

1 **ASSIGNED TO THE HONORABLE PARIS KALLAS**  
2 **HEARING DATE: OCTOBER 23, 2009 (W/OUT ORAL ARGUMENT)**

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5 **ASSIGNED TO THE HONORABLE PARIS KALLAS**

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7 **SUPERIOR COURT OF WASHINGTON**  
8 **FOR KING COUNTY**

9 J.B., M.B., and D.L.,

10 Plaintiffs,

11 vs.

12 CORPORATION OF THE CATHOLIC  
13 ARCHBISHOP OF SEATTLE, a sole  
14 corporation, et al.,

15 Defendants.

NO. 08-2-02341-9 SEA

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' VARIOUS  
MOTIONS FOR SUMMARY  
JUDGMENT**

16 **I. RELIEF REQUESTED**

17 Plaintiffs respectfully request that the Court deny the defendants' motions to dismiss  
18 and for summary judgment.

19 This consolidated opposition brief addresses the motions filed by the defendants in  
20 both the *J.B.* and *A.G.* cases, except for the motion of defendants Christian Brothers regarding  
21 the applicability of RCW 9.68A, which was responded to in a separate opposition brief. The  
22 present brief has been filed in both cases.

23 Given that this brief addresses no less than a half-dozen separate motions, and given  
24 the legal issues raised by the defendants as to the intentional and egregious nature of their  
25 misconduct, Plaintiffs respectfully request that the Court allow them to file an over length  
26 brief.

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## II. STATEMENT OF FACTS

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### A. Starting in the 1960s, the Christian Brothers Transferred Brother Courtney Between Four Schools Because He Kept Molesting Boys

In the 1960s, the Provincial Council of the Christian Brothers became aware that Edward Courtney was a sexual predator who preyed on young boys.<sup>1</sup>

In 1960, Courtney was moved from his first teaching assignment at Sacred Heart Elementary School in New York to teach at Brother Rice High School in Chicago, Illinois.<sup>2</sup>

Courtney remained at Brother Rice until he was transferred because, as described by the Council's records, problems arose with Courtney's "homosexuality."<sup>3</sup> "Homosexuality" was their code word for Courtney's history of molesting boys.

In February 1968, the principal of Brother Rice High School in Chicago wrote to Provincial Frick about Brother Courtney, his assistant principal, and suggested that "change might be good for him" because of some "personality problems" and because he has "difficulty relating with adults."<sup>4</sup>

A few months later, after Courtney received word of his transfer, the principal wrote that Courtney "thinks we tried to dump him," but that the transfer would be good because "I think he needs change. It may mature him."<sup>5</sup>

Despite his abuse of boys, a few months later, in August 1968, Courtney received his State of Illinois teaching certificate.<sup>6</sup>

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<sup>1</sup> Form to Be Completed Concerning an Application for a Dispensation From Perpetual Vows or for Exclausatration, Amala Decl., Ex. 1.

<sup>2</sup> Deposition of Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 2, at pp. 75-76.

<sup>3</sup> Deposition of Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 2, at 76; Application for Dispensation from Perpetual Vows or for Exclausatration, Amala Decl., Ex. 1, at 1; Defendant Christian Brothers unfairly used the term "homosexuality" to refer to Brother Courtney's molestations of pubescent high school students. *Id.*

<sup>4</sup> Letter to Frick, dated February 19, 1968, Amala Decl., Ex. 3, at 4.

<sup>5</sup> Letter to Louis, dated April 28, 1968, Amala Decl., Ex. 4, at 1.

<sup>6</sup> Illinois Teaching Certificate for Edward Courtney, Amala Decl., Ex. 5.

1 Because of his abuse of students at Brother Rice in Chicago, the Provincial transferred  
2 Courtney to Brother Rice High School in Birmingham, Michigan, for the 1968-1969 school  
3 year. They promoted him to “dean of students.”<sup>7</sup> As dean, he promptly began molesting  
4 students, as admitted by Courtney and as reported to the Provincial.<sup>8</sup>  
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6 On June 14, 1969, Provincial Frick wrote to the principal of Brother Rice and notified  
7 him that “[w]e thought it would be best for Chris Courtney to be changed out of Brother Rice”  
8 because “it is for the best of all concerned.”<sup>9</sup> Courtney testified that this “change” occurred  
9 because he had inappropriately touched a student.<sup>10</sup> Upon Courtney’s departure, the school  
10 principal, Brother D.P. Ryan wrote that Courtney “is still a bit confused. Let’s hope a change  
11 of atmosphere will help him mentally.”<sup>11</sup>

12 After being caught at Brother Rice in Michigan, the Provincial sent Courtney to sexual  
13 deviancy treatment.<sup>12</sup>

14 Facing these new allegations, and while still undergoing treatment, the Christian  
15 Brothers transferred Courtney again.<sup>13</sup> This time, in the Fall of 1969, they sent him back to  
16 Chicago to teach at St. Leo High School.<sup>14</sup> He lasted for all of three years, when complaints  
17 of sexual abuse reached critical mass and forced the Brothers to transfer him yet again.<sup>15</sup>  
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20 <sup>7</sup> Deposition of Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 2, at 77.

21 <sup>8</sup> Deposition of Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 2, at 153-55, 159, 164-65; Deposition  
of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 32-33, 44.

22 <sup>9</sup> Letter from Brother Frick to Brother Penny, dated June 14, 1969, Amala Decl., Ex. 7.

23 <sup>10</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 32-33.

24 <sup>11</sup> Letter from Brother D.P. Ryan, Amala Decl., Ex. 8.

25 <sup>12</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 32-33, 44.

26 <sup>13</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 42-43; Deposition of Edward  
Courtney, dated July 14, 2005, Amala Decl., Ex. 2, at 165.

<sup>14</sup> Deposition of Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 2, at 78-79, 165.

<sup>15</sup> Deposition of Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 2, at 101-03, 106, 159-60.

1 In September 1972, the Provincial Council transferred Brother Courtney to another  
2 school in the Chicago metropolitan area, St. Laurence High School.<sup>16</sup> Within a short time,  
3 Courtney began molesting students there.<sup>17</sup> Faced with more abuse, the Council voted to keep  
4 Courtney “out of school until he had seen a psychiatrist,” which he began doing.<sup>18</sup>  
5

6 By 1973, the Provincial Council knew that Courtney had sexually molested students at  
7 four different schools in the mid-West.<sup>19</sup> The Council knew as much as they had transferred  
8 Courtney from school-to-school-to-school-to-school because of his sexual abuse of students.<sup>20</sup>

9 Remarkably, while he was teaching at Brother Rice in Michigan and St. Laurence in  
10 Illinois, the Christian Brothers paid for Courtney to receive sexual deviancy treatment, but  
11 they never once reported Courtney to the authorities.<sup>21</sup>

12 Despite their recognition that Courtney posed a threat to students, the Christian  
13 Brothers’ newsletter from October 29, 1973, shows that Courtney was allowed to coach  
14 sophomore football: “The 32 sophomores, under Chris Courtney, are 1-2.”<sup>22</sup>

15 Courtney continued molesting students. In January 1974, Courtney was physically  
16 ejected from St. Laurence in the middle of the school year for molest students.<sup>23</sup> He was  
17 given “a day or two” to leave.<sup>24</sup> The principal, Brother Manning, delivered the message:  
18 “After breakfast, Brother Manning, who was the principal, called me in to talk, and he said  
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20 <sup>16</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 43-45.

21 <sup>17</sup> Deposition of Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 2, at 159-63.

22 <sup>18</sup> Minutes of the Council Meeting Held at Ryan Hall, dated January 28, 1973, Amala Decl., Ex. 9, at 2;  
Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 43-45.

23 <sup>19</sup> *Id.* at 1.

24 <sup>20</sup> Deposition of Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 2, at 159-60, 165.

25 <sup>21</sup> Deposition of Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 2, at 112-13, 148-54.

26 <sup>22</sup> Newsletter dated October 29, 1973, Amala Decl., Ex. 10, at 2. CB005461.

<sup>23</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 39-44.

<sup>24</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 47.

1 there had been complaints and basically told me I was going to have to leave at that time.”<sup>25</sup>  
2 Manning told Courtney to get a job and get married.<sup>26</sup> During his entire tenure at St.  
3 Laurence, Courtney was in sexual deviancy treatment that was paid for by the Brothers.<sup>27</sup>  
4

5 After being physically removed from St. Laurence, Brother Courtney “lived on the  
6 outside and worked at a travel agency” until late August, when the Provincial transferred him  
7 to O’Dea High School in Seattle.<sup>28</sup>

8 In March of 1974, six years after the Provincial Council first learned that Courtney  
9 posed a significant danger to students, the Council barred him from any contact with his prior  
10 three schools: “Chris is to have no contact with Rice, Leo or Laurence in any way, shape or  
11 form.” This decision was made shortly after the Provincial moved the headquarters of the  
12 Western Province to Vallejo, California.<sup>29</sup>

13 The Provincial Council appointed a liaison between the Chicago-area Brothers and  
14 Courtney: “His sole contact man is to be Bernie Rohan, who will keep us informed of  
15 developments. Bernie has agreed to talk with Chris’ psychiatrist when he returns from  
16 vacation around April 12th”<sup>30</sup>  
17

18 Less than a month later, the Council considered Courtney’s fate for the 1974-75  
19 school year. They considered making him a gardener at their Provincial Headquarters in  
20 Vallejo, California, or transferring him to be an administrator at O’Dea High School in  
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23 <sup>25</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 41.

24 <sup>26</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 41.

25 <sup>27</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 43-45.

26 <sup>28</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 41.

<sup>29</sup> Letter from McGowan to Connolly, dated July 18, 1973, Amala Decl., Ex. 11.

<sup>30</sup> Minutes of the Council Meeting Held at Ryan Hall, dated March 27-28, 1974, Amala Decl., Ex. 12, at 2.

1 Seattle.<sup>31</sup> Despite a well-documented history of molesting boys, and despite knowledge that  
2 he could not be treated, the Provincial Council in Vallejo, California, chose to transfer  
3 Courtney to O’Dea.  
4

5 **B. After Physically Ejecting Him From St. Laurence, and After Barring Him From  
6 His Three Prior Schools, the Provincial Council Transfer Him to O’Dea**

7 At the same time the Provincial Council considered transferring Courtney out West, to  
8 their headquarters in Vallejo or to O’Dea in Seattle, the Council was making administrative  
9 changes at O’Dea. In May 1974, Provincial McGowan appointed Brother McGraw the  
10 Principal of O’Dea High School and appointed Brother Reilly the Superior of its community,  
11 where he was partly responsible for supervising Brother Courtney.<sup>32</sup> Reilly also served as a  
12 teacher.<sup>33</sup>

13 During that transition, Brother McGraw wrote a letter to Provincial McGowan  
14 regarding the prospect of Courtney serving at O’Dea.<sup>34</sup> In that letter, McGraw contemplates  
15 whether he would be willing to assume responsibility for Brother Courtney: “I could use  
16 Chris to help with school finance work, work with the alumni, help with the gym planning  
17 perhaps, etc. But I don’t know if I could keep him busy enough and I wonder if with a lot of  
18 free time in a small place if he might get up tight just looking for things to do. ... And would  
19 he understand and agree to the conditions which would be set up and I guess governed by  
20 me?”<sup>35</sup>  
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23 <sup>31</sup> Minutes of the Council Meeting Held at Ryan Hall, dated April 28-30, 1974, Amala Decl., Ex. 13, at 2;  
Western American Province, Amala Decl., Ex. 14, at 3.

