24 as dioceses, they came back as the same dioceses they had  
25 been with the same authority that they had and were indeed

1 welcomed back by the presiding bishop of the Episcopal Church  
2 and by the resolution that was passed at that time in the  
3 1866 general convention.

4 Q. Doctor, I'm going to hand you a document which is the  
5 1866 proceedings of the Diocese of South Carolina. I'll ask  
6 you, sir, if you've seen that before?

7 A. Yes, I have.

8 THE COURT: Is this in evidence at this point?

9 MR. RUNYAN: It is not, Your Honor.

10 THE COURT: Okay.

11 MR. RUNYAN: I would at this time offer it in evidence.

12 (Plaintiff's Exhibit Diocese-70 marked for  
13 identification.)

14 THE COURT: You all have the document; correct?

15 MS. KOSTEL: Yes.

16 MR. TISDALE: He gave us one and I passed it over to  
17 Ms. Kostel.

18 THE COURT: All right. You may proceed, Mr. Runyan, to  
19 ask him questions.

20 Q. Doctor, what is this document?

21 A. This document is a journal of the proceedings of the  
22 Diocese of South Carolina as it was coming at the end of the  
23 Civil War.

24 Q. What was the year?

25 A. 1866.

1 Q. Does it contain on the first page just opposite the  
2 title something entitled "Preamble and Resolutions" of  
3 another entity?

4 A. Yes, it does. "Preamble and Resolutions of the General  
5 Council of the Protestant Episcopal Church," it looks as  
6 though it forgot to put the definite article in, "in the Late  
7 Confederate States."

8 Q. Was there a separate organization of the southern  
9 dioceses during the Civil War?

10 A. Separate in respect of the Episcopal Church in the  
11 United States, yes. There was no new diocese organized under  
12 the aegis of this General Council of the Protestant Episcopal  
13 Church. In fact, to the contrary. It was the dioceses of  
14 states like South Carolina which come together and organize  
15 not only a new convention of their own, but in fact give it a  
16 different title than the general convention of the Protestant  
17 Episcopal Church of the United States. They call it a  
18 General Council to distinguish it. It is very much a  
19 creation of these dioceses.

20 Q. Doctor, I'm going to read you a paragraph from that  
21 preamble and resolution and ask you a question about.

22 THE COURT: Hold on one second. Is it in evidence?

23 MR. RUNYAN: It is not.

24 THE COURT: Is it offered?

25 MR. RUNYAN: It is offered.

1 MS. KOSTEL: No objection.

2 MR. TISDALE: No objection.

3 MS. KOSTEL: 70?

4 THE COURT: 70. Very well.

5 (Plaintiff's Exhibit DSC-70 marked for identification.)

6 (Plaintiff's Exhibit DSC-70 admitted into evidence.)

7 Q. Would you turn to the paragraph marked, looks like,  
8 Resolved 1? Doctor, this says that in the judgment of this  
9 Council it is perfectly consistent with the good faith which  
10 she owes to the bishops and dioceses with which she has been  
11 in union since 1862 for any diocese to decide for herself  
12 whether she shall any longer continue in union with this  
13 Council.

14 Doctor, does that speak at all, in your opinion, to the  
15 issue of the independence of the dioceses?

16 A. It suggests that the diocesan authorities were enjoying  
17 and were given permission to make their own decisions about  
18 affiliation or re-affiliation with the Episcopal Church,  
19 Protestant Episcopal Church of the United States. The  
20 diocese would make its own decision.

21 Q. Doctor, based upon your knowledge as a professional  
22 historian, your understanding of the creation of the  
23 Episcopal Church, and your review of records surrounding its  
24 creation, in your opinion is there anything associated with  
25 that creation that suggests to you that a diocese who helped

1 create the Episcopal Church, once joining it, could never  
2 leave again?

3 A. I can recollect nothing which insists on a permanent  
4 subordination of dioceses in the national church to the  
5 authority of either the bishops or even the general  
6 convention of the Episcopal Church.

7 MR. RUNYAN: Thank you, sir.

8 THE COURT: Any other direct from any other plaintiffs?  
9 All right. Cross-examination, Mr. Beers.

10 MR. BEERS: May we have a few moments, Your Honor?

11 THE COURT: Of course.

12 MR. BEERS: Your Honor, given the fact we did not know  
13 about this witness -- and I'm not complaining about that --  
14 would you mind if Ms. Kostel and I split the cross?

15 THE COURT: No, I don't.

16 MR. BEERS: Thank you.

17 THE COURT: And I know it's not typically normally done,  
18 but I'm going to allow it under these circumstances.

19 CROSS-EXAMINATION BY MS. KOSTEL:

20 Q. Good morning, Dr. Guelzo.

21 A. Good morning.

22 Q. I'm Mary Kostel and I represent the Episcopal Church.  
23 We're referring to it as the national church here. Dr.  
24 Guelzo, you're familiar with someone named Francis Hawks,  
25 right, who was a clergyman and historian alive in the 19th

1 century?

2 A. Yes.

3 Q. And you're aware, I'm certain, that he wrote a book in  
4 that century called Contributions to the Ecclesiastical  
5 History of the United States of America?

6 A. That is correct.

7 Q. And I'm certain you're aware -- and I need to get my  
8 glasses. Excuse me.

9 Getting back to Francis Hawks, you're aware that in that  
10 book Francis Hawks was speaking about dioceses and wrote:  
11 What did the several dioceses surrender when they came into  
12 the general convention?

13 MR. RUNYAN: Your Honor, I'm sure she can do it, but  
14 you've missed a foundational question. I would object to the  
15 foundation.

16 MS. KOSTEL: He's aware of it. He's a historian in the  
17 19th century.

18 Q. Correct?

19 A. Correct.

20 Q. Yes. I thought I had established that.

21 MR. TISDALE: You did.

22 Q. Yes. So Francis Hawks wrote: What did the several  
23 dioceses retain when they -- what did they surrender when  
24 they came into the general convention as we apprehend, he  
25 wrote, the following things: Number one, such an exercise of

1 independency as would permit them to withdraw from the union  
2 at their own pleasure and without the assent of other  
3 dioceses.

4       You're aware that he wrote that; correct?

5 A.    Yes.

6 Q.    Okay.  And you're familiar with Francis Vinton, also a  
7 19th century writer, teacher, professor of ecclesiastical  
8 polity at law in the general theological seminary of the  
9 Episcopal Church and a priest?  You're aware of him?

10 A.    And also a rector in New York City.

11 Q.    Yes, exactly.  And I'm sure you're familiar with a  
12 manual commentary of the general canon law and the  
13 constitution of the Protestant Episcopal Church in the United  
14 States that Francis Vinton wrote?

15 A.    Yes.

16 Q.    And so I'm certain you're aware that Francis Vinton  
17 wrote in his manual commentary a question and answer type of  
18 essay, piece, and one question was, Q:  What is the relation  
19 of the general convention to the diocesan conventions?  A,  
20 his answer:  It is that of a supreme legislature whose  
21 constitution is the fundamental law of the Protestant  
22 Episcopal Church in the United States and whose canons either  
23 overrule or sanction the canons of the several diocesan  
24 conventions; correct?

25 A.    That statement is one of his statements.

1 Q. Yes. And he wrote that in the 19th century; correct?

2 A. That is correct.

3 Q. And you're familiar, I'm sure, with Hill Burgwin, who  
4 was also living in the 19th century, was the chancellor of  
5 the Diocese of Pittsburgh and is a lawyer. And Mr. Burgwin,  
6 I'm sure you know, wrote an article called "The National  
7 Church and the Diocese"?

8 A. Yes.

9 Q. And I'm sure you're aware that he wrote the following,  
10 which is long: But suppose the attempt to do so -- and he's  
11 referring to remove a diocese from the church -- were made  
12 and that the convention of a diocese with the bishop at its  
13 head should, by an overwhelming majority and for a cause  
14 sufficient to satisfy them, resolve to withdraw from the  
15 union with the national church and thereupon set up an  
16 independent organization. What would then be the  
17 ecclesiastical and also the civil status of the different  
18 parties concerned?

19 As to the former, all those who should remain faithful  
20 to the national church, whether as individuals or parishes,  
21 however small a remnant and however unorganized and widely  
22 scattered, would compose the Protestant Episcopal Church in  
23 that diocese. If not strong enough to organize themselves as  
24 a diocese, they would be taken under the foster and care of  
25 the national church and perhaps be organized temporarily as a

1 missionary jurisdiction.

2       As to the others, their acts would be that of  
3 individuals only, being beyond the scope of their powers as  
4 members of the convention. It would be of no legal effect  
5 and the diocese would still remain potentially and when  
6 subsequently reorganized actually in union with the national  
7 church, while any subsequent organization of the majority  
8 would be simply schismatical, especially after their bishop  
9 had been deposed, as he would be at once.

10       Not only would this be the ecclesiastical status of all  
11 the parties as held by the national church, but they would be  
12 regarded in the same light by the civil law and with this  
13 most important consequence that all the property in the  
14 diocese held in trust for the church purposes -- for church  
15 purposes -- excuse me -- whether by the diocese at large, by  
16 parishes, or by any other corporations or individuals, would  
17 remain for the use and benefit of those whom the law held to  
18 be, though in a minority, yet members of the Protestant  
19 Episcopal Church in the United States of America and her  
20 lawful representatives in the diocese concerned.

21       Hill Burgwin wrote that in the 19th century; isn't that  
22 right?

23 A.   Can you supply me the exact date on that?

24 Q.   Yes. Well, it's an April 1885 issue of the American  
25 Church Review.

1 A. And you are aware that in fact that was inaccurate and  
2 indeed contradicted by the case of Chase, et al., versus  
3 Cheney in 1871.

4 Q. In 1871. But Hill Burgwin wrote this in 1885.

5 A. I'm aware of that. But I will also have to point out  
6 that this is an opinion of a gentleman flying in the face of  
7 and in denial of what was already an established court case  
8 in the Diocese of Illinois and in the Illinois State Supreme  
9 Court.

10 Q. And that case that happened in the Diocese of Illinois  
11 happened before the church adopted new canons setting out its  
12 control over property; isn't that right?

13 A. You're right. You're reading canons or you're reading  
14 Mr. Burgwin's opinion?

15 Q. I'm talking about canons now.

16 A. And there were canons in 1880 to that effect? I'm  
17 unaware of such.

18 Q. That's fine then.

19 A. No. I think you're reading opinions of a particular  
20 person writing about canon law, but there are no such canons.