24 <sup>32</sup> O’Dea House Annals for March through June 1974, Amala Decl., Ex. 15; deposition of Kevin Reilly, Amala  
Decl., Ex. 16, at 117-18.

25 <sup>33</sup> Deposition of Kevin Reilly, Amala Decl., Ex. 16, at 16.

26 <sup>34</sup> Letter from McGraw to McGowan, dated May 12, 1974, Amala Decl., Ex. 17.

<sup>35</sup> *Id.*

1 Brother Reilly, the new Superior for the O’Dea community of Brothers, told  
2 Provincial McGowan that he believed Courtney should not be assigned to O’Dea.<sup>36</sup> Despite  
3 Reilly’s objection, and despite the fact that the Provincial had barred him from the three prior  
4 schools at which he had served because he had molested so many students, the Council  
5 transferred Courtney to O’Dea, where he became a school administrator and member of the  
6 Archdiocesan faculty.<sup>37</sup>

8 According to the Provincial’s own record, Courtney “was accepted at O’Dea after an  
9 incident at St. Laurence with a freshman boy led to his being withdrawn from the school for  
10 the remainder of the year.”<sup>38</sup>

11 As Brother Courtney described it, the Christian Brothers, “probably the Provincial,”  
12 informed him that O’Dea was his “final trial.”<sup>39</sup> He Courtney testified that his “friend,”  
13 Brother McGraw, and Brother Reilly Superior were both aware of his “past history,” but they  
14 agreed to this “final trial.”<sup>40</sup>

15 In their meeting minutes regarding Courtney’s transfer to O’Dea, the Council noted  
16 that Courtney would be performing “suitable duties” at the school: “Chris Courtney has been  
17 assigned to O’Dea to perform suitable duties in the house and school under the direction of  
18 John Reilly and Pat McGraw.”<sup>41</sup>

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21 <sup>36</sup> Deposition of Kevin Reilly, Amala Decl., Ex. 16, at 132.

22 <sup>37</sup> O’Dea House Annals for September through October 1974, Amala Decl., Ex. 18; Archdiocese of Seattle 1974-  
23 1975 Census of School Faculty, Amala Decl., Ex. 19; Application for Teacher’s Certificate, dated October 23,  
24 1974, Amala Decl., Ex. 20, at 2; Minutes of the Council Meeting 1, dated September 4, 1974, Amala Decl., Ex.  
25 21, at 2.

26 <sup>38</sup> Application for Dispensation from Perpetual Vows or for Exclaustration, Amala Decl., Ex. 1, at 2.

<sup>39</sup> Deposition of Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 6, at 167-69.

<sup>40</sup> Deposition of Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 6, at 165-69.

<sup>41</sup> Minutes of the Council Meeting Held at Ryan Hall, dated September 4, 1974, Amala Decl., Ex. 21, at 2.

1 Notably, one of the individuals who the Provincial charged with enforcing these  
2 “suitable duties,” Brother McGraw, testified that Provincial McGowan only told him of one  
3 prior “incident” of Courtney and a student and he did not mention that it was sexual.<sup>42</sup>  
4 McGraw agreed that he would have imposed “totally” different duties and conditions if he  
5 had been aware of Courtney’s long history of sexually molesting boys.<sup>43</sup> He was “surprised”  
6 to learn that the Provincial had known of Courtney’s abuses since the 1960s.<sup>44</sup>  
7

8 McGraw had, however, met with Courtney’s therapist in Chicago, at Provincial  
9 McGowan’s direction, and understood that Courtney should be barred from direct contact  
10 with students.<sup>45</sup>

11 Provincial McGowan also talked to Brother Reilly about the prospect of Courtney  
12 serving at O’Dea. McGowan informed Reilly that Courtney was a pedophile, which Reilly  
13 understood at the time to be an incurable disease, but he did not tell him of Courtney’s long  
14 history of molesting boys.<sup>46</sup> Other than confining him to office work, Reilly testified that  
15 Provincial McGowan did not inform him of any other conditions.<sup>47</sup>  
16

17 Despite his long history of sexually abusing boys, despite his on-going sexual  
18 deviancy treatment, and despite his therapist’s direction that McGraw should be barred from  
19 direct access to students, the “suitable duties” imposed by the Provincial, McGraw, and Reilly  
20 did not include keeping Courtney away from students. Less than two months after he started  
21 at O’Dea, a Christian Brothers’ newsletter notes that “[i]ntramural basketball conducted by  
22

23 <sup>42</sup> Deposition of John McGraw, dated October 8, 2009, Amala Decl., Ex. 24, at 15-16, 62-64.

24 <sup>43</sup> Deposition of John McGraw, dated October 8, 2009, Amala Decl., Ex. 24, at 67-69.

25 <sup>44</sup> Deposition of John McGraw, dated October 8, 2009, Amala Decl., Ex. 24, at 16.

26 <sup>45</sup> Deposition of John McGraw, dated October 8, 2009, Amala Decl., Ex. 24, at 13-15, 67-68.

<sup>46</sup> Deposition of Kevin Reilly, Amala Decl., Ex. 16, at 101-06, 133.

<sup>47</sup> Deposition of Kevin Reilly, Amala Decl., Ex. 16, at 107-08.



1 Bart Patitucci and Ed Courtney just completed their season. ... Over 75 students  
2 participated.”<sup>48</sup>

3  
4 **C. 1974-1975: The Provincial Learns that Courtney Fails His “Final Trial” and  
Immediately Begins Molesting Boys, Including Plaintiff J.B.**

5 Courtney failed his final trial. He began molesting boys upon his arrival at O’Dea:  
6 “He ... did have a problem with a couple of boys the first year.”<sup>49</sup> Brother McGraw learned  
7 within the first couple of months that Courtney had carried a young boy to the cook’s quarters  
8 of the Brothers’ private residence, supposedly to care for a low-grade fever.

9 Knowing that Courtney had failed his “final trial,” but desperate to keep him on the  
10 Archdiocesan payroll, the Provincial Council sent Courtney to counseling with at least his  
11 third therapist, Dr. Albert M. Hurley.<sup>50</sup>

12 Just a few weeks later, on November 24, 1974, the Provincial Council cryptically  
13 acknowledges that another “situation” with Courtney had already occurred of which “the  
14 grade school students in Seattle are probably already aware.” They claimed “the next incident  
15 would be the last:”

17 The Council was opposed 5-0 to letting Chris Courtney do the recruiting at O’Dea  
18 since the grade school students in Seattle are probably already aware of the  
19 situation. The Consultors did not wish to make a final decision concerning Chris’  
20 case until they had talked with John Reilly. After the talk with John it was agreed  
21 that the next incident would be the last.<sup>51</sup>

22 Despite this apparent concern, less than two months later, Brother Courtney’s former  
23 principal at St. Laurence, Brother Manning, wrote a glowing recommendation for Courtney to

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24 <sup>48</sup> Western American Province Newsletter, dated November 7, 1974, Amala Decl., Ex. 25, at 3.

25 <sup>49</sup> Application for Dispensation from Perpetual Vows or for Exclaustration, Amala Decl., Ex. 1, at 2.

26 <sup>50</sup> Invoice of Albert M. Hurley for visits from October 29, 1974, through July 22, 1975, Amala Decl., Ex. 22;  
Invoice of Albert M. Hurley for visits from August 22, 1975, through March 2, 1976, Amala Decl., Ex. 23.

<sup>51</sup> Minutes of the Council Meeting Held at Sierra Madre Retreat House, dated November 24, 1974, Amala Decl.,  
Ex. 26.

1 the Superintendent of Public Instruction for the State of Washington (“SPI”).<sup>52</sup> As reflected  
2 on the recommendation form, the recommendation was required “to determine the eligibility  
3 of Brother Edward C. Courtney [address omitted] for a Washington teaching certificate”  
4 based on “an evaluation of service under your supervision.”<sup>53</sup>

5  
6 Manning unequivocally recommended Courtney, noting that he “served very  
7 efficiently as full time teacher of English and history” and that “I recommend him highly.”<sup>54</sup>  
8 Brother Manning made this representation to SPI even though he was the Christian Brother  
9 who had physically ejected Courtney from St. Laurence, exactly one year earlier, for  
10 molesting students.<sup>55</sup>

11 Two weeks later, on January 29, 1975, SPI issued Courtney his standard Washington  
12 state teaching certificate for secondary education.<sup>56</sup> Brother McGraw was sent a copy of  
13 SPI’s letter.<sup>57</sup>

14 Teaching certificate in hand, the Christian Brothers asked Dr. Hurley to write  
15 Courtney a letter of recommendation so that he could “teach classes at O’Dea High School  
16 this summer and during the regular school year.”<sup>58</sup> Despite knowing Courtney’s long history  
17 of sexually molesting students while in treatment, McGowan wrote to Hurley from his  
18 headquarters in Vallejo, California, and accepted Hurley’s recommendation.<sup>59</sup>

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21 <sup>52</sup> Evaluation of Experience, Amala Decl., Ex. 27.

22 <sup>53</sup> *Id.*

23 <sup>54</sup> *Id.*

24 <sup>55</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 39, 68-70.

25 <sup>56</sup> Letter from Brouillete to Courtney, dated January 29, 1975, Amala Decl., Ex. 28; deposition of Edward  
26 Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 70-71.

<sup>57</sup> Letter from Brouillete to Courtney, dated January 29, 1975, Amala Decl., Ex. 28.

<sup>58</sup> Letter from A.M. Hurley to McGowan, dated May 13, 1975, Amala Decl., Ex. 29.

<sup>59</sup> Letter from McGowan to Hurley, dated May 15, 1975, Amala Decl., Ex. 30.

1 At the same time, the Provincial's own Superior at O'Dea, Brother Reilly, did not  
2 believe that Courtney should be teaching at O'Dea because he was a pedophile.<sup>60</sup> However,  
3 he did not do anything to warn parents or students about Courtney because "[i]t wasn't my job  
4 to warn the people about Ed Courtney. I was a teacher and a coach at O'Dea. The people that  
5 were in charge were the principal and the deans, etc."<sup>61</sup>  
6

7 That principal, on the other hand, similarly washed his hands of any responsibility for  
8 McGowan's decision to place a pedophile at O'Dea: "So Brother McGowan was well within  
9 his position to have those conversations with the Superior of the house, who then was Brother  
10 Reilly. I was a member of the community in that residence. I was principal of the school  
11 across the street. ... I do not know what transpired between the Superior of the house and the  
12 Provincial."<sup>62</sup>

13 Despite their asserted lack of knowledge, or at least responsibility, Courtney's abuses  
14 were already widespread. His Vice Principal at O'Dea, Frank LaFazia, recently testified that  
15 by that point he had secretly met with McGraw and Reilly in his car because a student's older  
16 brother complained that Courtney had inappropriately touched him.<sup>63</sup> They told LaFazia that  
17 they would handle it: "They said they would take care of it so that was the end for me."<sup>64</sup>  
18

19 During that same time frame, Courtney molested and assaulted Plaintiff J.B. He  
20 complained to McGraw that Courtney was "humping me," but McGraw replied that Courtney  
21 was "just really friendly." After the report to McGraw, Courtney's sexual assaults became  
22 more violent. They escalated until J.B. refused to go to Saturday detention because of fear  
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24 <sup>60</sup> Deposition of Kevin Reilly, Amala Decl., Ex. 16, at 165.

25 <sup>61</sup> Deposition of Kevin Reilly, Amala Decl., Ex. 16, at 161-62.

26 <sup>62</sup> Deposition of John McGraw, Amala Decl., Ex. 24, at 43-44.

<sup>63</sup> Deposition of Frank LaFazia, Amala Decl., Ex. 153, at 37-44, 70-71.

<sup>64</sup> Deposition of Frank LaFazia, Amala Decl., Ex. 153, at 42-43.

1 that he would be molested by Courtney. In response, McGraw expelled J.B. from O’Dea for  
2 his “own good,” but he promised to take care of the situation.<sup>65</sup>

3 J.B.’s former Vice Principal, Frank LaFazia, corroborates J.B.’s story: “He was at  
4 O’Dea and I heard he was one of the kids that Ed Courtney bothered, as we say. I don’t  
5 remember too much about him. He seemed to have a hard time, and if what was happening  
6 really was happening, I can understand it ...<sup>66</sup>

7  
8 **D. 1975-1976: Courtney is Promoted to Teacher and More Boys are Molested**

9 Despite the fact that Courtney molested several boys during the first year that he was  
10 assigned to O’Dea, the Provincial Council in Vallejo, California, returned him to O’Dea for  
11 the 1975-76 school year. The Council assigned Courtney to teach English as part of the  
12 Archdiocesan faculty at O’Dea.<sup>67</sup>

13 Shortly thereafter, Provincial McGowan visited O’Dea for a few days and attended  
14 two social functions where “he participated ... as if he were a member of the O’Dea  
15 faculty.”<sup>68</sup>

16 In January 1976, a boy’s father reported to McGraw that his son had been molested by  
17 his teacher, Brother Courtney. Courtney told the boy to stay after class because Courtney  
18 claimed he was chewing gum. After leading the boy to another classroom and locking the  
19 door, Courtney pushed the boy to the floor, mounted him, and rubbed himself on the boy for  
20 approximately twenty minutes until he climaxed. The boy told his neighbors, who told his  
21 parents. The boy’s father then went to O’Dea and told Brother McGraw.<sup>69</sup>

22  
23 \_\_\_\_\_  
24 <sup>65</sup> J.B. discovery responses, Amala Decl., Ex. 154, at 9-11.

25 <sup>66</sup> Deposition of Frank LaFazia, Amala Decl., Ex. 153, at 91.

26 <sup>67</sup> Archdiocese of Seattle 1975-1976 Census of School Faculty, Amala Decl., Ex. 31.

<sup>68</sup> O’Dea House Annals for September-November 1976, Amala Decl., Ex. 32.

<sup>69</sup> Deposition of D.C., dated September 8, 2006, Amala Decl. Ex. 155, at 31-37, 39-44.

1 A month later, the Christian Brothers conducted their annual inspection of O’Dea.<sup>70</sup>  
2 Not surprisingly, the visiting Provincial noted the “complaints” coming to Brother McGraw  
3 regarding Courtney’s abuses:  
4

5 Br. Courtney was and is just now a constant source of anxiety for any Principal.  
6 Because he is school Bursar he holds a key position and his loss could be a severe  
7 blow to the Principal. At the same time [Brother McGraw] cannot ignore  
8 complaints coming to his office. At the moment he has asked me to let him deal  
9 with this matter until the extent of the trouble is clarified and he is in a position to  
10 report to the Provincial. I agreed to this procedure.<sup>71</sup>

11 When describing Brother Courtney, the visiting Provincial noted that “Brother  
12 obviously has his own problems, which, just now, seem to be emerging once again. The  
13 Principal is dealing with this matter and will report to the Provincial. It seems hard to me that  
14 all the hard work of this community should be jeopardized by the conduct of this man.”<sup>72</sup>

15 A month later, in early March 1976, the Superior General of the Christian Brothers  
16 visited O’Dea High School from Rome, Italy.<sup>73</sup> He was accompanied by the Provincial,  
17 Brother McGowan.<sup>74</sup> The two leaders met with Archbishop Hunthausen.<sup>75</sup>

18 **E. Spring 1976: the Provincial Council Sends Courtney to Sexual Deviancy  
19 Treatment in Canada**

20 A few weeks later, reports of Courtney’s abuses caused the Provincial Council to  
21 order Courtney to make a “public apology” to the community at O’Dea:  
22

23 Chris Courtney – it was the decision of the Council that Chris should make a  
24 public apology to the community at O’Dea for his actions which jeopardized the  
25 reputation of the Brothers and the good name of the Congregation in Seattle. If  
26

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27 <sup>70</sup> O’Dea House Annals for February-May 1976, Amala Decl., Ex. 33.

28 <sup>71</sup> Visitation Report of O’Dea High School, dated February 18, 1976, Amala Decl., Ex. 34, at 4.

29 <sup>72</sup> Visitation Report of O’Dea High School, dated February 18, 1976, Amala Decl., Ex. 34, at 5.

30 <sup>73</sup> O’Dea House Annals for February-May 1976, Amala Decl., Ex. 33.

31 <sup>74</sup> *Id.*

32 <sup>75</sup> Letter from McGowan to Hunthausen, dated March 27, 1976, Amala Decl., Ex. 35.

1 the community accepts his apology, he may remain at his post in the school until  
2 June. If they do not accept the apology, then John Reilly should get in touch with  
3 me. He would be advised then to stay with his mother until June when we would  
4 consider the case at another Council Meeting.<sup>76</sup>

5 Courtney apparently rejected that idea. On April 25, 1976, the Provincial Council  
6 reviewed Courtney's "situation" and sent him to the Southdown Institute in Canada for three  
7 months of sexual deviancy treatment.<sup>77</sup> Courtney testified that the Council made that decision  
8 because of his on-going problem of inappropriately touching students.<sup>78</sup> Brother McGraw,  
9 however, testified that McGowan did not tell him that Courtney was going to Southdown for  
10 sexual deviancy treatment.<sup>79</sup>

11 While the Provincial sent Courtney to Southdown, the O'Dea High School newspaper  
12 provided cover for the Christian Brothers by telling students and faculty that Courtney "has  
13 gone to Canada for his Tertianship."<sup>80</sup> Their own community of Brothers was either ignorant  
14 of Courtney's problem or assisted in the cover-up, noting in their House Annals that "Brother  
15 Chris Courtney left here yesterday for an indefinite period to take a much needed rest at a  
16 place called Southdown Institute, Toronto, Canada. We hope to see him back 'home' again in  
17 good condition to face the next scholastic year, 1976-1977."<sup>81</sup>

18 Courtney's point-of-contact with the Christian Brothers while at Southdown was the  
19 Provincial himself, Brother McGowan. When Courtney wrote about spending money, the  
20 Council directed the Provincial to contact Southdown regarding its policy on spending  
21

22  
23 <sup>76</sup> Minutes of the Council Meeting, dated March 27, 1976, Amala Decl., Ex. 36.

24 <sup>77</sup> Minutes of the Council Meeting, dated April 25, 1976, Amala Decl., Ex. 37, at 2.

25 <sup>78</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 84-85.

26 <sup>79</sup> Deposition of John McGraw, dated October 8, 2009, Amala Decl., Ex. 24, at 43.

<sup>80</sup> Crosier, dated May 28, 1978, Amala Decl., Ex. 38.

<sup>81</sup> O'Dea House Annals, February-May 1976, Amala Decl., Ex. 33.

1 money.<sup>82</sup> Courtney's bills for sexual deviancy treatment were sent to the Provincial  
2 Headquarters in Vallejo, California.<sup>83</sup>

3  
4 It is worth noting that although the Provincial Council had removed Courtney during  
5 the middle of the school year and sent him all the way to Canada for treatment, McGowan in  
6 his final report on Courtney's abuses claims that "nothing serious enough to warrant alarm on  
7 the part of the Principal transpired" during his second year.<sup>84</sup>

8 **F. 1976-77: Brother Courtney Continues Teaching and Continues Molesting Boys;  
9 He Is Allowed to Teach Summer School with Brother Reilly**

10 Despite Courtney's long history of sexually abusing boys, and his history of molesting  
11 boys at O'Dea during his first two years at that school, the Provincial Council returned  
12 Courtney to O'Dea for the 1976-77 school year. When that school year began, the Council  
13 assigned him to teach English on the Archdiocesan faculty.<sup>85</sup>

14 Just a few months later, the Provincial sent Courtney back to Southdown for another  
15 six days of sexual deviancy treatment.<sup>86</sup> Again, the bill was sent to the Provincial.<sup>87</sup>

16 Shortly thereafter, during February 1977, Provincial McGowan conducted a six-day  
17 visit to O'Dea in order to "see that operations were functioning smoothly at school and at the  
18 Brothers' House."<sup>88</sup>

19 Before the end of that school year, another boy reported to Brother McGraw that he  
20 had been molested by Courtney in the new locker room, but nothing was done.<sup>89</sup>

21  
22 <sup>82</sup> Minutes of the Council, dated May 30, 1976, Amala Decl., Ex. 39, at 2.

23 <sup>83</sup> Bills of George Freemesser, dated June 25, 1976, and July 30, 1976, Amala Decl., Exs. 40 and 41.

24 <sup>84</sup> Application for Dispensation from Perpetual Vows or for Exclaustation, Amala Decl., Ex. 1, at 2.

25 <sup>85</sup> Archdiocese of Seattle 1976-1977 Census of School Faculty, Amala Decl., Ex. 42.

26 <sup>86</sup> Southdown record, dated January 9, 1977, to January 15, 1977, Amala Decl., Ex. 43.

<sup>87</sup> Bill of George Freemesser, dated January 31, 1977, Amala Decl., Ex. 44.

<sup>88</sup> Crosier, dated March 11, 1977, Amala Decl., Ex. 45, at 1.

<sup>89</sup> Deposition of A.C., dated December 28, 2006, Amala Decl., Ex. 156, at 86-91, 119.



1 This was near the same time that Plaintiff M.B. was sexually assaulted by Courtney.  
2 As with a number of other boys, Courtney invited M.B. to play handball at Seattle University.  
3 After they were finished, Courtney took M.B. to his mother's house under the guise of  
4 delivering groceries. Courtney then attacked M.B., wrestled him to the ground, and ground  
5 his penis onto M.B. until he ejaculated.<sup>90</sup>  
6

7 It was also during this time period that Courtney began grooming and sexually abusing  
8 Plaintiff D.L. The first abuse took place when D.L. visited O'Dea during his eighth grade  
9 year and continued through the 1977-78 school year.<sup>91</sup>

10 Despite his long history of molesting boys before and at O'Dea, in June 1977 the  
11 Christian Brothers allowed Brother Courtney to teach summer school at O'Dea: "Brother  
12 Reilly and Courtney will be the only two Brothers teaching this summer at O'Dea."<sup>92</sup>

13 **G. 1977-1978: Brother Courtney Continues Teaching and Continues Molesting**  
14 **Boys**

15 Despite Courtney's long history of sexually abusing boys, and his history of molesting  
16 boys at O'Dea during his first three years at that school, the Provincial Council returned  
17 Courtney to O'Dea for the 1977-78 school year. When that school year began, the Council  
18 assigned Courtney to teach English on the Archdiocesan faculty.<sup>93</sup>

19 Shortly thereafter, in September 1977, Brother Frank McGovern replaced Brother  
20 Reilly as the new Superior of the O'Dea community and as a member of the teaching staff.<sup>94</sup>  
21 Two months later, Provincial McGowan visited O'Dea. During that visit, O'Dea hosted  
22

23 \_\_\_\_\_  
24 <sup>90</sup> M.B. discovery responses, Amala Decl., Ex. 157, at 10-11.