21 Q. So you're not aware of canons that were adopted by the  
22 general convention after the Cheney case?

23 A. Not of that nature, not representing that gentleman's  
24 opinion, no.

25 Q. I'm talking about canons regarding church property that

1 were adopted by the general convention after the Cheney case  
2 was decided.

3 A. But those canons, of course, were not in fact put into  
4 effect. And what's more, they had to wait until 1977 with  
5 the resolutions surrounding the Dennis canon.

6 Q. What canons do you think you're talking about that were  
7 not put into effect?

8 A. I'm talking about canons with reference to church  
9 property.

10 Q. So you're not aware of any canons that were adopted in  
11 the 1870s regarding church property?

12 A. None that were put to any sort of test.

13 Q. That expressly spoke about protecting church property  
14 against persons who abandoned the Episcopal Church.

15 A. No. You are reading, are you not, Mr. Burgwin's  
16 opinion?

17 Q. I'm not reading anything. I'm asking you if you're  
18 aware of a canon that had that language in it.

19 A. If you can supply me with the text of the canon so that  
20 I can be sure of the exact wording, I would be happy to give  
21 you my opinion about the canons. But you have asked me for  
22 an opinion about Mr. Burgwin's article.

23 Q. No. I asked you whether you were aware of Mr. Burgwin's  
24 article.

25 A. I am aware of Mr. Burgwin's article. That's all.

1 Q. Okay. But you're not aware of canons passed in the  
2 1870s?

3 A. Can you cite me a case?

4 Q. You're either aware of it or you're not, Dr. Guelzo.

5 A. Well, I'm not aware of them because you cannot cite a  
6 case for me.

7 Q. Thank you.

8 A. It doesn't exist, a vapor.

9 Q. You're familiar, I'm sure, also with Murray Hoffman, who  
10 was a layman in the Episcopal Church in the 19th century and  
11 published a paper called "Remarks Upon the Question of What  
12 Is Schism"?

13 A. Yes.

14 Q. And in that paper Hoffman quoted Francis Hawks, did he  
15 not?

16 A. Yes, he did.

17 Q. And in agreement with Francis Hawks said: He enumerates  
18 what the several dioceses retained and then asks what did  
19 they surrender, as we apprehend the following things: Number  
20 one, such an exercise of independence as would permit them to  
21 withdraw from the union at their own pleasure and without the  
22 assent of the other dioceses.

23 That was in Hoffman's article, wasn't it?

24 A. That is correct. Are you aware of the disposition of  
25 these authors whom you have been reading, from Cox to

1 Hoffman?

2 Q. I'm asking the questions.

3 A. I know you're asking the questions.

4 THE COURT: Stop. Both of you stop. When you  
5 cross-examine an expert with regards to a document, it has to  
6 be accepted as a learned treatise by the witness before you  
7 can ask him. This is of no use to the Court if this witness  
8 doesn't consider what you're reading to be learned treatises.  
9 You're not laying the proper foundation. I know there hadn't  
10 been an objection, but this is of no use to me to have you  
11 have a debate with this witness about whether he believes  
12 what you're reading is legitimate or not. That doesn't help  
13 me.

14 MS. KOSTEL: But, your Honor, I'm offering it -- may I  
15 finish?

16 THE COURT: No. You cannot under our rules. When you  
17 cross-examine an expert with regards to a treatise, the  
18 expert has to accept the document as a learned treatise.  
19 That is missing from your foundation. I know it hadn't been  
20 objected to, but this is nonjury, people, and I have to be  
21 able to rely on it. And there's a ton of information. I'm  
22 not going to have this kind of information thrown at me, and  
23 I have got to discern what was legitimate and what wasn't.

24 MS. KOSTEL: Fair enough. Let me ask about --

25 THE COURT: So start over and ask him do you consider

1 this document to be a learned treatise.

2 MS. KOSTEL: Fair enough. But, Your Honor, can I skip  
3 reading all the excerpts again?

4 THE COURT: Absolutely. Absolutely.

5 Q. So let's go back to Francis Hawks. Do you agree that  
6 Francis Hawks wrote a number of works about the history of  
7 the Episcopal Church; correct?

8 A. Yes. But I don't believe that's the question at issue.

9 Q. No. I'm going to follow up that question.

10 A. Very good.

11 Q. Yes. And "Contributions to the Ecclesiastical History  
12 of the United States of America" was one of those works;  
13 correct?

14 A. Correct.

15 Q. And that's what I read from just a moment ago.

16 A. Correct.

17 Q. Yes. And do you consider that a learned treatise?

18 A. No.

19 Q. And why is that?

20 A. Because it was a party statement. Understand that Cox,  
21 Vinton, especially Francis Vinton, were partisans for a  
22 particular party within the church known as the ritualists or  
23 the Anglo-Catholics, as they're sometimes called, who were  
24 agitating for movement of the Episcopal Church to a structure  
25 and to theology more closely resembling Roman Catholicism,

1 hence the name Anglo-Catholic. They were advocates, they  
2 were partisans, they produced works of theological  
3 speculation, but in no sense were they speaking  
4 authoritatively for the church. And their positions were in  
5 fact frequently and roundly condemned in the general  
6 convention of the Episcopal Church. What you are -- what you  
7 are reading effectively would be like reading excerpts from  
8 articles written by members of the Tea Party to describe the  
9 Constitution of the United States.

10 Q. How about Dawley; is that a learned treatise?

11 A. I believe it is.

12 Q. So your view is that Hoffman is not a learned treatise?

13 A. I would say so.

14 Q. And Burgwin, the chancellor of the Diocese of  
15 Pittsburgh?

16 A. Definitely.

17 Q. And Vinton as well?

18 A. Definitely above all Vinton, who is probably among the  
19 authors you read the most forward as a partisan of the  
20 ritualist party.

21 Q. Let me ask you this: Were they known? Were they known  
22 people?

23 A. Oh, they were certainly known, but so was Jesse James.

24 Q. Yes. That's fine. But they were known figures in the  
25 Episcopal Church in the 19th century?

1 A. They were known as radicals, they were known as members  
2 of a fringe group; yes.

3 THE COURT: Now, would you do this for me -- and I hate  
4 to do this because I know you've been through it, but it's  
5 important because you've read some things that are very  
6 important for me to hear -- the gentleman that he just  
7 acknowledged was a learned treatise, can you go back through  
8 the quote that you gave him.

9 MR. KOSTEL: That was not one of the quotes. That was  
10 the treatise that Mr. Runyan introduced.

11 THE COURT: Okay.

12 Q. Let me ask you, Dr. Guelzo, about William Jones Seabury.  
13 Is it your view that he has produced learned treatises?

14 A. No.

15 Q. Okay.

16 THE COURT: Can you spell that for me?

17 MS. KOSTEL: Yes. William Jones Seabury, S-E-A-B-U-R-Y.

18 Q. Can you tell us a little bit about who he was?

19 A. The gentleman was, as my memory serves me, an Episcopal  
20 clergyman and a partisan and the author of partisan material.

21 Q. How about William Stephens Perry?

22 A. William Stephens Perry is the author of learned  
23 treatises and especially not -- I think the word "treatise"  
24 is probably inaccurate. He was the editor of documents. He  
25 was well known as a historian collecting elements of

1 historical documents of the Episcopal Church, which he then  
2 edited in a series of volumes in the 19th century.

3 Q. But in those volumes sometimes he included his own  
4 comments; correct?

5 A. Yes; as introductory material.

6 Q. And in your view did his views carry any weight?

7 A. The documents do, yes. The documents are an important  
8 collection of resources which save scholars like myself from  
9 having to make excessive trips to the library.

10 Q. Yes, I understand. I'm familiar with those types of  
11 collections. But what I'm asking you is setting aside the  
12 documents he was collecting, his commentary on the documents.

13 A. His comments are generally considered to be neither here  
14 nor there because for one thing you're dealing with someone  
15 who's observing the situation from the 19th century, and  
16 documentary editing in the 19th century was a much more  
17 loosey-goosey affair than documentary editing is today.

18 Q. Yes. And so how is Dawley different from all these  
19 people?

20 A. For one thing much shorter, much more precise, and much  
21 more careful, also much more recent.

22 Q. So Dawley writes more recently?

23 A. My understanding is that, yes, Dawley's approach is a  
24 much more cautious, careful, and recent approach.

25 Q. And is there anyone you know of in the 19th century who

1 was writing in a cautious and careful way?

2 A. Not too many. I will cite, though, Calvin Colton.  
3 Colton in 1853, who was an Episcopal clergyman and not really  
4 identified with any of these parties, wrote a landmark  
5 treatise on the structure of the Episcopal Church called  
6 "Genius and Mission of the Episcopal Church in the United  
7 States." His insistence was that the Episcopal Church was  
8 not in any way a type of the English church, it was not  
9 monarchical. Its genius, Colton said, is republican, with a  
10 small r; in other words, meaning that there is no hierarchy,  
11 no monarchy, no top-down authority, rather authority moves  
12 from the bottom up. Even in terms of the authority of  
13 bishops, bishops act only as providing officers of a dioceses  
14 and the authority remains within the dioceses themselves.  
15 That includes the presiding bishop. Colton was at pains to  
16 make clear that the presiding bishop was merely an executive  
17 officer.

18 And, in fact, it is curious in this respect that  
19 presiding bishops of the Episcopal Church were also serving  
20 as diocesan bishops; in other words, the office of presiding  
21 bishop was a part-time add-on because there really was so  
22 little in the way of authority or exercise of authority  
23 attaching to that office.

24 Q. Yes.

25 A. And that is Colton in 1853. I'm sure you're aware of

1 Colton's treatise.

2 Q. Just to flesh out the presiding bishop's office, that  
3 changes somewhat by the action of general convention in the  
4 20th century; for example, the presiding bishop can no longer  
5 continue to have jurisdiction over a diocese while acting as  
6 presiding bishop.

7 A. That is true. There is a conflict of interest involved.

8 Q. That's a fairly recent development.

9 A. That is. And being a history person, of course, the  
10 closer I get to the present, the less I know about  
11 everything.

12 Q. Fair enough. Let me ask you about, are you aware of  
13 anyone writing in the 19th century who took the opposite view  
14 of whether a diocese could leave?

15 A. It's difficult for me to put a finger on a particular  
16 person who is actually addressing that question.

17 Q. Other than the folks who we --

18 A. Other than the Anglo-Catholics.

19 Q. Right.

20 A. The consensus opinion was that the Episcopal Church was  
21 a federation of its dioceses and functioned in that light.  
22 The general convention, if you look carefully at the  
23 proceedings, the published proceedings of each general  
24 convention mostly came together for the consideration of  
25 reports from the dioceses and from the voluntary societies of

1 the church and did very little in the way of what you might  
2 call legislation.