25 <sup>91</sup> D.L. discovery responses, Amala Decl., Ex. 158, at 10-11.

26 <sup>92</sup> O'Dea House Annals, April-June 1977, Amala Decl., Ex. 46.

<sup>93</sup> Archdiocese of Seattle 1977-1978 Census of School Faculty, Amala Decl., Ex. 47, at 1.

<sup>94</sup> O'Dea House Annals, September 1977, Amala Decl., Ex. 48.



1 Archbishop Hunthausen for dinner, where the Archbishop provided \$30,000 for the school's  
2 new library and media center.<sup>95</sup>

3 The Christian Brothers were well aware of Courtney's teaching certificates. Their  
4 "fact sheet" for Courtney dated December 31, 1977, notes that he maintained valid teaching  
5 certificates in both Illinois and Chicago.<sup>96</sup>

6  
7 Just a short while after acknowledging his teaching certificates, in the spring of 1978,  
8 the Provincial reported that "there was another confrontation of parents with [the] Principal  
9 telling of three incidents during the year when their son had been abused."<sup>97</sup> During this time,  
10 as discussed above, Courtney continued molesting Plaintiff D.L.

11 Presumably facing the prospect of being reported to law enforcement by that mother,  
12 the Provincial Council decided to put an end to their "final trial" with Courtney at O'Dea:

13 Chris Courtney had his meeting in Southdown with Mark Eveson, Mark's wife  
14 and Father Freemesser. It was recommended that he be assigned to a school in  
15 the Toronto area and receive periodic counseling from Mark Eveson. The  
16 Council recommended the following:

- 17 a) Have Chris changed out of O'Dea.
- 18 b) Since it would not be fair to the Canadian Province to have them  
19 take on one of our problems, Chris should be assigned to Cody  
20 Hall to supervise house maintenance, etc.
- 21 c) Arrangements should be made with Doctor Korzenowski for  
22 periodic therapy.<sup>98</sup>

23  
24 <sup>95</sup> O'Dea House Annals, October-December 1977, Amala Decl., Ex. 49.

<sup>96</sup> Individual Brother's Fact Sheet, Western American Province, dated December 31, 1977, Amala Decl., Ex. 50.

<sup>97</sup> Application for Dispensation from Perpetual Vows or for Exclaustration, Amala Decl., Ex. 1, at 2.

<sup>98</sup> Minutes of the Council, dated June 12, 1978, Amala Decl., Ex. 51; *see also* deposition of John McGraw, dated October 8, 2009, Amala Decl., Ex. 24, at 22 (testifying that Cody Hall "was a training house for young Brothers").

1 **H. The Defendants Take No Action Regarding Courtney or His Credentials**

2 Despite recognizing that Courtney was “one of our problems” and that he needed close  
3 supervision far away from any school children, the Christian Brothers took no action to ensure  
4 his teaching days were over.

5 The Archdiocese’s principal, Brother McGraw, made no such effort, either. The only  
6 “authority” to which he reported Courtney’s abuses was Provincial McGowan. McGraw  
7 failed to report Courtney to the state authorities, even though he was aware that teachers in  
8 Washington at the time had to have a valid teaching certificate, he was aware of the  
9 mandatory reporting laws, and he understood that those laws were intended to ensure that that  
10 the state became aware of problems between teachers and students. When asked why he did  
11 not report Courtney to SPI, McGraw responded, “I don’t remember.”<sup>99</sup>  
12

13 Similarly, Brother Reilly admitted that he was aware of Washington’s mandatory  
14 reporting laws while he was a teacher at O’Dea, but that he would have reported Courtney’s  
15 abuses only to Provincial McGowan.<sup>100</sup>

16 McGraw did provide one explanation for his failure to protect the boys at O’Dea from  
17 Brother Courtney. When asked why he never ejected Courtney from the school, Brother  
18 McGraw responded that “I would have reported incidents to the Provincial, and it would have  
19 been up to the Provincial.” He agreed that his hands were tied:  
20

21 Q: Could you have at any point during your time as principal at O’Dea just  
kicked him out and said I don’t want him here anymore?

22 A: My input was always to the Provincial.  
23 ...  
24

25 <sup>99</sup> Deposition of Brother McGraw, dated October 8, 2009, Amala Decl., Ex. 24, at 75-77, 95-96, 119-20.

26 <sup>100</sup> Deposition of Kevin Reilly, Amala Decl., Ex. 16, at 53, 138-39.

1 Q: Your hands were tied, then. You could not have removed Courtney  
2 yourself from O’Dea High School based on the problems that you knew he  
3 was having.

4 ...

5 A: My job, as I saw it, was subject to reporting to my immediate supervisor.  
6 My immediate superior in the Congregation [of] Christian Brothers was  
7 Brother McGowan. It is to him that I provided all information that I had  
8 had.

9 Q: And then it was his decision whether or not to remove Courtney from the  
10 school; is that correct?

11 A: It would have been his decision, yes.<sup>101</sup>

12 Brother Reilly concurred: “The government doesn’t ask you. They tell you.”<sup>102</sup>

13 At the end of 1978, the Provincial summarized the Council’s knowledge of Courtney’s  
14 abuses at O’Dea in a two-page letter regarding Courtney’s request for exclaustation: “Chris  
15 has had a problem with homosexuality for a number of years. It seems to have surfaced more  
16 than ever within the past five years or so.”<sup>103</sup>

17 The letter then goes on to note the Council’s knowledge that Courtney abused boys at  
18 O’Dea every year from 1974 through 1978. The Provincial concludes that Courtney should  
19 never step foot in a school again:

20 I do not believe he should be teaching at all and that he would be much better off  
21 physically, mentally, emotionally and spiritually anywhere except in a teaching  
22 Congregation.<sup>104</sup>

23 Despite Provincial McGowan’s belief that Courtney should never again step foot in a  
24 classroom, despite Reilly’s belief that Courtney was an incurable pedophile, and despite the  
25 numerous complaints that McGraw received over the four years that Courtney taught at  
26

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24 <sup>101</sup> Deposition of Brother McGraw, dated October 8, 2009, Amala Decl., Ex. 24, at 17-18, 38-39.

25 <sup>102</sup> Deposition of Kevin Reilly, Amala Decl., Ex. 16, at 133.

26 <sup>103</sup> Amala Decl., Ex. 1.

<sup>104</sup> *Id.* at 2.

1 O'Dea, neither the Christian Brothers nor the Archdiocese have produced any evidence to  
2 show that they reported Courtney to the authorities or tried to prevent him from teaching.<sup>105</sup>

3 To his credit, Brother Courtney admits he sexually abused multiple students at O'Dea,  
4 and he recalls being confronted with these allegations by Provincial McGowan, McGraw, and  
5 Reilly.<sup>106</sup> During at least one of those confrontations, Courtney testified that he admitted to  
6 inappropriately touching a student, and he testified that he was terminated from O'Dea for  
7 "inappropriate touching."<sup>107</sup> This ended Courtney's teaching days at O'Dea; but sadly for  
8 others, not the end of his teaching career or his career as an unreported sexual predator.  
9

10 **I. Rather than Report Courtney to the Authorities, the Defendants Assist Him in**  
11 **Obtaining Teaching Certificates and Administrator Credentials**

12 The Christian Brothers were initially going to transfer Brother Courtney to yet another  
13 school, but instead they granted his request to take a "leave of absence."<sup>108</sup>

14 Despite that slight change in status, however, the Christian Brothers paid for Courtney  
15 to obtain his Masters in Teaching Administration from Seattle University so that he could  
16 earn principal accreditation from SPI.<sup>109</sup> At the same time, in the late spring and early  
17 summer of 1978, no less than three Christian Brothers who knew that Courtney was a serial  
18 sexual predator<sup>110</sup> wrote letters of recommendation on his behalf in an effort to help him  
19 obtain future employment as a school teacher and administrator:  
20  
21

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22 <sup>105</sup> Amala Decl., at ¶ 54.

23 <sup>106</sup> Deposition of Edward G. Courtney, dated August 30, 2007, Amala Decl., Ex. 52, at 14-21; Deposition of  
24 Edward Courtney, dated July 14, 2005, Amala Decl., Ex. 2, at 144-45, 171-72, 176-77.

25 <sup>107</sup> Deposition of Edward G. Courtney, dated August 30, 2007, Amala Decl., Ex. 52, at 14-21.

26 <sup>108</sup> Deposition of Edward G. Courtney, dated August 30, 2007, Amala Decl., Ex. 52, at 14, 20-21.

<sup>109</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 135-36.

<sup>110</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 39-40 (Rohan) and 140-42 (Bates).

1 **Brother James C. Bates, Director of Education, Christian Brothers, Canada:**

2 “Br. Courtney is a most industrious and generous individual ... As a teacher Br.  
3 Courtney maintains a fine atmosphere in his classroom. Students respond well to  
4 his personality and motivation. ... I am pleased to recommend Edward C.  
Courtney as a competent and reliable teacher or administrator.”<sup>111</sup>

5 **Brother Gerald Rohan, former Master of Novices and Provincial Council**  
6 **member:**

7 “He set high standards and expected the best from each student. He maintained  
8 good order in his classes without being harsh and rigid. ... He was able to handle  
9 the complaints of parents, teachers and students in a calm and diplomatic manner.  
... I am happy to recommend Brother Courtney for a position in the schools of the  
Archdiocese of Seattle.”<sup>112</sup>

10 **Brother John McGraw, Principal of O’Dea High School:**

11 “I believe Mr. Courtney would be an excellent addition to any school’s  
12 administration as his skills and talents have been a major cause of the recent  
13 growth and academic strength of O’Dea High School.”<sup>113</sup>

14 At the same time, Brothers Bates, McGraw, and Donnelly, who served as principal of  
15 Brother Rice in Michigan and St. Laurence while Courtney was abusing students at those  
16 schools, wrote similar letters of recommendation for Courtney’s file with the Office of  
17 Teacher Placement for Seattle University to help him maintain his teaching credentials.<sup>114</sup>

18 On September 5, 1978, after securing the above recommendations and well on his way  
19 to a Masters in Teaching Administration from Seattle University, Courtney wrote to  
20 Provincial McGowan and, in accord “with our telephone conversation this morning,”  
21  
22

23 \_\_\_\_\_  
24 <sup>111</sup> Letter from Bates to Sister Agnes, dated June 24, 1978, Amala Decl., Ex. 53.

25 <sup>112</sup> Letter from Rohan, dated June 26, 1978, Amala Decl., Ex. 54.

26 <sup>113</sup> Letter from McGraw, dated June 28, 1978, Amala Decl., Ex. 55.

<sup>114</sup> McGraw recommendation, Amala Decl., Ex. 56; Bates recommendation, Amala Decl., Ex. 57; Donnelly  
recommendation, Amala Decl., Ex. 58.