3 Q. Let me ask you this: So you said that the consensus at  
4 the time was that the church was -- the general convention I  
5 think was a confederation. Did I say that correctly?

6 A. Yes.

7 Q. But it's true that William Stephens Perry, who I think  
8 you acknowledge, did make some valid commentary, did you not?

9 A. Yes.

10 Q. Yes. Stated in the history of the American Episcopal  
11 Church, 1587 to 1883, he did say the following: Now how is  
12 it with our ecclesiastical constitution? I must say that  
13 after a careful and anxious scrutiny of the constitution and  
14 canons of our general church, the power of the general  
15 convention seems to me unlimited, while that of the diocesan  
16 convention is only that which the general convention is  
17 pleased to concede.

18 He did say that, didn't he?

19 A. Yes, he did. And I suppose we could put Stephens and  
20 Colton together in a ring and they could slug it out. I  
21 think the point there is that there is not any one single  
22 opinion on this; that, in fact, there has been no  
23 authoritative determination in the 19th century on that  
24 status, no one in fact has thought to put a finger down on  
25 it, on the question of that relationship, so that you will

1 find someone offering an opinion here, you will find someone  
2 offering an opinion in another direction and in yet another  
3 direction. That does not suggest that there is any kind of  
4 settled law on the subject.

5 Q. And you don't know so much about the 20th century you  
6 have testified; is that right?

7 A. No. The 20th century fades away for me.

8 Q. Well, we're in the 21st, so hang on.

9 A. That's fading even faster. Ask me about 1861 and I'll  
10 tell you about everything that was going on, but yesterday,  
11 hopeless.

12 Q. I can sympathize.

13 MS. KOSTEL: Let me collect my thoughts for a moment.  
14 If I may consult with Mr. Beers.

15 CROSS-EXAMINATION BY MR. BEERS:

16 Q. Father, my name is David Beers and I represent the  
17 Episcopal Church as well. There was some discussion about  
18 canons in the 1870s regarding real estate. Do you remember  
19 that?

20 A. Yes.

21 Q. Do you remember that the canons were adopted in the late  
22 1860s and early 1870s about the alienation of property?

23 A. There were some canons, yes.

24 Q. Do you remember what they said?

25 A. Not specifically.

1 Q. Would it refresh your recollection if I were to say that  
2 a parish could not alienate consecrated property without the  
3 consent of the bishop and the standing committee?

4 A. Yes. And this was a direct attempt to close the barn  
5 door on the horse that had galloped away with Charles Edward  
6 Cheney and Christ Church Chicago.

7 Q. Is that your reference to the reformed Episcopal Church?

8 A. Indirectly. The case was not determined in connection  
9 with the reformed Episcopal Church because that was not  
10 organized until 1873. The case of Chase, et al., versus  
11 Cheney is heard in 1871.

12 Q. And are you familiar with the breakaway of the churches  
13 in the reformed Episcopal Church? I'm sure you are.

14 A. Yes, I am.

15 Q. Do you remember, have any idea how many churches broke  
16 away?

17 A. There were no churches that broke away. The reformed  
18 Episcopalians were a movement. They were not a diocese, they  
19 were not parishes, they were a movement. And once they had  
20 separated from the Episcopal Church, they organized  
21 themselves by their own lines.

22 Q. And so who left the Episcopal Church?

23 A. Well, starting at the very top, the --

24 Q. No. I mean what --

25 A. I thought you were asking about personalities.

1 Q. You said they left the Episcopal Church. What do you  
2 mean by "they"?

3 A. Well, all right, then I go to some personalities.

4 Q. Fine.

5 A. The assistant bishop of Kentucky, George David Cummins;  
6 Charles Edward Cheney; William Tufnell Sabine; Benjamin B.  
7 Leacock. And the names will come to me, coming swimming out  
8 of my memory, but I think you get the idea. These were a  
9 number of Episcopal clergy, some of whom in fact at that  
10 point were nonparochial clergy, but they leave the Episcopal  
11 Church and adhere to the reformed Episcopal Church when it is  
12 organized on December 2nd, 1873.

13 Q. And how many of those attempted to take parish property  
14 with them?

15 A. None. They were not -- they were not doing this as  
16 parishes.

17 Q. That man you mentioned in Kentucky, He did try to take  
18 the property of the parishes, didn't he?

19 A. No, he did not.

20 Q. He was not involved in litigation?

21 A. No, he was not.

22 Q. Do you remember any member of the reformed Episcopal  
23 Church in Kentucky that tried to take property away and was  
24 involved in litigation?

25 A. The only question that ever was raised was by Emmanuel

1 Church Lexington. And the actual outcome of that particular  
2 case I believe was an out-of-court settlement, but even there  
3 what was involved was minimal. This was a movement, these  
4 were not parishes or dioceses.

5 Q. And so you disagree with me if I said that my  
6 understanding is about 100 parishes, reformed, 100 parishes  
7 left the Episcopal Church without their property to become  
8 part -- to help form the reformed Episcopal Church?

9 A. Oh, no, no. They did not leave as parishes. These were  
10 individuals who were part of the movement. And when they  
11 reorganized, once the reformed Episcopal Church has its  
12 initial organizational meeting in New York City, then they  
13 begin to address the question of shall we have parishes, are  
14 we going to organize, then later on they become the  
15 organization of senates. But that is subsequent to that.  
16 There were no attempts to take parish property or to take  
17 diocesan property out as a whole.

18 Q. Let me ask you another question in the same era about  
19 the Civil War. Did the Episcopal Church believe or  
20 understand that the so-called southern dioceses left?

21 A. As far as they were concerned, no. They believed that  
22 those dioceses still had some kind of connection to the  
23 Episcopal Church of the United States of America. The  
24 difficulty is in determining exactly what that was legally.

25 Q. But when the general convention met during the Civil

1 War, when they called the roll, they included all those  
2 dioceses, didn't they?

3 A. That is correct; just as the United States Congress did  
4 for the seceded states.

5 Q. And when the individuals in those dioceses showed up at  
6 the next convention of the general convention, they were  
7 seated as deputies of those dioceses?

8 A. That is correct.

9 Q. The general convention created no new dioceses?

10 A. That is correct.

11 Q. So they just came -- the individuals came back, but as  
12 far as the Episcopal Church was concerned, those dioceses  
13 never left?

14 A. That is correct, because the dioceses had an identity  
15 entire to themselves apart from the general convention of  
16 either the Protestant Episcopal Church of the United States  
17 or of the Protestant Episcopal Church of the Confederate  
18 States.

19 Q. All right. Now, we've talked about the property canons  
20 in the 1860s and early 70s. Those canons only applied to  
21 consecrated property; is that right?

22 A. As I understand it, yes.

23 Q. Did the church subsequently adopt a canon that extended  
24 that anti-alienation provision to all real estate?

25 A. I would have to say that I'm uncertain about all real

1 estate because that covers a wide sway of category.

2 Q. Do you have a recollection that there was a canon?

3 A. Yes, there was canonical action that was taken in the  
4 wake of the Cheney case.

5 Q. I'm talking about in the 20th century.

6 A. Oh, the 20th century. The 20th century I'm mostly  
7 familiar with the adoption or the resolution around the  
8 Dennis canon in 1977. But, again, I must warn you, I am a  
9 history person and current events are not my long suit.

10 Q. Are you aware of a canon that prescribes that the parish  
11 property shall always be under the control and jurisdiction  
12 of the rector?

13 A. I know that there are some parishes which in fact do  
14 have arrangements and did have arrangements of that sort.

15 Q. Are you aware of such a canon?

16 A. I'm aware of such arrangements.

17 Q. Are you aware of such a canon?

18 A. No. I am not a canon lawyer.

19 Q. Well, let's go back to your early career. When did you  
20 first enter a process for ordination?

21 A. In 1978.

22 Q. In which diocese?

23 A. This would have been within the reformed Episcopal  
24 Church in the senate of New York and Philadelphia.

25 Q. And when were you received in the Episcopal Church?

1 A. In the year 2000.

2 Q. And where?

3 A. In the Diocese of Quincy.

4 Q. And at that time did you execute the declaration of  
5 conformity?

6 A. Yes.

7 Q. And were you a priest by then or a deacon?

8 A. I was a priest.

9 Q. Are you familiar with the canons relating to ordination  
10 in the Episcopal Church?

11 A. Yes.

12 Q. Where are they?

13 A. Canons regarding ordination are in the constitution and  
14 canons of the church.

15 Q. And where?

16 A. I cannot quote you chapter and verse. Again, I am not a  
17 canon lawyer.

18 Q. I'm not asking you to quote them, I'm just asking where  
19 in the canons all that appears.

20 A. My recollection is that it would be in Section 3.

21 Q. Let me ask you this: Let's talk about bishops. You  
22 would agree with me that the constitution sets out the basic  
23 rules for the election and duties -- the election of bishops?

24 A. Yes.

25 Q. And are you familiar with how bishops are elected?

1 A. Yes.

2 Q. Would you tell us?

3 A. A bishop can be elected by a diocesan convention and  
4 then within 120 days that election must receive consents from  
5 the other dioceses of the Episcopal Church, a majority of  
6 those dioceses.

7 Q. Are there age requirements?

8 A. There is a retirement age at the very top. I will  
9 confess, never having aspired to being a bishop, I'm not sure  
10 what the lower limits might be if there are such.

11 Q. And would you agree with me that the canons relating to  
12 the election of bishops in the constitution are mandatory and  
13 binding on the states, I mean in the dioceses?

14 A. They direct the dioceses. The dioceses are the ones,  
15 however, which give the consents. If we were dealing with  
16 another situation, if, for instance, we were dealing with the  
17 Church of England, appointment of bishops would be remanded  
18 to the Crown Appointments Commission.

19 Q. Would you agree with me that the constitution mandates  
20 what the electing convention must do?

21 A. The constitution describes what the process is.

22 Q. It doesn't mandate it?

23 A. It describes it.

24 Q. Father, I'm going to hand you what's been admitted as  
25 the Constitutions and the Canons of the Episcopal Church in

1 2009. Would you turn to Article II, Page 3?

2 A. Yes.

3 Q. Please turn to Section 1. Would you just read the first  
4 sentence stopping at the word "provided" just to move along  
5 quickly?

6 A. "In every Diocese the Bishop or the Bishop Coadjutor  
7 shall be chosen agreeably to rules prescribed by the  
8 Convention of that Diocese."

9 Q. Now would you turn to Section 2 and read the first  
10 sentence up to the semicolon?

11 A. "No one shall be ordained and consecrated Bishop until  
12 the attainment of thirty years of age."

13 Q. And Section 3, read up to the word "elected," if you  
14 will.

15 A. "A Bishop shall confine the exercise of such office to  
16 the Diocese in which elected, unless" --

17 Q. That's far enough. Section 4, could you just read up to  
18 the comma?

19 A. "It shall be lawful for a Diocese."

20 Q. Fine. I meant the next comma. Pardon me.

21 A. I'm sorry. "...at the request of the Bishop of that  
22 Diocese..."

23 Q. And, I'm sorry. Just to the next comma.

24 MR. BEERS: I apologize for this, Your Honor.

25 THE WITNESS: "...to elect not more than two Suffragan

1 Bishops..."

2 Q. Thank you. Section 5, just read up to the comma.

3 A. "It shall be lawful for a Diocese to prescribe by the  
4 Constitution and Canons of such Diocese that upon the death  
5 of the Bishop..."

6 Q. Thank you. And turn the page to Section 7, read up to  
7 the comma.

8 A. "It shall be lawful for the House of Bishops to elect a  
9 Suffragan Bishop who..."

10 Q. And how about Section 9?

11 A. "Upon attaining the age of seventy-two years a Bishop  
12 shall resign from all jurisdiction."

13 Q. Now, that's mandatory language, isn't it?

14 A. It's descriptive language.

15 Q. It's not mandatory?

16 A. It always describes what the bishop is doing in a  
17 diocese. It is putting the entire purpose of the election of  
18 a bishop in the lap of a diocese. It does not say that the  
19 house of bishops will select a bishop from its own ranks or  
20 that it will mandate the election of a new bishop.

21 Q. But it does say the bishop must resign at 72, he shall  
22 or she shall resign.

23 A. Yes.

24 Q. That's mandatory.

25 A. Yes.

1 Q. That's mandatory.

2 A. Yes. But that is not saying that it has authority to  
3 tell the diocese what to do that way.

4 Q. Now, are you familiar with all the duties of bishops?

5 A. I'm sorry.

6 Q. Are you familiar with all the duties of bishops that are  
7 set out in the constitution and canons?

8 A. I wish I could say I was intimately familiar with them,  
9 but never having been a bishop, I am not.

10 Q. And so you don't know to what extent the constitution  
11 and canons set out a broad array of duties that are  
12 mandatory?

13 A. Sir, I am a historian, not a canon lawyer.

14 Q. As a historian you don't read or rely on canons?

15 A. I examine canons from the past.

16 Q. But you've not examined the ones that govern the  
17 Episcopal Church today?

18 A. I do not examine them in the way that you are examining  
19 them or want me to examine them.

20 Q. Do you examine them?

21 A. Oh, yes. I read them.

22 Q. The current canons?

23 A. Yes.

24 Q. By the way, what do the current canons say about the  
25 authority of the presiding bishop with respect to the

1 discipline of bishops?

2 A. I am at a loss. I haven't read that in several years.

3 Q. Are you familiar with the provision --

4 A. I'm uncertain where your line of question is going. My  
5 understanding is that I was speaking as a historian. Now  
6 we're all afield and you might as well ask me what I think  
7 the temperature of the weather is in Haiti today.

8 Q. If I'm going to ask you about the structure of the  
9 church today as laid out in the constitution and canons, you  
10 would not be the witness?

11 A. I am not in that immediate respect concerning this  
12 edition of the constitution and canons an authority about  
13 this edition of the constitution and canons.

14 Q. How about the editions of the constitution and canons  
15 say for the last 20 years? You've already said that when you  
16 get up to the late 20th century, you're not our man.

17 A. That's right.

18 Q. I see. Thank you. All right.

19 A. Do you have questions about the area that I am familiar  
20 with?

21 Q. Are you familiar with the preamble of the Episcopal  
22 Church?

23 A. I am.

24 Q. Could you turn to it? Well, if you're familiar with it,  
25 tell me what it says.

1 A. "The Protestant Episcopal Church" --

2 Q. No, no, don't read it. Don't read it. Read it if you  
3 need to, but, first of all, just let me ask you what you  
4 remember about the preamble.

5 A. It establishes, first of all, the historic connection of  
6 the Episcopal Church to the overall Anglican fellowship,  
7 describes it as a fellowship, curiously enough, and not a  
8 communion. It then also speaks of the dioceses as being  
9 companions in following that tradition.

10 Q. It does?

11 A. Yes. "...duly constituted Dioceses...in communion with  
12 the See of Canterbury, upholding and propagating the historic  
13 Faith and Order as set forth in the Book of Common Prayer."  
14 I don't see that it says set forth in this constitution and  
15 canons, but maybe that's an oversight.

16 Q. Could you read the last sentence for me?

17 A. "This Constitution, adopted in General Convention in  
18 Philadelphia in October, 1789, as amended in subsequent  
19 General Conventions, sets forth the basic Articles for the  
20 government of this Church, and of its overseas missionary  
21 jurisdictions."

22 Q. So the preamble provides that the constitution sets  
23 forth the basic articles for the government of the church?

24 A. Yes, yes, the basic articles, the operating rules, so to  
25 speak.

1 Q. By the way --

2 A. They do not speak to a number of other questions,  
3 however. You'll notice that there is no allusion here to the  
4 theology of the church. There is no attempt on the part of  
5 this preamble to establish a comprehensive authority.

6 Q. A comprehensive authority of what?

7 A. A comprehensive authority that would speak to all  
8 matters of faith and doctrine.

9 Q. Are those matters set forth --

10 A. If there is, I have missed it completely.

11 Q. The constitution does provide for the adoption of the  
12 prayer book, does it not?

13 A. Yes, it does.

14 Q. And in the Episcopal Church that is the basic faith  
15 doctrine, isn't it?

16 A. Have you ever heard of the Articles of Religion?

17 Q. All 39 of them.

18 A. Thank you.

19 Q. But the substance of our faith is by and large set out  
20 in the Book of Common Prayer, isn't it?

21 A. And by what determination was that made? You mean by  
22 the prayer book alone and solely? By what authoritative  
23 demonstration was that settled upon entirely apart from the  
24 Articles of Religion or any other statement of faith? What  
25 about the Apostles' Creed? What about the Chicago

1 Quadrilateral, sometimes known as the Chicago-Lambeth  
2 Quadrilateral just to make things more difficult for  
3 everybody.

4 Q. So my question would have been about the basic faith  
5 document would be better if the -- well, the Apostles' Creed  
6 is in the prayer book, isn't it?

7 A. Yes, it is; but not used at every service.

8 Q. Okay. And I suppose the prayer book would have more --  
9 would be closer to the basic articles of faith if it had the  
10 Chicago Quadrilateral in it?

11 A. It might be. Do you see any evidence of that in the  
12 document?

13 Q. In the prayer book?

14 A. No. I mean in the constitution and canons.

15 Q. No. I'm talking about the prayer book.

16 A. Well, good. Then what we're talking about is the  
17 constitution and canons, as I understand it, and I'm saying  
18 to you that this provides general operating directions, but  
19 it does not provide a comprehensive statement of faith  
20 doctrine operations and so forth like that. It sets out  
21 several basics.

22 Q. But the general convention adopted the prayer book?

23 A. Yes, that's true. But at the same time, if I may offer  
24 this as an example, I live in a townhouse association. We  
25 have rules and regulations that govern the common areas of

1 our townhouse association, but the houses themselves are  
2 owned in fee simple and our deeds are registered in the  
3 courthouse accordingly. The fact that we have rules and  
4 regulations, however, does not mean that the rules and  
5 regulations cover every aspect of our property. In fact, if  
6 the association were to pass a rule and regulation declaring  
7 that our property, our fee simple property, now belongs to  
8 someone else, in this case the association, well, that would  
9 provide quite a lot of interesting litigation on the county  
10 courthouse. It would in fact fall flat because that would be  
11 simply an example of fiat confiscation of property and it  
12 would be treated as such.

13 Q. The constitution does provide for the adoption of the  
14 prayer book, does it not?

15 A. Yes, it does.

16 Q. The constitution provides for the --

17 A. But doesn't provide for everything in the church.

18 Q. The constitution and canons together provide for the  
19 discipline of all clergy, do they not?

20 A. Yes.

21 Q. And the duties of bishops?

22 A. Yes, it describes them. Does it describe all the duties  
23 of bishops?

24 Q. And when --

25 A. It doesn't.

1 Q. And if the canon on the subject of duties of bishops  
2 says "shall," you view that as a -- what was the term you  
3 used, a descriptive term?

4 A. Yes.

5 Q. I see. And the duties of rectors provided by the  
6 national canons?

7 A. They are described there, yes.

8 Q. One more question back in the old days. You said that  
9 there was reluctance, I think, in the state church in South  
10 Carolina to have bishops.

11 A. Correct. Or at least to use the terminology.

12 Q. But they called themselves an Episcopal Church, didn't  
13 they?

14 A. That they did.

15 Q. Why?

16 A. If I was available from a time machine, I would probably  
17 pose that question to them. Obviously they did not regard  
18 having bishops as being of the essence of being an Episcopal  
19 Church. And indeed it is an interesting theological  
20 question, as I am sure you know, as to whether the possession  
21 of the episcopate is of the esse of the church. That has  
22 never been settled in Anglican circles.

23 Q. Just as you don't know much about the canons, I don't  
24 know much about theology.

25 MR. BEERS: Could I have a moment with Ms. Kostel?

1 MS. GOLDING: I'm going to move to strike that last  
2 comment of Mr. Beers. I think that was inappropriate and to  
3 a certain extent insulting. It wasn't a question.

4 THE COURT: It was certainly not a question.

5 MR. BEERS: That's all I have, Your Honor. Thank you,  
6 sir.

7 THE COURT: Yes, sir.

8 Mr. Tisdale.

9 MR. TISDALE: I think you'll be pleased with the length  
10 of my questioning.

11 CROSS-EXAMINATION BY MR. TISDALE:

12 Q. Doctor, I'll just ask a question or two about the  
13 creation of the reformed Episcopal Church that you testified  
14 about in 1873, I think.

15 A. That is correct.

16 Q. Why did that body adopt the name reformed Episcopal  
17 Church and not simply call itself the Episcopal Church?

18 A. Because they, first of all, wanted to establish that  
19 they were an Episcopal Church fully as much as the Protestant  
20 Episcopal Church was. They were founded by a bishop  
21 consecrated in due order and succession. They also wished to  
22 indicate they were reformed in the sense that they were  
23 making an effort to purge out the more radical elements that  
24 had disturbed the life of the Protestant Episcopal Church, in  
25 this case Anglo-Catholic ritualist thinking.

1 Q. Would you agree that they wanted to distinguish  
2 themselves from the Episcopal Church at least in that way  
3 that you just described?