1 requested an official leave of absence from the Christian Brothers so that he could “consider  
2 more fully my future as a religious Brother and my ability to live the vowed life.”<sup>115</sup>

3 That same day, Courtney received a letter from SPI regarding Courtney’s request to  
4 broaden his Washington teaching certificate. Among other items, the letter noted that  
5 Courtney needed “student teaching at the elementary level.”<sup>116</sup>

6  
7 Despite his long history of abusing students at O’Dea, the Archdiocese assisted  
8 Courtney in that endeavor by creating an “Administrative Assistant and Administrative  
9 Intern” position for Courtney at Our Lady of the Lake elementary school.<sup>117</sup> Courtney created  
10 the position with Sister Mary Patrick in the Archdiocese’s Office of Education.<sup>118</sup>

11 Five days later, on September 10, 1978, Provincial McGowan and his Council voted  
12 5-0 to grant Courtney one year of exclaustation, which meant Courtney was still a Brother  
13 but he lived apart from the community.<sup>119</sup>

14 Less than three months later, Courtney anxiously wrote to the Archdiocese’s Office of  
15 Education about expanding his Washington State teaching certificate. In order to do so, he  
16 asked that Office to have its Superintendent, Father Clark, provide a statement of satisfactory  
17 experience for SPI that would verify his ninety days of service in his Archdiocese-created  
18 position at Our Lady of the Lake.<sup>120</sup>

21  
22  
23 <sup>115</sup> Letter from Courtney to Felix, dated September 5, 1978, Amala Decl., Ex. 59.

24 <sup>116</sup> Letter from Terrey, dated September 5, 1978, Amala Decl., Ex. 60.

25 <sup>117</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 134-37.

26 <sup>118</sup> Deposition of Edward Courtney, dated April 13, 2009, Amala Decl., Ex. 6, at 136, 143-44.

<sup>119</sup> Minutes of the Council, dated September 10, 1978, Amala Decl., Ex. 61; Deposition of Charles Gattone, dated May 19, 2008, Amala Decl., Ex. 62, at 41-43.

<sup>120</sup> Letter from Courtney to Sister Agnes, dated November 27, 1978, Amala Decl., Ex. 63.

1 On November 29, 1978, Father Clark obliged: “As far as we can determine his work  
2 has been entirely satisfactory and we endorse and recommend his application for the K-12  
3 teaching certificate and Administrators Credential.”<sup>121</sup>

4 Five weeks later, Courtney applied to SPI for a Standard K-12 Teaching Certificate.  
5 As an “experienced teacher,” he was required to provide a list of his past employment (all  
6 with the Christian Brothers and the Archdiocese) and the verification of service that he had  
7 recently obtained from Father Clark.<sup>122</sup> After receiving his application and Clark’s letter, SPI  
8 issued Courtney his new teaching certificate, a copy of which was sent to the Archdiocese.<sup>123</sup>

9 Newly-minted teaching certificate in hand, Courtney updated the Archdiocese’s Office  
10 of Education regarding his efforts to obtain Principal’s Credential by June and noted that he  
11 would “receive my Master’s degree in Educational Administration in August of this year.”  
12 He thanked that Office “for adding my name to the list of prospective candidates” for the  
13 following school year.<sup>124</sup>

14 Courtney then asked the Archdiocese’s Office of Education to fill-out a  
15 recommendation form for his placement file at Seattle University because “it would be a good  
16 thing for the future.”<sup>125</sup> Again, the Archdiocese’s Superintendent, Father Clark, obliged,  
17 verifying that Courtney served “as assistant to the Principal” at Our Lady of the Lake for the  
18 past school year. But he also went one step further, recommending Courtney “for  
19 principalship in our schools” and expressing “confidence that he will bring the same expertise  
20  
21  
22

23 <sup>121</sup> Letter from Clark to Brouillet, dated November 29, 1978, Amala Decl., Ex. 64.

24 <sup>122</sup> Application for Certificate, dated January 4, 1979, Amala Decl., Ex. 65.

25 <sup>123</sup> Teaching certificate dated February 4, 1979, Amala Decl., Ex. 66; *see also* letter from Nore to Courtney,  
dated February 23, 1979, Amala Decl., Ex. 67.

26 <sup>124</sup> Letter from Courtney to Sister Agnes, dated February 22, 1979, Amala Decl., Ex. 68.

<sup>125</sup> Letter to Sister Agnes, Amala Decl., Ex. 69.

1 and concern to other situations that the has demonstrated this year at Our Lady of the  
2 Lake.”<sup>126</sup>

3  
4 **J. With the Help of Defendants, Courtney is Appointed Principal of St. Alphonsus  
Parish School**

5 On February 27, 1979, Courtney’s point-of-contact with the Office of Education,  
6 Sister Huck, sent out a memo and noted that Courtney had applied to be the Principal of St.  
7 Alphonsus Parish School, an Archdiocesan elementary school. This letter was sent out to  
8 “Pastors, Principals, Local Education Committee,” a group that would have included  
9 Courtney’s former principal, and now endorser, Brother McGraw.<sup>127</sup> In his application,  
10 Courtney listed only Sister Mary Patrick and Brother McGraw as his references, and noted  
11 that he was certified to act as a principal in Washington “as of June 1979.”<sup>128</sup>

12  
13 A week later, presumably (or hopefully) oblivious to Courtney’s decade-long history  
14 of molesting boys, Sister Mary Patrick recommended Courtney as “a man of high moral  
15 standards” that “will be an asset to any school either public or private in the capacity of  
16 administrator or teacher. I recommend him without any reservation.”<sup>129</sup>

17 On June 13, 1979, the Archdiocese appointed Brother Courtney the principal of St.  
18 Alphonsus Parish School. In her welcome letter on behalf of the Archdiocesan Office of  
19 Education, Sister Huck noted that “[a]s a teacher in our schools during the past years we  
20 certainly feel at home with you.”<sup>130</sup>

21  
22  
23 \_\_\_\_\_  
24 <sup>126</sup> Form from Office of Teacher Placement, Amala Decl., Ex. 70.

25 <sup>127</sup> Letter from Huck, dated February 27, 1979, Amala Decl., Ex. 71.

26 <sup>128</sup> Principal Application Form, Amala Decl., Ex. 72.

<sup>129</sup> Letter from Sister Patrick, dated March 5, 1979, Amala Decl., Ex. 73.

<sup>130</sup> Letter from Huck, dated June 13, 1979, Amala Decl., Ex. 74.



1 Two weeks later, on June 25, 1979, Brother Courtney signed his St. Alphonsus  
2 contract with the Pastor of St. Alphonsus, Jeff Sarkies.<sup>131</sup> This was not unusual as Sarkies  
3 was actively involved with administrating St. Alphonsus Parish School.  
4

5 Prior to Courtney being hired as principal, Sarkies was listed by the Archdiocese as  
6 the contact person for that position.<sup>132</sup> He was also sent a copy of the standardized  
7 Archdiocesan principal contract that he eventually signed with Courtney.<sup>133</sup>

8 Four days after Courtney signed his principal contract with Sarkies, an  
9 “Administrator’s Credentials Checklist” from Seattle University, where Courtney’s placement  
10 file was kept, notes that Courtney (1) had a Standard Teaching Certificate as of February  
11 1979, (2) had completed an internship at the appropriate level, (3) had completed three years  
12 of teaching experience and two years at the appropriate level, and (4) had verified elementary  
13 experience.<sup>134</sup>

14 Three days later, SPI issued Courtney his Provisional Secondary Principal Teaching  
15 Certificate, which validated Courtney for four years of service as a principal. It noted that his  
16 “Recommending Agency” was Seattle University.<sup>135</sup>  
17

18 **K. Father Sarkies, Pat Crowley, Father Clark, and the Archdiocesan Office of**  
19 **Education Learn that Courtney is Molesting Students at St. Alphonsus, But Do**  
20 **Nothing; He is Visited by McGowan and He Asks McGraw to Speak at**  
21 **Graduation, But They Do Nothing**

22 While principal of St. Alphonsus, Father Sarkies, Pat Crowley, Father Clark, and the  
23 Archdiocese’s Office of Education all learn that Courtney has abused students at St.

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24 <sup>131</sup> Standardized Principal Contract, dated June 25, 1979, Amala Decl., Ex. 75.

25 <sup>132</sup> Memorandum from Huck, dated May 29, 1979, Amala Decl., Ex. 96.

26 <sup>133</sup> Letter from Hunthausen re: contracts for the 1979-1980 school year, Amala Decl., Ex. 97.

<sup>134</sup> Administrator’s Credentials Checklist, Amala Decl., Ex. 76.

<sup>135</sup> Certification Record Form, Amala Decl., Ex. 77.

1 Alphonsus and/or O’Dea. He is also visited by Provincial McGowan and asks McGraw to  
2 speak at graduation. Nobody reports him.

3  
4 Very early in the 1979-1980 school year, Father Sarkies heard a rumor from his  
5 secretary, Mary Ellingsen, that Courtney had engaged in “bonding” with male students at  
6 O’Dea. Ellingsen related this rumor with a “concerned voice” and “thought it might be  
7 problematic if Ed Courtney came as principal to Saint Alphonsus.”<sup>136</sup>

8 Sarkies called O’Dea High School and spoke with Courtney’s former principal,  
9 Brother McGraw, to ask him about the rumor. McGraw told him “that it was only rumor –  
10 that there was no substance.”<sup>137</sup>

11 In addition to relying on McGraw’s confirmation of “only rumor,” Sarkies testified  
12 that he relied on the Archdiocese’s Office of Education to screen Courtney before adding him  
13 to the list of principal candidates for St. Alphonsus, and that he relied on that Office to  
14 establish that Courtney was certified and qualified.<sup>138</sup> With their recommendations, Sarkies  
15 allowed Courtney to serve as principal of St. Alphonsus.

16 During his time as principal, Courtney admits he molested at least two or three  
17 students, although the defendants are aware of at least six victims from St. Alphonsus.<sup>139</sup>

18  
19 Meanwhile, the Christian Brothers continued to correspond with Brother Courtney.  
20 On December 12, 1979, Provincial McGowan responded to a December 3rd letter from  
21 Courtney regarding “many of the questions of the Council.” The Provincial noted that  
22 Courtney had requested an extension of his exclaustation and that it had been sent to the  
23

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24 <sup>136</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 87-89, 93-94, 97-98.

25 <sup>137</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 87-89, 93-94, 97-98.

26 <sup>138</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 20, 27.

<sup>139</sup> Deposition of Edward G. Courtney, dated August 30, 2007, Amala Decl., Ex. 52, at 64-65.

1 Superior General. “You present may interesting options in your letter. Hopefully we will be  
2 able to consider them after your request for an extension is approved.”<sup>140</sup>

3 A few months later, on April 5, 1980, Provincial McGowan wrote Courtney  
4 “concerning our conversation of March 12th” because the Superior General “feels that you  
5 should request a dispensation at this time and then apply for readmittance at a later date if you  
6 so desire.”<sup>141</sup> There appears to be one very good reason for the General’s desire to have  
7 Courtney dispensed as a Brother. McGowan had visited Courtney at St. Alphonsus in early  
8 1980 while he was principal of the elementary school:  
9

10 I would say that you seem to be doing very well at the present time as Principal of  
11 that elementary school that we visited. ... If I were you, I would stick with that  
12 until He should point out to you that He has another direction for your life.  
13 Whether in or out, Chris, you know that you can always count on the many  
14 friends you have made in the Congregation over the years, not the least of which  
15 is the Superior General himself.<sup>142</sup>

16 Later that month, McGowan and his Council voted to have Courtney decide his future  
17 with the Christian Brothers. McGowan forwarded Courtney’s letter to the Superior General  
18 in Rome with the Council’s recommendations.<sup>143</sup>

19 Shortly thereafter, Courtney wrote to Father Sarkies about a telephone conversation  
20 that Courtney had with Provincial McGowan and stated that he was being forced to decide  
21 whether to withdraw from the Christian Brothers or resume active status. Courtney chose to  
22 resign from St. Alphonsus: “Since I do not wish to choose the former, my only alternative is  
23 the letter. ... Accordingly, it will be necessary for me to resign my position as principal of St.