4 A. In that respect, yes.

5 Q. Thank you very much.

6 MR. TISDALE: Thank you, Your Honor?

7 THE COURT: All right.

8 Redirect?

9 MR. RUNYAN: None, Your Honor.

10 THE COURT: Very well. Anything from any other  
11 plaintiff?

12 Thank you. You may step down.

13 All right. We'll take a 15-minute break and then we'll  
14 have our next witness.

15 (Recess held.)

16 THE COURT: All right. If you would call your next  
17 witness, please.

18 MR. RUNYAN: Plaintiffs call Bob Lawrence.

19 ROBERT STRATTON LAWRENCE,  
20 being first duly sworn, testified as follows:

21 THE COURT: All right. If you'd state your full name  
22 for our record again, please.

23 THE WITNESS: Robert Stratton Lawrence.

24 THE COURT: Your witness.

25 DIRECT EXAMINATION BY MR. RUNYAN:

1 Q. Father Lawrence, are you related in any way to Mark  
2 Lawrence?

3 A. I am not, except as a brother in Christ.

4 Q. Where are you employed?

5 A. I am the executive director of St. Christopher Camp and  
6 Conference Center. It's an appointed position. I'm on the  
7 bishop's staff.

8 Q. At the testimony yesterday of Bishop vonRosenberg the  
9 following question was asked and the following answer was  
10 given, and I'm going to ask you about it:

11 Bishop vonRosenberg, since you have been bishop of the  
12 Episcopal Church in South Carolina, have the people of the  
13 diocese that you lead had any access to the assets and  
14 institutions of the plaintiff, the Protestant Episcopal  
15 Church in South Carolina, such as this, have you been able to  
16 use the assets of Camp St. Christopher?

17 Answer: No, sir.

18 Father Lawrence, was the bishop mistaken?

19 A. Yes, sir, I believe he was, because in my time there,  
20 and it will be four years as of the 30th of September, St.  
21 Christopher has been available to all groups that have asked  
22 to come and utilize the facilities. And, in fact, a number  
23 of the parishes that now identify themselves under Bishop  
24 vonRosenberg's authority have continued to utilize St.  
25 Christopher. We have had summer camp staff as well as many

1 summer campers this summer coming from parishes of the  
2 Episcopal Church in South Carolina.

3 And we intentionally altered a policy that used to give  
4 preferential treatment to the diocese, the parishes of the  
5 Diocese of South Carolina, and we have expanded that. And  
6 there was a letter sent out to all bishops with Anglican  
7 jurisdiction, including Bishop vonRosenberg, in September of  
8 last year notifying them of that policy to where not only are  
9 we available to them, they continue to get the exact same  
10 preferential policies at reduced rates and being able to book  
11 24 months in advance. So that policy is fully in place right  
12 now for all parishes of the Episcopal Church in South  
13 Carolina.

14 Q. And the facilities are available for use by parishioners  
15 from the Episcopal Church in South Carolina?

16 A. Yes.

17 Q. And they have been so used?

18 A. Have been.

19 MR. RUNYAN: Thank you, sir.

20 MR. TISDALE: Is that it?

21 MR. RUNYAN: That's it.

22 THE COURT: All right. Cross-examination.

23 CROSS-EXAMINATION BY MR. TISDALE:

24 Q. Thank you, Father Lawrence. Is St. Christopher  
25 available for use of any member of the public who files an

1 application that is accepted under the normal course of the  
2 application process?

3 A. Yes. But I'm not sure what you mean in terms of  
4 application. I mean --

5 Q. Well, if you want to go to camp, you file an application  
6 to be accepted to go to camp, don't you?

7 A. Yes, sir.

8 Q. Is that available to any citizen to file such an  
9 application to be accepted for that?

10 A. Yes, it is.

11 Q. It is. And you also have a group -- as you said, groups  
12 can sign up to use it. And they're not limited to the  
13 Episcopal Church, are they?

14 A. No, sir.

15 Q. Any group. In fact, there are a lot of things that  
16 don't have anything to do with religion that use the camp  
17 from time to time, don't they?

18 A. Yes, sir.

19 Q. Are any members of the Episcopal Church in South  
20 Carolina associated with that diocese that you know of on the  
21 governing board of Camp St. Christopher?

22 A. Again, the structure of St. Christopher, it is a  
23 department of the diocese. There is a board of directors.  
24 They're more of an advisory board. They don't really  
25 function as a true board of directors in that I work for the

1 bishop and not for the board.

2 Q. All right. On that board of advisors did you say?

3 A. They're called a board of directors, but in effect  
4 they're more of a board of advisors.

5 Q. Are any members of the Episcopal Church in South  
6 Carolina members of that board of directors?

7 A. Right now, no, sir.

8 Q. No. Have they ever been since 2012?

9 A. No. But there was no transition, the people that were  
10 serving as directors then by and large are still serving.

11 Q. All right. So is Bishop vonRosenberg on any board that  
12 has anything to do with the operation of the camp?

13 A. No, sir. But he has full access and use of it if he  
14 were to so choose in the same way that Bishop Lawrence does.

15 Q. As anybody does?

16 A. Yes.

17 Q. Anybody. So my question to you is obviously this: Does  
18 the Episcopal Church in South Carolina have anything to do  
19 with directing the operation and programs of Camp St.  
20 Christopher?

21 A. No, sir, they do not.

22 Q. Does the Episcopal Church in South Carolina have any  
23 ownership interest in Camp St. Christopher?

24 A. The proper ownership of St. Christopher is by the  
25 trustees of the Diocese of South Carolina.

1 Q. Correct. And along those lines let me ask you this:  
2 How is St. Christopher financed? Where does the money come  
3 from to run it?

4 A. By the funds that we generate. We get no support from  
5 the diocese outside of a portion of the diocesan budget  
6 covering some debt service on an old loan from a capital fund  
7 campaign of years ago.

8 Q. Does any money come to you, through the diocese or  
9 otherwise, from the trustees of the -- trustees?

10 A. None outside of what they pay in normal fees for use of  
11 the facility.

12 Q. The trustees?

13 A. If the trustees were to book an overnight retreat, they  
14 would pay the normal fees as any other group.

15 Q. There's no financial allocation from the trustees either  
16 through the diocese or directly to the camp?

17 A. Not to the operational budget, sir.

18 Q. To any part of the upkeep of the camp?

19 A. No, sir.

20 MR. TISDALE: All right. Nothing else, Your Honor.

21 THE COURT: All right.

22 Yes, from the national church?

23 MR. BEERS: No, ma'am.

24 THE COURT: All right. Any redirect?

25 MR. RUNYAN: None, Your Honor.

1 THE COURT: Anyone else on behalf of the plaintiffs?

2 Thank you, sir. You may come down.

3 All right. Call your next witness, please.

4 MS. GOLDING: Mr. Logan.

5 THE COURT: Mr. Logan has already been sworn in this  
6 matter.

7 WADE H. LOGAN, III,

8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. GOLDING:

10 Q. Mr. Logan, how long have you served as chancellor for  
11 the plaintiff diocese?

12 A. I believe officially since 2007.

13 Q. As chancellor for the plaintiff diocese, did you send a  
14 letter to the chief financial officer for the defendant  
15 national church in October 2012?

16 A. Yes, ma'am, I did.

17 (Plaintiff's Exhibit DSC-71 marked for identification.)

18 Q. And is this a letter that you sent in your capacity as  
19 the chancellor?

20 A. Yes, ma'am.

21 MR. GOLDING: Okay. Your Honor, we would offer this  
22 letter as Plaintiff Diocese Exhibit No. 71.

23 MR. TISDALE: No objection.

24 MR. BEERS: No objection.

25 (Plaintiff's Exhibit DSC-71 admitted into evidence.)

1 Q. For what reason did you send the letter which is October  
2 29, 2012, Exhibit 71, to the CFO officer of defendant  
3 national church?

4 A. It was our understanding that we were still listed, we  
5 the diocese were still listed, under a group exemption which  
6 the Episcopal Church held. I stated it was my understanding  
7 that our permission had to be given for that and that we did  
8 not give permission and asked that we be removed from the  
9 listing of entities under the group exemption number.

10 Q. What response, if any, did you get from the defendant  
11 national church with respect to Plaintiff's Exhibit No. 71?

12 A. I got no response.

13 Q. Okay. Let me then give you a letter dated November 19,  
14 2013. And can you identify that letter, please?

15 A. Yes, ma'am. This is another letter that I wrote also to  
16 Mr. Barnes dated November 19, 2013.

17 Q. And what was the reason for writing this letter in  
18 November?

19 A. It was my understanding that there were a number of  
20 congregations affiliated with the plaintiff diocese which  
21 will continue to be listed under the group exemption. I  
22 stated that it was -- they had not given permission to be  
23 included and listed a number of the parishes and asked that  
24 they be removed from that exemption list.

25 MR. GOLDING: Your Honor, we would mark that letter as

1 Exhibit 72.

2 (Plaintiff's Exhibit DSC-72 marked for identification.)

3 THE COURT: Any objection?

4 MR. BEERS: No.

5 MS. KOSTEL: No objection.

6 MR. TISDALE: No objection, Your Honor.

7 (Plaintiff's Exhibit DSC-72 admitted into evidence.)

8 MR. TISDALE: I've got a general objection to this  
9 testimony. Perhaps she could clear it up. What is this in  
10 rebuttal to? It may be it's been a long record, but I don't  
11 see the connection to it.

12 MS. GOLDING: There was -- the defendants --

13 MR. TISDALE: I object to it for that reason.

14 THE COURT: Overruled.

15 MR. TISDALE: She was going to explain.

16 THE COURT: I can tell you. But you go ahead. I'm  
17 sorry.

18 MS. GOLDING: During the defendants' case, Your Honor,  
19 they brought in through the documentation and they in fact  
20 introduced, I believe, or attempted to introduce IRS  
21 regulations with respect to a group exemption for the  
22 501(c)(3), and these letters are to show that we had  
23 withdrawn our commission and we did not want to be listed  
24 under those exemptions.

25 MR. TISDALE: Thank you.

1 Q. With respect to Plaintiff Diocese Exhibit No. 72, did  
2 you receive any response to that, Mr. Logan?

3 A. No, ma'am, I don't believe I did.

4 Q. And, Mr. Logan, has the plaintiff diocese obtained its  
5 own 501(c)(3) status?

6 A. Yes, ma'am.

7 Q. And to your knowledge, have the parishes associated with  
8 the plaintiff diocese obtained their own 501(c)(3) status?