24 <sup>140</sup> Letter from Felix, dated December 12, 1979, Amala Decl., Ex. 79.

25 <sup>141</sup> Letter from McGowan, dated April 5, 1980, Amala Decl., Ex. 80.

26 <sup>142</sup> Letter from McGowan, dated April 5, 1980, Amala Decl., Ex. 80.

<sup>143</sup> Minutes of the Council Meeting, dated April 20, 1980, Amala Decl., Ex. 81.

1 Alphonsus School effective June 30, 1980, as I will be unable to contract for another year of  
2 service at this time.”<sup>144</sup>

3 Given what happened next, it is unclear whether Courtney’s resignation letter was  
4 genuine or part of a cover story fabricated by himself, Father Sarkies and Patrick Crowley, the  
5 Archdiocese’s in-house attorney.  
6

7 Around that time, Father Sarkies was confronted with allegations that Courtney had  
8 sexually abused a student.<sup>145</sup> In response, Sarkies consulted with the Archdiocesan Office of  
9 Education about terminating Courtney. He spoke about the allegations with Father Clark, the  
10 Archdiocesan Superintendent, and possibly Sister Mary Taylor, his Assistant  
11 Superintendent.<sup>146</sup> He also met with Courtney’s former principal, Brother McGraw, to ask  
12 him about Courtney’s history.<sup>147</sup> McGraw informed Sarkies of Courtney’s history of sexually  
13 molesting students at O’Dea.<sup>148</sup>

14 After consulting with McGraw, Clark and possibly Taylor, Sarkies states that he  
15 confronted Courtney with the Archdiocese’s in-house attorney, Patrick Crowley. At that  
16 meeting, Courtney admitted to the abuse, and he asked Courtney to resign.<sup>149</sup>  
17

18 As discussed above, it is unclear whether the resignation letter discussed above was an  
19 elaborate effort of smoke and mirrors.

20 However, on May 27, 1980, Courtney wrote to Father Sarkies and apologized “for the  
21 embarrassment and distress that I have caused you recently. It is most unfortunate and I am

22  
23 <sup>144</sup> Letter from Courtney to Sarkies, dated May 19, 1980, Amala Decl., Ex. 82.

<sup>145</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 25-26, 42-43.

24 <sup>146</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 26; Deposition of Agnes Huck,  
dated June 13, 2008, Amala Decl., Ex. 83, at 16-19.

25 <sup>147</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 50.

26 <sup>148</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 52-53.

<sup>149</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 26, 53, 69-70, 85.

1 truly sorry.” He then asked to withdraw his resignation because “I have assessed the climate  
2 during the past week and I do not feel that my remaining would be a source of further  
3 embarrassment to me or to others. This assessment includes the attitude I’ve witnesses from  
4 among the students including the sixth graders. The situation ... apparently has not been  
5 spread any further and would, I believe, not likely be believed by others anyway.”  
6

7 Courtney further rationalized that “I fully realize the seriousness of this situation,” but  
8 that “I do feel that there was some exaggeration involved in the charges.” He promised that “I  
9 have not only seen to it that I do not relate improperly to the students, but I am presently  
10 getting therapeutic help as an aid in eliminating the problem. ... I am resolved that this  
11 misconduct will not re-appear!” He begged Sarkies to let him remain as principal.<sup>150</sup>

12 After receiving this letter, Father Sarkies consulted with Father Clark and his Office of  
13 Education. Although Courtney would be removed, Sarkies and Crowley brokered a deal with  
14 Courtney and the complaining parents in order to protect the “name and reputation” of the  
15 Archdiocesan school:  
16

17 After consultation with the Office of Education and following their advice I have  
18 decided to accept your letter of resignation and take it as final. I do so with  
reluctance. ...

19 Ed, it is important that you understand the reason we were able to keep the matter  
20 that led to your submitting a letter of resignation quiet was because the parents  
21 concerned, who also admired your abilities, were assured that since there were  
22 only two weeks left of the school year, you would be allowed to finish the year as  
23 usual. But they were also assured that you would then terminate which was in  
keeping with the agreement we reached in the discussion we had with Mr. Pat  
Crowley, the Archdiocesan Attorney.

24 ... At the same time it is clear to me that if you were to follow the original cause  
25 of action you would there by be allowed to save face and leave the area with the  
respect and admiration of the majority of the St. Alphonsus School people. To

26 <sup>150</sup> Letter to Father Sarkies, dated May 27, 1980, Amala Decl., Ex. 84.

1 alter that course would be to run the very real risk of turning this situation into a  
2 cause célèbre thereby doing damage to your name and reputation and that of the  
school.<sup>151</sup>

3 With the “name and reputation” of Archdiocese protected, Courtney left St. Alphonsus  
4 with his own “name and reputation” unscathed and with the “respect and admiration of the  
5 majority of the St. Alphonsus School people.”

6 On his way out, Courtney invited Brother McGraw to speak at the St. Alphonsus  
7 graduation. Despite seeing that Courtney was the principal of a grade school, McGraw made  
8 no effort to report his Brother to the authorities.<sup>152</sup>

9  
10 **L. The Defendants Transfer Brother Courtney to the Public School System**

11 Despite this second major blow-up at an Archdiocesan school, no steps were taken to  
12 ensure that Courtney’s teaching days were over. Instead, the defendants got rid of their  
13 problem by helping him obtain employment in the public school system.

14 Father Sarkies testified that he did not take any steps to have SPI strip Courtney of his  
15 teaching certification because Archdiocesan policies dictated that Father Clark was  
16 responsible for informing SPI of adverse employment actions. He assumed Clark would  
17 contact SPI to decertify Courtney, particularly where he and Clark had been consulting with  
18 Crowley, the Archdiocese’s attorney.<sup>153</sup>

19 Although Sarkies was relying on Clark and Crowley to ensure that Courtney never  
20 returned to the classroom, it is clear that Sarkies also qualified as a mandatory reporter  
21 because he was actively involved in running St. Alphonsus Parish School.  
22

23  
24  
25 \_\_\_\_\_  
<sup>151</sup> Letter from Sarkies to Courtney, dated June 5, 1980, Amala Decl., Ex. 85.

26 <sup>152</sup> Deposition of John McGraw, dated October 8, 2009, Amala Decl., Ex. 24, at 93-96.

<sup>153</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 30-31, 68-69, 98-99.

1 For example, just a few months before he would remove Courtney from St.  
2 Alphonsus, Father Sarkies was sent a timeline and personnel forms to use as he considered  
3 “employment and re-employment of your school personnel.”<sup>154</sup> A few weeks after that, he  
4 received formal notice that Clark’s Office would visit his school on January 31<sup>st</sup> to review  
5 “implementation of Religion, English, and Social Studies.”<sup>155</sup> Despite his active involvement  
6 with Archdiocesan schools, he never reported Courtney to the authorities.  
7

8 Instead, he relied on Clark to report Courtney. But rather than do that, Clark wrote  
9 Courtney a “thank you” letter for his service and another letter of recommendation for his  
10 teaching file. The former includes an expression of “our appreciation and best wishes as you  
11 leave your position as principal of St. Alphonsus School” and wishes “[g]ood luck to you in  
12 your new endeavors.”<sup>156</sup> (Ironically, Brother McGraw received the identical letter that same  
13 day for his service at O’Dea.)<sup>157</sup>  
14

15 The latter was written directly to a Certification Office for the State of Illinois. In it,  
16 Clark confirms Courtney’s four years of service at O’Dea, his service as “principal intern” at  
17 Our Lady of the Lake, and his year as principal of St. Alphonsus. He represents that “[w]e are  
18 sorry to lose Edward as he is an excellent teacher and administrator,” and concludes by  
19 making sure the State of Illinois knows that Courtney “is certified as a teacher grades K-12  
20 and has provisional administrator credentials, issued by the State of Washington.”<sup>158</sup>  
21  
22

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23 <sup>154</sup> Letter from Huck, dated January 2, 1980, Amala Decl., Ex. 98.

24 <sup>155</sup> Letter from Perri, dated January 18, 1980, Amala Decl., Ex. 99.

25 <sup>156</sup> Letter from Clark to Courtney, dated May 30, 1980, Amala Decl., Ex. 86.

26 <sup>157</sup> Letter from Clark to McGraw, dated May 30, 1980, Amala Decl., Ex. 87.

<sup>158</sup> Letter from Clark to the Educational Service Region, Certification Office, dated June 30, 1980, Amala Decl., Ex. 88.



1 Sarkies testified that these letters were written after Clark was fully aware that  
2 Courtney was being terminated for inappropriately touching a student, which was no later  
3 than May 30, 1980.<sup>159</sup> As if his letters of recommendation were not sufficient, Clark then  
4 verified Courtney's teaching and principal experience with SPI,<sup>160</sup> even though Sarkies was  
5 relying on Clark and Crowley to do the opposite so Courtney could never teach again:  
6

7 Q: You were relying upon Father Clark to take the appropriate action to  
8 prevent Edward Courtney from using the service record verification and a  
certificate to become reemployed in a teaching setting, correct?

9 A: ...  
10 Correct.

11 Q: By keeping the allegations against Courtney and his own admissions  
12 confidential, didn't that, then, allow others to write positive  
recommendations since they did not have the knowledge that you did?

13 A: It could have, yes.

14 ...  
15 Q: Was that a concern of yours at the time that the matter regarding Courtney  
16 was kept confidential?

17 A: It was not a concern of mine at the time.

18 Q: Why not?

19 A: Because I was working with an attorney and followed the directions – we  
20 consulted back and forth on what was the best way to approach and  
resolve the matter.<sup>161</sup>

21 When shown a copy of Clark's letter of recommendation, Sarkies admitted he was  
22 shocked that Clark did not disclose the abuse.<sup>162</sup> Sarkies refused to write a similar letter  
23

24 <sup>159</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 43-44, 55.

25 <sup>160</sup> Service Record Verification for Edward Courtney, dated September 11 and 18, 1980, Amala Decl., Ex. 89.

26 <sup>161</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 74-75, 98-99.

<sup>162</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 55-56.



1 because “I didn’t feel, in conscience, that I could recommend him.”<sup>163</sup> He further agreed that  
2 he did not want to recommend Courtney to another school because of fear that he would  
3 molest other students at other schools.<sup>164</sup> He could not do so in good conscience.<sup>165</sup>  
4

5 There is no question that Father Clark and his Office of Education understood the  
6 importance of Courtney’s teaching certificate and service verification, which was required on  
7 the back of the teaching certificate.<sup>166</sup> Each year, from at least 1977 through 1980, the  
8 Archdiocese reminded its principals that “[s]tate law is explicit on Washington Teacher  
9 Certification” and mandated that “as of May, 1975, ... [t]he verification of successful  
10 teaching experience must be signed by Father Clark, Archdiocesan Superintendent. ... Upon  
11 verification of experience, the forms will be returned to the teacher. Applicant is then  
12 responsible to send forms to the E.S.D. office.”<sup>167</sup>

13 When that letter was sent for the upcoming 1979-1980 school year, the same school  
14 year that Courtney was eventually removed from St. Alphonsus and then endorsed by Clark,  
15 Father Clark’s Office added that “Universities require verification of teaching experience to  
16 renew certificates. Only the signature of the Superintendent of Catholic Schools is  
17 accepted.”<sup>168</sup> The emphasis is in the original.