9 A. I believe some have. I don't know that others have, I  
10 know some have.

11 Q. Okay. Next let me hand thank you this document, please.  
12 Would you identify the document that I handed to you, please?

13 A. Yes, ma'am. This appears to be a copy of a filing from  
14 the South Carolina Secretary of State for the Protestant  
15 Episcopal Church in the United States of America, Inc.

16 Q. Is that the South Carolina Secretary of State?

17 A. Yes, ma'am.

18 MR. GOLDING: We would offer that document as Plaintiff  
19 Diocese Exhibit 73.

20 (Plaintiff's Exhibit DSC-73 marked for identification.)

21 MR. TISDALE: No objection.

22 MR. BEERS: (Shaking head).

23 THE COURT: All right? Very well.

24 (Plaintiff's Exhibit DSC-73 admitted into evidence.)

25 MR. GOLDING: Next let me hand you another document.

1 (Plaintiff's Exhibit DSC-74 marked for identification.)

2 Q. With respect to the document I just handed you, Mr.  
3 Logan, can you just identify this document, please?

4 A. Yes, ma'am. This appears to be a page from the legal  
5 notices section of the News and Courier of Thursday, February  
6 19, 1987.

7 Q. Okay. And is there a notice in this document that  
8 references the plaintiff diocese?

9 A. Yes, ma'am, there is; filing notice.

10 Q. Was this notice within their books and records of the  
11 plaintiff diocese under your control and custody?

12 A. Yes, ma'am.

13 MS. GOLDING: Your Honor, we would offer this document  
14 in as Plaintiff's Exhibit No. 74.

15 MR. TISDALE: No objection.

16 MR. BEERS: No.

17 THE COURT: Very well, no objection from either party.

18 (Plaintiff's Exhibit DSC-74 admitted into evidence.)

19 Q. With respect to Exhibit 74, Mr. Logan, with respect to  
20 the notice, can you, instead of reading the notice, just  
21 identify who the bishop was at that time on this notice?

22 A. It was signed by the Right Reverend C.F. Allison, who  
23 would be FitzSimons Allison, former bishop of the diocese.

24 Q. Okay. And is there a capacity for the bishop in this  
25 notice?

1 A. Yes, ma'am. He signed as president.

2 Q. Okay. Mr. Logan, I want to take you into October of  
3 2012. In October 2012 were you party to any communications  
4 between Bishop Lawrence and the presiding bishop of the  
5 defendant national church?

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

7 Q. Okay. And do you know when that communication occurred?

8 A. I'll have to check my notes. I believe it was on  
9 October 22nd -- excuse me -- October 15th.

10 Q. And tell me, was that communication by telephone?

11 A. Yes, it was.

12 Q. Okay. And can you tell me what you recall with respect  
13 to the telephone call in which you were a party with Bishop  
14 Lawrence and the presiding bishop for the defendant national  
15 church?

16 A. Yes, ma'am. In addition to the presiding bishop and  
17 Bishop Lawrence and myself, I believe that Mr. Beers was part  
18 of the conversation. Bishop Schori, Jefferts Schori, advised  
19 that she had received a written certificate of abandonment  
20 from a body known as the Disciplinary Board of Bishops on  
21 October 10th; that she was required under the applicable  
22 canons of the national church, which our diocese does not  
23 recognize, to restrict Bishop Lawrence's ministry; that Mr.  
24 Beers would be sending a copy of a restriction and other  
25 paperwork; and that she would still be willing to meet with

1 Bishop Lawrence on October the 22nd, which was a previously  
2 arranged meeting; and that she would not publicize the fact  
3 of these developments.

4 Q. Now, as of that telephone call on October the 15th,  
5 2012, had you received a document entitled "Certificate of  
6 Abandonment"?

7 A. No, ma'am.

8 Q. And to your knowledge, had the bishop, Bishop Lawrence,  
9 received a document entitled "Certificate of Abandonment"?

10 A. To my knowledge, he had not.

11 Q. Subsequently had you ever received such a document?

12 A. I received an unsigned copy of that document, I believe  
13 it was later that day, I believe it came from Mr. Beers. At  
14 some time subsequent to that I received a copy of the  
15 signature page, which I also believe had come from Mr. Beers.

16 Q. Okay. When you received the copy of the signature page  
17 subsequently, was the signature page attached to the  
18 certificate?

19 A. No, ma'am, just one page.

20 Q. Okay. To your knowledge, has Bishop Lawrence ever been  
21 served or received from the defendant national church the  
22 certificate of abandonment?

23 MS. KOSTEL: Objection.

24 THE WITNESS: To my knowledge, he has not.

25 MS. KOSTEL: Objection to relevance. I'm not sure how

1 it's relevant.

2 MS. GOLDING: Your Honor, the defendants presented  
3 evidence and they presented a document entitled "Certificate  
4 of Abandonment" which was marked as Defendant's Exhibit 22.

5 MS. KOSTEL: Correct.

6 MS. GOLDING: And it came in through the testimony of  
7 Bishop Daniel, I believe, Clifton Daniel, and so we are  
8 responding. It may have been another individual, but it was  
9 definitely Defendant's Exhibit No. 22.

10 THE COURT: And this is in response to that.

11 MS. GOLDING: This is in response to that, Your Honor.

12 THE COURT: Very well. Overruled.

13 Q. Now, let me hand you what is a copy of Defendant's  
14 Exhibit No. 22. And, first of all, let me ask you, are you  
15 familiar with the constitution and canons of the national  
16 church?

17 A. Very generally back then I was and I believe -- yes,  
18 back then I was.

19 Q. With respect to the document, Defendant's Exhibit No.  
20 22, under the constitution and canons what is to be the  
21 process with respect to the issuance of a certificate?

22 MS. KOSTEL: Objection, Your Honor. This gets into  
23 whether the church is following its procedures and how it's  
24 following its procedures. That is clearly beyond the  
25 province of the Court, if I understand where Ms. Golding is

1 going.

2 MS. GOLDING: I'm going because I believe the defendants  
3 in their case have tried to present that Bishop Lawrence was  
4 no longer in a position to undertake any acts as a bishop.  
5 And I am going to just establish that he was not  
6 disassociated in October at the time that the plaintiff  
7 diocese voted to disaffiliate itself from the defendant  
8 national church.

9 THE COURT: I understand. Any response?

10 MS. KOSTEL: So what Ms. Golding is trying to establish  
11 is what the national church thought about the status?

12 THE COURT: No. What she's doing is she's saying that  
13 there is a procedure that failed to be followed and,  
14 therefore, his acts that were taken in October, because of  
15 the failure of the national church to do whatever it did,  
16 based on their theory, as certain actions were taken in  
17 October, that he was within his purview and his authority to  
18 undertake those acts at that time.

19 MS. KOSTEL: Well, I'm sure that Ms. Golding and Your  
20 Honor are aware of the Supreme Court precedent that restricts  
21 Courts from looking into the internal procedures of church  
22 tribunals. And so if Ms. Golding is trying to show whether  
23 or not the church --

24 THE COURT: Well, here's what she just showed me. She  
25 responded to a document and tells me that the document wasn't

1 served. People get due process, got to serve something on  
2 somebody before they got notice; right?

3 MS. KOSTEL: I don't think that's what she was after,  
4 Your Honor.

5 THE COURT: I thought that was what you were after.

6 MS. GOLDING: I already answered that question.

7 THE COURT: I know.

8 MS. GOLDING: May I proceed with questioning the  
9 witness? I'm not going to any intent, it's just to procedure  
10 and the effect of that procedure as to Bishop Lawrence's  
11 status, that's all.

12 MR. KOSTEL: And I just renew my objection.

13 THE COURT: All right. Here's where we are: Whatever  
14 was the ultimate determination, I can't go behind that.

15 MS. GOLDING: No, no. There was no determination at  
16 all.

17 MS. KOSTEL: Wait a minute. That's testimony, Your  
18 Honor.

19 MR. RUNYAN: I think they will agree with me that the  
20 certificate of abandonment was a charge, not a conviction.

21 THE COURT: They're saying it's a conviction.

22 MS. KOSTEL: No, we're not, Your Honor.

23 MR. RUNYAN: I don't think they're going to say that.

24 THE COURT: Okay. All right. Well, then why would  
25 you --

1 MS. GOLDING: If they --

2 THE COURT: Stop, please. Then why am I having this  
3 discussion if it's only a charge? As you know, I take the  
4 final determination when it comes to the ecclesiastic  
5 determination. And if it's not a determination, why are you  
6 objecting?

7 MS. KOSTEL: Your Honor, it's not merely a charge. What  
8 it is is it's a preliminary determination that under the  
9 governance of the church temporarily strips the bishop of his  
10 authority until there can be a final determination.

11 THE COURT: Okay. Well, it's the final determination,  
12 of which I am limited. So why would you propose to tell me  
13 that the document that is in evidence originally with your  
14 objection is something other than what it is?

15 MS. KOSTEL: I'm not telling Your Honor that. I'm  
16 telling Your Honor that it is what it is and the Court is  
17 bound by it.

18 THE COURT: Let me tell you something, you better stop.  
19 We're going to take a recess and you're going out with your  
20 local counsel, because you're about to lose your pro hac  
21 vice. Do you understand?

22 MS. KOSTEL: I do, Your Honor.

23 THE COURT: You better go out with Mr. Holmes right now  
24 and you all better have a discussion about Rule No. 3.1.

25 Do you understand me, Mr. Holmes?

1 MR. HOLMES: Yes, ma'am.

2 THE COURT: We will take 15 minutes.

3 Do not discuss, please, your testimony with anyone.

4 (Recess held.)

5 THE COURT: Let me see that exhibit, please, Exhibit No.

6 22.

7 THE WITNESS: Judge (indicating).

8 (Brief pause.)

9 THE COURT: You may proceed, Ms. Golding.

10 MS. GOLDING: Thank you.

11 Q. Mr. Logan, with respect to the telephone conversation  
12 on, I believe it was, October the 15th --

13 A. Yes, ma'am.

14 Q. -- of 2012 with the presiding bishop and Mr. Beers, as  
15 counsel for the defendant national church, did you have a  
16 subsequent communication with either of them after that  
17 October with respect to Defendant's Exhibit 22?

18 A. I believe that the -- everything except the signature  
19 page was sent to me by Mr. Beers later that day and that at  
20 some later date, which I can't recall right now, after  
21 request, I received a copy of the signature page.

22 Q. Okay. With respect to your understanding of Exhibit 22,  
23 Defendant's Exhibit 22, once that document is served upon a  
24 bishop, what is the procedure that's followed?