18 Further, it is indisputable that Father Clark and his Office of Education understood the  
19 ramification of writing letters of recommendation for Courtney’s placement file and endorsing  
20

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21 <sup>163</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 67.

22 <sup>164</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 67-68.

23 <sup>165</sup> Deposition of Sarkies, dated September 30, 2009, Amala Decl., Ex. 78, at 68.

24 <sup>166</sup> Cf. Professional Education Certificate for Edward Courtney, Amala Decl., Ex. 90.

25 <sup>167</sup> Notes to Elementary and Secondary Principals, Archdiocese of Seattle, 1977-78, Amala Decl., Ex. 91, at 3;  
26 Notes to Elementary and Secondary Principals, Archdiocese of Seattle, 1978-79, Amala Decl., Ex. 92, at 2-3;  
Notes to Elementary and Secondary Principals, Archdiocese of Seattle, 1979-80, Amala Decl., Ex. 93, at 2-3.  
(emphasis added).

<sup>168</sup> Notes to Elementary and Secondary Principals, Archdiocese of Seattle, 1979-80, Amala Decl., Ex. 93, at 2-3.  
(emphasis added).

1 his service in the Archdiocese's school system. As his Office dictated to Archdiocesan  
2 principals on October 2, 1978, and May 15, 1979:

3  
4 This office does not maintain individual teacher personnel files. Letters of  
5 recommendation should be sent to the teacher's placement file at the college or  
6 university which maintains the teacher's record.

7 ...

8 Verification of employment as requested on the back of the teaching certificate  
9 requires the signature of Father Clark at the time a teacher leaves the Seattle  
10 Archdiocesan system, e.g., seeks employment in the public schools or other  
11 private schools. ...

12 Verification of employment as requested on an application for renewal of  
13 certification requires the signature of Father Clark. The Archdiocesan Office of  
14 Education does not process applications. Teachers mail forms directly to the  
15 Educational Service District once Father Clark has verified the teaching  
16 experience and signed the application.<sup>169</sup> (emphasis in original 1979 letter)

17 The failure to act of Clark, Crowley, McGraw, and Sarkies had other ramifications.  
18 Presumably ignorant of Courtney's long history of abusing Archdiocesan boys, at least six  
19 other Archdiocesan teachers and administrators provided glowing recommendations for  
20 Courtney's placement file at Seattle University, the "recommending agency" on his teaching  
21 certificate.<sup>170</sup>

22 **M. Courtney Uses His Clean Teaching Certificates and Service Verification to  
23 Obtain a Job at Parkland Elementary and then Schools in Othello**

24 His teaching certificate intact and his record clean, Courtney was able to obtain a job  
25 as a teacher at Parkland Elementary. His contracts required that he have a valid Washington  
26 State Teacher's Certificate and were not effective until his Certificate was registered with the

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24 <sup>169</sup> Memorandum to Principals from Huck, dated October 2, 1978, Amala Decl., Ex. 94; Memorandum from  
25 Huck, dated May 15, 1979, Amala Decl., Ex. 95.

26 <sup>170</sup> Recommendations of Lorette Schneider, Robert Russell and Janet Caruso, Amala Decl., Ex. 100;  
Recommendations of Shirley Hegge and Janis Lee, Amala Decl., Ex. 101; Recommendation of Mary Leary,  
Amala Decl., Ex. 102; Professional Education Certificate for Edward Courtney, issued June 28, 1979, Amala  
Decl., Ex. 103.

1 Educational Services District.<sup>171</sup> Additionally, his first contract notes that he had seventeen  
2 years of experience outside of Washington and six years of experience in Washington.<sup>172</sup>

3  
4 After serving two years at Parkland, Courtney obtained a teaching job at Scootney  
5 Springs Elementary School in Othello, Washington, a small farming town in Eastern  
6 Washington.<sup>173</sup> Courtney's Othello application listed his Washington Continuing Teaching  
7 Certificate and Provisional Administrative Credentials, which he obtained in 1979 after  
8 leaving O'Dea, noted that his placement file was up-to-date at Seattle University, and listed  
9 his eleven years of teaching experience for the Christian Brothers and/or the Seattle  
10 Archdiocese, including his experience at St. Alphonsus, Our Lady of the Lake, O'Dea, St.  
11 Laurence, and Leo High School.<sup>174</sup>

12 As with Parkland, Courtney's teaching certifications and service verification allowed  
13 him to obtain that teaching position in Othello. Each of his Othello contracts required a valid  
14 Washington State Teacher's Certificate.<sup>175</sup> The cover page of his initial application also  
15 stated that it "is not effective unless the holder obtains a valid Washington State Teaching  
16 Certificate by the time his period of service begins."<sup>176</sup>

17  
18 There is no question that Othello made sure that Courtney had a valid Certificate and  
19 verified his prior service in the Archdiocese. On August 10, 1982, the secretary of the Othello  
20 Superintendent, Peggy Thompson, sent the local Educational Service District a copy of

21  
22 <sup>171</sup> Certificated Employee's Contract, signed October 29, 1980, Amala Decl., Ex. 104, at 1; Certificated  
Employee Contract, signed June 5, 1981, Amala Decl., Ex. 105.

23 <sup>172</sup> Certificated Employee's Contract, signed October 29, 1980, Amala Decl., Ex. 104, at 2.

24 <sup>173</sup> In-lieu of Contract form, dated June 30, 1982, Amala Decl., Ex. 106.

25 <sup>174</sup> Application for Certificated Employment, dated April 20, 1982, Amala Decl., Ex. 107, at 2-3.

26 <sup>175</sup> Provisional Certificated Employee Contract, dated October 1, 1982, Amala Decl., Ex. 108; Certified  
Employee's Contract, dated May 27, 1983, Amala Decl., Ex. 109; Certificated Employee's Contract, dated May  
22, 1984, Amala Decl., Ex. 110; Certificated Employee's Contract, dated May 15, 1985, Amala Decl. Ex. 111.

<sup>176</sup> Application for Certificated Employment, dated April 20, 1982, Amala Decl., 107, at 1.

1 Courtney's Certificate: "Also enclosed is Professional Education Certificate for Edward C.  
2 Courtney who will be teaching in the Othello School District for the 1982-83 school year."<sup>177</sup>  
3 Thompson was responsible for sending a teacher's teaching certificate to the local  
4 Educational Service District for registration.<sup>178</sup> Moreover, a few weeks later, Courtney was  
5 required to fill-out "Individual Personnel Data" sheet that verified he had a valid teaching  
6 certificate.<sup>179</sup>  
7

8 Othello also relied on Clark's signed verification that Courtney served in the  
9 Archdiocese as both a teacher and a principal: his Othello file contains both verifications.<sup>180</sup>  
10 When Courtney's applicant qualifications were reviewed in June 1982, Othello noted that he  
11 had "considerable" teaching experience, "considerable" professional membership and  
12 activities, "exceptional" professional education, and "exceptional" credentials. Othello  
13 concluded: "Very fine candidate. Wide and valuable experience."<sup>181</sup>  
14

15 James Jungers, the former Superintendent of the Othello School District who signed  
16 Courtney's original teaching contract, has provided a declaration affirming that Courtney was  
17 hired to teach in Othello because of his letters of recommendation and his long history of  
18 teaching with the Christian Brothers and serving in Archdiocesan Schools, including O'Dea:

19 I was involved with hiring Edward Courtney to teach at Scootney Springs. I  
20 remember when Courtney first applied to teach in the Othello School District.  
21 We took a hard look at him because he was a Christian Brother who taught at  
22 O'Dea High School and we had previously hired another Christian Brother, Pete  
Patitucci, who had also taught at O'Dea High School and with whom we had  
good results. I recall that we were impressed with his history of teaching

23 <sup>177</sup> Letter from Peggy J. Thompson to Gloria Cartagena, dated August 10, 1982, Amala Decl., Ex. 112.

24 <sup>178</sup> Declaration of James Jungers, dated October 5, 2009, Amala Decl., Ex. 113, at ¶ 5.

25 <sup>179</sup> Othello Public Schools, Individual Personnel Data sheet, Amala Decl., Ex. 114.

26 <sup>180</sup> Service Record Verification for Edward Courtney, dated September 11 and 18, 1980, Amala Decl., Ex. 89; Amala Decl., at ¶ 91.

<sup>181</sup> Othello School District Summary of Applicant's Qualifications, dated June 28, 1982, Amala Decl., Ex. 115.

1 assignments and letters of recommendation. Our policy at the time was to verify  
2 prior teaching assignments and to call some references.<sup>182</sup>

3 Jungers also confirms that Courtney would not have been able to teach in Othello but  
4 for his valid Washington State Teaching Certificate, and that they would not have hired him if  
5 they knew that he had a history of sexually abusing boys:

6 The policies and procedures of our school district at the time that Edward  
7 Courtney was hired to teach at Scootney Springs required that he have a valid  
8 Washington teaching certificate. We would not have hired Courtney to teach in  
9 our school district, and we would not have allowed him to keep teaching in our  
10 school district, unless he had a valid Washington teaching certificate. No  
11 exceptions were made to the requirement that a teacher have a valid Washington  
12 teaching certificate. We also would not have hired Courtney to teach in our  
13 school district if we had known that he had a history of sexually abusing children,  
14 which we did not know when we hired him.<sup>183</sup>

15 When Jungers later learned that Courtney had been accused of sexually molesting a  
16 student in Othello, he was immediately placed on administrative leave and was not allowed to  
17 return to the classroom.<sup>184</sup> Courtney packed-up his things, returned to Seattle, and fled to  
18 Reno, Nevada.<sup>185</sup> He remained there until the police found him and extradicted him back to  
19 Washington to face charges for his abuse of boys in Othello.<sup>186</sup>

20 **N. Throughout His Time at St. Alphonsus, Parkland, and Othello, the Christian  
21 Brothers Supervised Courtney and Monitored His Sexual Deviancy Treatment**

22 While Father Clark and other Archdiocesan teachers and administrators endorsed  
23 Courtney and helped him obtain teaching jobs at Parkland and in Othello, Provincial  
24 McGowan continued his efforts to recruit back into his teaching congregation.

25 <sup>182</sup> Declaration of James Jungers, dated October 5, 2009, Amala Decl., Ex. 113, at ¶ 3.

26 <sup>183</sup> Declaration of James Jungers, dated October 5, 2009, Amala Decl., Ex. 113, at ¶ 4.

<sup>184</sup> Deposition of Edward Courtney, dated April 20, 2009, Amala Decl., Ex. 159, at 112-15.

<sup>185</sup> Deposition of Edward Courtney, dated April 20, 2009, Amala Decl., Ex. 159, at 131-32.

<sup>186</sup> Deposition of Edward Courtney, dated April 20, 2009, Amala Decl., Ex. 159, at 132-37.

1 On June 8, 1980, as Courtney was being terminated from St. Alphonsus, McGowan  
2 wrote Courtney and asked him to make a decision: “Then, I have the General inquiring as to  
3 whether or not I have heard from you. What he is referring to, Chris, is your decision at this  
4 point in time. ... If you wish to return to community, fine – if not, that is your  
5 prerogative.”<sup>187</sup>  
6

7 A year later, the Provincial Council, under a new Provincial, Brother Morris, voted to  
8 ask Courtney “to either return to the Brothers in a non-teaching capacity or to ask for a  
9 dispensation (5-0).”<sup>188</sup> By that vote, the Council implicitly acknowledged that Courtney  
10 posed a threat to students if he returned to a school in a teaching capacity.