25 A. Well, actually what this is is a certificate of

1 abandonment of the Episcopal Church. And this is signed by  
2 the Right Reverend Dorsey Henderson, who was chair of the  
3 Disciplinary Board for Bishops, I believe, it's dated  
4 September the 18th, and this was forwarded to the presiding  
5 bishop.

6 My understanding of the procedure is that a written  
7 restriction of ministry under their canons is then issued and  
8 it must be served upon the bishop in question. And I should  
9 tell you that -- I need to correct myself -- I don't know  
10 that I have ever received this certificate of -- I must have  
11 received the certificate of abandonment. When I told you  
12 about what I had received from Mr. Beers, that was actually  
13 the restriction. I apologize.

14 Q. Going forward with respect to what is the response under  
15 the -- what's your understanding as to procedure with respect  
16 to the certificate or restriction?

17 A. The procedure is that once the presiding bishop, as I  
18 understand it, receives such a certificate, she must issue a  
19 document called a restriction, I believe it's a restriction  
20 of ministry, which then must be served upon the bishop in  
21 question in order for the restriction to become effective.

22 Q. And then is there any response time with respect to the  
23 restriction of ministry?

24 A. I believe it's 60 days.

25 Q. Okay. And then once the subject bishop has responded,

1 then what is the next step?

2 A. Then the presiding bishop needs to make a decision about  
3 whether to suspend the bishop, take further action, or to  
4 drop the charges, I believe, my general recollection.

5 Q. Now, before October of 2012, October the 15th of 2012,  
6 did you have any knowledge of any possible complaints or  
7 investigations against Bishop Lawrence that were proceeding  
8 in the earlier part of the year?

9 A. There was a set of charges that were made which were  
10 dismissed. I'm not sure about the timing, but it is my  
11 understanding, which I learned subsequently, that a group of  
12 complainants had filed charges against Bishop Lawrence and he  
13 was notified of the filing of those charges after the fact.

14 Q. And to your knowledge, did Bishop Lawrence receive any  
15 restrictions from the presiding bishop?

16 A. You would have to ask him that. I can just tell you  
17 what I've seen. To my knowledge, he did not.

18 Q. That's what I want, to your knowledge.

19 THE COURT: I don't know that she's finished.

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

21 MR. TISDALE: I thought she was too. I'm sorry.

22 THE COURT: Do you not see her having a conversation  
23 with her co-counsel? You all have done it a hundred times.  
24 Doesn't necessarily mean she's finished.

25 MS. GOLDING: Your Honor, I'm concluded with my

1 examination.

2 THE COURT: All right. Any further -- yes, sir --  
3 direct?

4 MR. RUNYAN: Couple of questions.

5 THE COURT: All right.

6 DIRECT EXAMINATION BY MR. RUNYAN:

7 Q. Mr. Logan, to your recollection, when the restriction of  
8 ministry was sent to you, was it signed?

9 A. No.

10 Q. After a certificate of abandonment is issued by a  
11 disciplinary board for bishops, is there a period of time  
12 during which the respondent, the bishop in question, has an  
13 opportunity to respond?

14 A. After he receives notice of this in a restriction from  
15 the presiding bishop, he has a 60-day period of time in which  
16 to respond.

17 Q. And do the canons require that he be personally served  
18 with that?

19 A. That's my recollection.

20 Q. And if there is a response, is there then a trial in the  
21 House of Bishops?

22 A. That's my recollection, yes, sir.

23 Q. And if there isn't a response after a 60-day period,  
24 certain actions may be taken of a more permanent nature by  
25 the presiding bishop; is that correct?

1 A. That's correct.

2 MR. RUNYAN: That's all I have.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION BY MR. BEERS:

5 Q. Good morning, Mr. Logan.

6 A. Good afternoon.

7 Q. Good afternoon. In the telephone conversation of  
8 September 15 -- I'm sorry --

9 A. It was actually October 15, I believe, Mr. Beers.

10 Q. October 15 -- sorry -- was the subject of restriction on  
11 ministry discussed, mentioned?

12 A. Yes, it was.

13 Q. And do you recall Bishop Lawrence saying to Bishop  
14 Jefferts Schori, you're going to have to restrict me, aren't  
15 you?

16 A. I don't remember that exact language. There was a  
17 discussion. I believe she said she was going to have to  
18 restrict him.

19 Q. I see. But you don't remember who brought it up first?

20 A. I believe she did.

21 Q. I see. All right. And then you asked me for a copy of  
22 the certificate?

23 A. Actually, I believe she said that she would be sending  
24 it -- you would be sending it. And later that day I did get  
25 the unsigned copy or at least everything but the signature

1 page.

2 Q. And then you later got -- I sent you the signature page?

3 A. Right.

4 Q. And you were representing Bishop Lawrence at the time?

5 A. I'm the diocesan chancellor.

6 Q. And so you were representing Bishop Lawrence?

7 A. I'm not his agent for service or process, if that's what  
8 you're asking.

9 Q. No, I understand that.

10 A. I was acting as his lawyer, the diocesan chancellor,  
11 giving advice to the bishop, yes, sir.

12 Q. Now, as I understand it, the standing committee met  
13 shortly after that phone call.

14 A. I believe that they did.

15 Q. And as a result of that, Bishop Lawrence called Bishop  
16 Jefferts Schori back; is that right?

17 A. I'll take your word for it. I think he did, yes.

18 Q. Maybe this will refresh your recollection. Did she call  
19 him back -- call her back to say he under the circumstances  
20 was not going to be able to meet, attend the meeting that  
21 they had originally scheduled?

22 MR. RUNYAN: Your Honor, I object; lack of foundation.  
23 Hadn't shown this witness participated in that discussion.

24 MR. BEERS: I'm just asking if he knows.

25 THE WITNESS: I don't know what was actually said. The

1 meeting did not take place.

2 Q. I see. Okay. Now, what action did the standing  
3 committee take on either that day or the next day with regard  
4 to the relationship between the diocese and the Episcopal  
5 Church?

6 A. The standing committee had actually already passed a  
7 resolution, which I think was dated October 2nd, which  
8 basically said that upon the taking of any action against  
9 Bishop Lawrence effective as of that date, or words to that  
10 effect, that we were disassociated from the Episcopal Church.

11 Subsequent to that, actually I think it was later that  
12 day, a requirement of the resolution was that I, as  
13 chancellor, had to certify that in fact that condition had  
14 occurred. I issued such a certification. I believe that  
15 there was another meeting, I'm sure we had a later meeting,  
16 of the standing committee.

17 Q. I'm --

18 A. You asked if there was a later meeting with the standing  
19 committee.

20 Q. I think you've answered my question. There was a  
21 meeting in which you were asked to certify that the action  
22 had been taken or some action had been taken.

23 A. That was back on October 2nd.

24 Q. No. I'm sorry. I thought you were describing a meeting  
25 you were asked to --

1 THE COURT: The question was, Mr. Logan, did the  
2 standing committee take any action that day or the next day.  
3 You can get it read back if you need it.

4 THE WITNESS: I am sure that they didn't take action  
5 that day. I issued my certification that day. Either the  
6 next day or very shortly after that, Your Honor, the standing  
7 committee did have a meeting and in effect affirmed the  
8 action.

9 Q. You don't have the minutes or your certification here,  
10 do you?

11 A. No, sir.

12 Q. Okay. And then did there come a time when Bishop  
13 Lawrence left the Episcopal Church?

14 A. I'm not sure what you mean by the term. He had never,  
15 to my knowledge, issued a written abandonment of the  
16 Episcopal Church.

17 Q. No. I mean after October 15 did there come a time when  
18 he stated he was no longer a member of the House of Bishops  
19 or no longer an Episcopal bishop?

20 A. To my recollection he made such a statement, yes.

21 Q. Do you remember when that was?

22 A. No, sir.

23 MR. BEERS: Thank you, Your Honor. That's all I have.

24 THE COURT: Okay. Mr. Tisdale, do you have any  
25 questions?

1 MR. TISDALE: No questions, Your Honor.

2 THE COURT: Okay. Is there any redirect?

3 MS. GOLDING: None, Your Honor.

4 THE COURT: Very well. You may step down.

5 Call your next witness, please.

6 MR. RUNYAN: Plaintiffs call Nancy Armstrong.

7 NANCY ARMSTRONG,

8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. RUNYAN:

10 Q. Ms. Armstrong, would you state your name again for the  
11 record?

12 A. Nancy J. Armstrong.

13 Q. And where do you live?

14 A. I live in Summerville, South Carolina.

15 Q. Where do you work?

16 A. I am an employee of the Diocese of South Carolina.

17 Q. What's your position there?

18 A. My position is assistant treasurer.

19 Q. How long have you had that position?

20 A. 21 years.

21 Q. Prior to that what did you do?

22 A. Prior to that I took a little time off to be with my  
23 infant son. The job before that, I served for 11 years as  
24 the vice president for finance and administration for an  
25 interstate trucking company. Prior to that I was a United

1 States Marine.

2 Q. At my request did you look at the records, the financial  
3 records, of the Diocese of South Carolina in order to  
4 determine two things: How much money you could tell that the  
5 Diocese of South Carolina had given to the Episcopal Church  
6 and how much money you could trace from Episcopal Church  
7 entities that may or may not be related but came through  
8 their office?

9 A. Yes, I did.

10 Q. All right. First of all, with respect to monies paid to  
11 or given to the Episcopal Church, the national church, for  
12 what period of time did you look at the records?

13 A. I looked at them all the way back to the beginning of  
14 the diocese.

15 Q. And how much money did you determine had been  
16 voluntarily given to the national church during that period  
17 of time?

18 A. \$6,341,948.

19 Q. And has that amount of money been adjusted at all for  
20 inflation, those are just raw numbers?

21 A. Raw numbers.

22 Q. All right. And did you try to determine how much money  
23 had been received, first of all, from the Domestic and  
24 Foreign Missionary Society?

25 A. Yes.

1 Q. All right. First of all, did you determine whether any  
2 grants had been received?

3 A. Yes.

4 Q. How much was the total amount of grants that you were  
5 able to locate for the same time period that you looked for  
6 what had been paid to the Episcopal Church?

7 A. 729,268.

8 Q. Did that include loans?

9 A. Yes.

10 Q. Did that include monies that did not on their face come  
11 from the Domestic and Foreign Missionary Society?

12 A. Yes.

13 Q. Let's just talk about the Domestic and Foreign  
14 Missionary Society. How much in grants did you discover in  
15 that process?

16 A. 127,730.

17 Q. And how much of that money actually made it to a parish  
18 in this diocese?

19 A. 20,629.

20 Q. And how much of that money actually made it to the  
21 diocese itself?

22 A. 54,100.

23 Q. And how much of that \$127,000 went to the community or  
24 third-party individuals?

25 A. 53,000.

1 Q. Okay. Did you discover any other DFMS funds labeled as  
2 gifts?

3 A. Yes.

4 Q. How much was that?

5 A. 5,000.

6 Q. Did any of that money go to any parish in the diocese or  
7 to the diocese itself?

8 A. No, it did not.

9 Q. Did you discover any other money that was referred to as  
10 loans to churches?

11 A. Yes, I did.

12 Q. And how much was that?

13 A. 25,000.

14 Q. Did any of that money go to the Diocese of South  
15 Carolina?

16 A. No, it did not.

17 Q. Did the 25,000 go to any parish within the Diocese of  
18 South Carolina?

19 A. Yes.

20 Q. And how much went to the parishes?

21 A. Total money out of all of the grand total that went to  
22 all the parishes?

23 Q. No. The loan.

24 A. Just the loan. 25,000.

25 Q. And to one parish or more than one?

1 A. Just to one.

2 Q. What was the name of the parish?

3 A. That was St. Helena's in Beaufort.

4 Q. Okay. And that was a loan?

5 A. Yes, it was.

6 Q. Do you know what the rate was?

7 A. I do not.

8 Q. Okay.

9 A. But I did confirm with them that they did receive it.

10 Q. Okay. Was it paid back?

11 A. Yes.

12 Q. Did you find monies that were given through the office  
13 of the DFMS but actually came from the United Thank Offering?

14 A. Yes.

15 Q. What is the United Thank Offering?

16 A. The UTO is an organization with its own board who --  
17 that raises funds separately and they make grants that are  
18 applied -- the people applying for the grants go through the  
19 diocese to receive for community improvement and that sort of  
20 thing.

21 Q. You said raises money separately. What did you mean by  
22 that?

23 A. The United Thank Offering raises its own contributions.

24 Q. Okay. And how much money during that period of time was  
25 received as a United Thank Offering grant?

1 A. 230,938 in total.

2 Q. Did any of that money go to the Diocese of South  
3 Carolina?

4 A. No.

5 Q. Did any of that money go to a parish or two within the  
6 Diocese of South Carolina?

7 A. Yes.

8 Q. How much went to a parish within the Diocese of South  
9 Carolina?

10 A. 58,000.

11 Q. Did that go to one or more parishes?

12 A. Several.

13 Q. Are any of those parishes not a part of this lawsuit?

14 A. Yes.

15 Q. Which ones?

16 A. Calvary Church, St. John's Chapel.

17 Q. Of the \$230,938 in grants from the United Thank  
18 Offering, how much of that money went to third parties  
19 unrelated to the Diocese of South Carolina?

20 A. 172,938.

21 Q. Did you discover any monies that came through the  
22 diocese from the presiding bishop's fund for world relief?

23 A. Yes, I did.

24 Q. And how much did you discover?

25 A. 340,600.

1 Q. Did the Diocese of South Carolina get any of that money?

2 A. Yes -- no, not the diocese itself, no.

3 Q. Was any of that money sent to churches within the  
4 Diocese of South Carolina?

5 A. Yes.

6 Q. How much?

7 A. 65,000.

8 Q. Of the \$340,600 how much went to entities other than the  
9 diocese and the parishes within the diocese?

10 A. 275 -- 275,600.

11 Q. Does that money include some money for Hurricane Hugo?

12 A. Yes, it did.

13 Q. And how much was that?

14 A. 145,000.

15 Q. And how much of that money went to a parish or parishes  
16 within the Diocese of South Carolina?

17 A. All of it.

18 Q. To a parish --

19 A. None of it went to the diocese and I'm not sure about  
20 the split of the 145,000.

21 Q. Okay. Well, did any more than 65,000 within the 340,000  
22 go to the parishes?

23 A. No.

24 Q. Okay. Thank you.

25 Okay. Did I ask you to figure out the ratio of the

1 amount of money that was given to the Episcopal Church versus  
2 the amount of money assumed in toto to come from them?

3 A. Yes, you did.

4 Q. What is the ratio of that?

5 A. 117 to 1.

6 Q. How does that work out in terms of a percentage?

7 A. It's a pretty tiny percent.

8 Q. Does .8 percent sound right?

9 A. .8.

10 Q. Of the total receipts received that you were able to  
11 find in your records through the office of the DFMS, what  
12 percent went to entities that are neither parishes or the  
13 diocese itself?

14 A. 69 percent.

15 Q. 69.46?

16 A. .46 percent.

17 Q. Have you prepared a summary of the information that you  
18 did and to which you have just testified?

19 A. Yes, I did.

20 (Plaintiff's Exhibit DSC-75 marked for identification.)

21 Q. I show you what's been mark for identification as  
22 Plaintiff's Exhibit 75. Can you tell me what that is?

23 A. This is the spreadsheet that I prepared which summarized  
24 all of my research.

25 Q. Is that a summary of what you've just testified to?

1 A. Yes, it is.

2 MR. RUNYAN: We would offer it in evidence.

3 MR. TISDALE: What exhibit number, please?

4 MR. RUNYAN: 75.

5 THE COURT: Any objection?

6 MR. TISDALE: No objection, Your Honor.

7 THE COURT: Any objection?

8 MR. BEERS: No, Your Honor.

9 THE COURT: Very well. 75 is in evidence without  
10 objection.

11 (Plaintiff's Exhibit DSC-75 admitted into evidence.)

12 Q. Just a final couple of questions, Ms. Armstrong. In  
13 this process of review did you and persons working with you  
14 actually look through all of the journals of the Diocese of  
15 South Carolina?

16 A. We did.

17 Q. And this is what you came up with?

18 A. Yes.

19 MR. RUNYAN: That's all I have.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION BY MR. BEERS:

22 Q. Ms. Armstrong, my name is David Beers. I represent the  
23 Episcopal Church. Just to clarify, if you look at the -- do  
24 you have the Exhibit in front of you?

25 A. Yes, I do.

1 Q. Look at the -- just to the right of the middle of the  
2 page. The column says "Total Received Through the Diocese."  
3 Could you explain to me what you meant by that?

4 A. It means that the money was sent to us, deposited into  
5 our account, and we disbursed the funds accordingly.

6 Q. All right. And then two columns over you say "Sent to  
7 other community entities or individuals."

8 A. Mm-hmm.

9 Q. Can you give me any rough idea, certainly not all of  
10 them, but how about some examples?

11 A. Sure. Let me look at my notes if you don't mind.

12 Q. Sure.

13 A. Some of that money went for hurricane relief to various  
14 organizations in the area. Some went to the South Carolina  
15 Christian Action Council. Some went to Camp Baskerville.

16 Q. That's enough. I mean, you may continue, but that's all  
17 I need. But who made the -- well, sorry. Let me start  
18 again. I apologize.

19 Some went to Hugo relief?

20 A. Yes.

21 Q. Can you just give me an example of an entity that would  
22 receive the money from the Hugo relief?

23 A. Sure. Camp Baskerville did receive a good bit of that,  
24 Calvary Church got some of that.

25 Q. Okay. And who made the decision to send it to

1 Baskerville?

2 A. I'm not sure. Looking at the --

3 Q. I don't mean what individual. Was it made by somebody  
4 in the diocese?

5 A. I believe it was.

6 Q. So go back to that first column, the total received  
7 through the diocese. And you said that includes money that  
8 was sent to the diocese and then the diocese sent it on to  
9 somebody else?

10 A. Correct.

11 Q. And the decision of the somebody else was made by  
12 somebody in the diocese?

13 A. Some of these grants were applied for in the name of a  
14 particular church or another community entity, but in the  
15 case of Hurricane Hugo some of that money was sent as like a  
16 block grant, a flat amount of money, and then we accounted  
17 for that back. And it all went to -- all went to  
18 organizations that were impacted in the community.

19 MR. BEERS: Thank you very much. That's all I have,  
20 Your Honor.

21 THE COURT: All right.

22 Mr. Tisdale?

23 MR. TISDALE: Thank you, Your Honor. I don't have any  
24 questions.

25 THE COURT: All right.

1 REDIRECT EXAMINATION BY MR. RUNYAN:

2 Q. Ms. Armstrong, one final question. For the most part in  
3 these grants do they have a designated entity that they're  
4 supposed to go to?

5 A. Yes.

6 Q. And for the most part when we're talking about third  
7 party money, that designated entity was on the grant from the  
8 DFMS?

9 A. That is correct.

10 Q. And you administer it?

11 A. Yes.

12 MR. RUNYAN: Thank you. That's all I have.

13 THE COURT: All right. Recross? None.

14 Feel free to go. Thank you.

15 Call your next witness, please.

16 MR. RUNYAN: Your Honor, at this time we would call the  
17 Right Reverend Mark Lawrence.

18 THE COURT: Very well.

19 MR. RUNYAN: Could it be possible to take a lunch break  
20 right now or would you like to keep going?

21 THE COURT: You have two choices. And you're welcome to  
22 caucus and tell me what it is that you want to do. I have an  
23 obligation and I'm going to leave at 2 o'clock. You may  
24 choose to go for an hour and then you can work on your  
25 documents, as you all tell me. You all don't tell me, the

1 defendants tell me that they need more time to work with the  
2 parishes with regards to documents. You may have that time  
3 to work with the documents. But I have a commitment which  
4 I'm going to honor. I'm going to be leaving at 2 o'clock.  
5 If you wish, you may start your document review after lunch  
6 at 2 o'clock and then we will take this witness up in the  
7 morning. I don't care which.

8 MR. RUNYAN: That would be our preference, Your Honor.

9 THE COURT: Okay. Do you all want to caucus and let me  
10 know?

11 MR. TISDALE: I think that's fine, Your Honor. I mean,  
12 he was not on the list of witnesses for today so --

13 THE COURT: This is reply. I presume he is replying to  
14 something that was raised.

15 MR. TISDALE: I understand that. But I was just saying  
16 he wasn't on the list. So to have until tomorrow would be  
17 helpful.

18 MR. RUNYAN: That is correct.

19 MR. TISDALE: That's all. And I think Mr. Runyan  
20 agrees.

21 THE COURT: Very well. We'll start in the morning at  
22 9:30. Those of you who have any issues with regards to  
23 documents, you cannot go to lunch, but please do everything  
24 you can to resolve whatever issues remain with regards to  
25 documents so that we can hopefully end that process tomorrow.

1 And I will see you all in the morning at 9:30.

2 MR. TISDALE: Thank you, Your Honor.

3 --- END OF TRANSCRIPT OF RECORD ---

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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 24th 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 26, 2014

16

17 Ruth L. Mott

18 Official Court Reporter

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