11 A few months later, the Council again extended Courtney’s exclaustation another  
12 year “[s]ince Chris is presently receiving psychiatric help and spiritual direction on a regular  
13 basis, the Council feels his request to extend this treatment for one more year to be a  
14 reasonable one.”<sup>189</sup>  
15

16 That same day, Provincial Morris wrote to Courtney’s new psychologist, Dr. James  
17 Reilly, and thanked him for treating Courtney: “Thank you again for taking on this  
18 responsibility and for what you are doing for Ed Courtney.”<sup>190</sup> In other words, the Christian  
19 Brothers were still monitoring Courtney and his sexual deviancy treatment.

20 Three weeks later, on November 17, 1981, Provincial Morris wrote to Courtney and  
21 thanked him “for your reply.” The Christian Brothers have not produced a copy of  
22  
23

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24 <sup>187</sup> Letter from Felix, dated June 8, 1980, Amala Decl., Ex. 116.

25 <sup>188</sup> Provincial Council Meeting, dated June 28, 1981, Amala Decl., Ex. 117.

26 <sup>189</sup> Form to be Completed Concerning an Application for a Dispensation from Perpetual Vows or for  
Exclaustation, dated October 29, 1981, Amala Decl., Ex. 118.

<sup>190</sup> Letter from Provincial Morris to Reilly, dated October 29, 1981, Amala Decl., Ex. 119.

1 Courtney's letter, so it is not clear whether Courtney wrote the letter from his home or from  
2 his new school elementary school.<sup>191</sup>

3 Less than a year later, in September 1982, the Provincial Council again took up the  
4 matter of Brother Courtney: "the Provincial read the letter he had sent to Ed. In the letter,  
5 the guidelines for a re-entry were spelled out, as well as setting a deadline of October 5<sup>th</sup> for a  
6 decision."<sup>192</sup>

7  
8 Three weeks later, the Council noted that Courtney "is still up in the air about whether  
9 he will be returning or not. The General will see him also when he is in Seattle."<sup>193</sup>

10 A month after that, in November 1982, the Council's minutes reflect that "[t]he  
11 Provincial reported on the General's talk with Ed. The General reiterated his support of our  
12 pointers. Ed has until the end of the month to decide if he will return or not."<sup>194</sup>

13 In December 1982, the Provincial Council continued their monitoring of Brother  
14 Courtney, and very clearly recognized the danger he still posed to boys: "in his last letter, he  
15 states that he wishes to return, but there seems to be a bit of confusion even in that letter. The  
16 Provincial has written to Ed to point out the difficulties he will face if he returns, and then  
17 specifying the exact details of a return immediately after Christmas to Cantell, if he wishes to  
18 return."<sup>195</sup>

19  
20 A month later, after having sufficient time to groom himself into an elementary school  
21 in Othello, Brother Courtney finally chose to leave the Christian Brothers. The Council's  
22

23  
24 <sup>191</sup> Letter from Brother Morris, dated November 17, 1981, Amala Decl., Ex. 120.

25 <sup>192</sup> Council Meeting, dated September 19, 1982, Amala Decl., Ex. 121, at 2.

26 <sup>193</sup> Council Meeting, dated October 16, 1982, Amala Decl., Ex. 122.

<sup>194</sup> Council Meeting, dated November 12-23, 1982, Amala Decl., Ex. 123, at 2.

<sup>195</sup> Council Meeting, dated December 11-12, 1982, Amala Decl., Ex. 124.



1 minutes state that Courtney's "papers requesting dispensation have been sent to Rome. He  
2 has written a letter to the General directly."<sup>196</sup>

3 After the Superior General approved of Courtney's dispensation, Brother Houlihan, a  
4 member of that Council, reached-out to Courtney on behalf of Provincial Morris to let him  
5 know that the Council had "received the dispensation form and are forward it to Seattle. ...  
6 These have been difficult years for you and we are hoping that all will go much better for you  
7 in the years that lie ahead. You are in our prayers and will continue to be remembered."<sup>197</sup>

8 On February 27, 1983, five years after taking a leave of absence for molesting school  
9 boys at five different Christian Brothers' schools, Brother Courtney was "dispensed" from the  
10 Brothers.<sup>198</sup>

11 Despite acknowledging his years of molesting boys, when Provincial McGowan was  
12 asked about Courtney's abuses by a fellow Christian Brother, Brother Gattone, he stated that  
13 Courtney had a "gay problem, not an abuse problem."<sup>199</sup> According to Gattone, "in my  
14 conversations with Brother McGowan, it came across that he never felt that this was child  
15 abuse."<sup>200</sup>

16  
17  
18 **O. After Receiving Notice of the Othello Allegations, SPI Made Sure the Othello  
19 Authorities Were Investigating Courtney So His Certificates Could be Revoked**

20 In June 1988, less than ten years after Courtney was removed from O'Dea High  
21 School for molesting boys, and less than eight years after he was removed from St. Alphonsus  
22

23  
24 <sup>196</sup> Council Meeting, dated January 22-23, 1983, Amala Decl., Ex. 125.

25 <sup>197</sup> Letter from Houlihan, dated February 18, 1983, Amala Decl., Ex. 126.

26 <sup>198</sup> Christian Brothers of Ireland form for Edward Courtney, Amala Decl., Ex. 127.

<sup>199</sup> Deposition of Charles Gattone, Amala Decl., Ex. 62, at 53, 65-66.

<sup>200</sup> Deposition of Charles Gattone, Amala Decl., Ex. 62, at 116-17.



1 for the same, the Archdiocese received a formal complaint about Courtney's abuses at  
2 O'Dea.<sup>201</sup>

3 In their resulting "investigation," the Archdiocese concluded that "The Catholic  
4 School Office was not made aware of the reasons for Edward's departure from the Christian  
5 Brothers or any reasons for not employing him in any of the Archdiocesan schools." The  
6 Archdiocese reached that self-serving conclusion even though its investigation included an  
7 interview with Father Clark, who "remember[ed] the situation but very little of the details."  
8 The investigation also makes no mention of the fact that Father Clark and Patrick Crowley  
9 were actively involved with removing Courtney from St. Alphonsus.<sup>202</sup>

11 **P. After Receiving Notice of the Othello Allegations, SPI Made Sure the Othello  
12 Authorities Were Investigating Courtney So His Certificates Could be Revoked;  
13 They Are Revoked Within Four Months**

14 In December 5, 1988, shortly after an article regarding Courtney's abuses were  
15 published in the Spokesman-Review, an internal memo shows that SPI was making sure that  
16 those abuses were being investigated and prosecuted by the Othello authorities so that his  
17 certificates could be revoked.<sup>203</sup>

18 On December 28, 1988, the Prosecuting Attorney for Adams County notified SPI that  
19 Courtney changed his plea to Guilty for Indecent Liberties with a minor.<sup>204</sup> Within a month,  
20 SPI notified Courtney that his certificate was being investigated and suggested that he  
21 voluntarily surrender his teaching certificates.<sup>205</sup> Within two months of that, Courtney had

22  
23 <sup>201</sup> Memorandum from Francine Breedlove, dated June 14, 1988, Amala Decl., Ex. 128.

24 <sup>202</sup> Memorandum from Sister Carol Ann, dated June 1, 1988, Amala Decl., Ex. 129.

25 <sup>203</sup> Letter from Adelle, dated December 5, 1988, Amala Decl., Ex. 130; Letter from Nore, dated December 22,  
1988, Amala Decl., Ex. 131.

26 <sup>204</sup> Letter from Miller, dated December 28, 1988, Amala Decl., Ex. 132.

<sup>205</sup> Letter from Nore, dated January 27, 1989, Amala Decl., Ex. 133.

1 voluntarily surrendered his three Washington teaching and principal certificates and SPI had  
2 revoked those certificates.<sup>206</sup>

3  
4 **Q. The Christian Brothers and the Archdiocese Were Financially Motivated to Keep  
Courtney Employed at O’Dea High School**

5 When Courtney became a Christian Brother, he devoted all of his earthly belongings  
6 to the Brothers and irrevocably agreed to “render all my services of every kind to and for the  
7 said Congregation without compensation of any kind or character and no reward or  
8 remuneration shall ever be made to me for my labors ... which I may execute or shall have  
9 executed while a member of the said Congregation.”<sup>207</sup>

10 Similarly, he agreed that “I will not at any time seek any remuneration for the work I  
11 may do as a matter of the said Congregation and at no time will I ever claim compensation  
12 therefor, it being my distinct understanding that any services rendered by me are rendered  
13 without any promise of pay or any expectation of pay or remuneration.”<sup>208</sup>

14 The Christian Brothers were very cognizant of this financial benefit to keeping  
15 Courtney at O’Dea. In his May 1974 letter to Provincial McGowan, Brother McGraw was  
16 concerned about the Archdiocese not “covering” Brother Courtney if he were not teaching.<sup>209</sup>

17 When shown this same letter, Courtney’s Superior at O’Dea, Brother Reilly, agreed  
18 that it was in the financial best interests of the Christian Brothers to have as many Brothers at  
19 O’Dea as possible because the remuneration for their service went into their operating fund.<sup>210</sup>

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23 <sup>206</sup> Voluntary Surrender of Certificate, dated February 28, 1989, Amala Decl., Ex. 134; Letter from Billings,  
dated March 20, 1989, Amala Decl., Ex. 135.

24 <sup>207</sup> Amala Decl., Ex. 136.

25 <sup>208</sup> Amala Decl., Ex. 137.

26 <sup>209</sup> Letter from McGraw to McGowan, dated May 12, 1974, Amala Decl., Ex. 138.

<sup>210</sup> Deposition of Kevin Reilly, Amala Decl., Ex. 16, at 106, 110-15.

1 Likewise, the Archdiocese understood that Courtney was cheap labor. In May 1978,  
2 Father Clark wrote to the Archbishop regarding O’Dea’s subsidies. He recommended that the  
3 Archbishop increase O’Dea’s annual subsidy because Brother McGraw “is very depressed,  
4 and feels that maybe he should ask for a transfer.” Clark noted that this would be a “great  
5 loss to the Archdiocese” and suggested the Archbishop should approve the increase because  
6 he did not want to lose their cheap labor: “[I]t is a mere pittance compared to what we would  
7 have to pay out in order to replace the Brothers.”<sup>211</sup>  
8

9 **R. The Seattle Archdiocese Owned O’Dea High School and Jointly Operated O’Dea**  
10 **with the Christian Brothers Defendants**

11 Since September 1973, O’Dea High School has been owned and jointly operated by  
12 defendants Seattle Archdiocese, the Congregation of the Christian Brothers, and the Christian  
13 Brothers Institute.

14 In January 1973, the Provincial Council approved a new contract for O’Dea. (This  
15 was the same meeting where the Council voted to keep Courtney “out of school until he had  
16 seen a psychiatrist.”)<sup>212</sup>

17 That July, the Provincial wrote to Archbishop Connolly regarding the finishing  
18 touches on the O’Dea contract and noted that the Provincial headquarters had recently been  
19 moved to Vallejo, California.<sup>213</sup> In August, the Archbishop sent the Provincial a signed copy  
20 of the O’Dea contract at the headquarters in Vallejo.<sup>214</sup> Shortly thereafter, the Provincial  
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22  
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24 <sup>211</sup> Letter from Clark to Hunthausen, dated May 19, 1978, Amala Decl., Ex. 139.

25 <sup>212</sup> Minutes of the Council Meeting Held at Ryan Hall, dated January 28, 1973, Amala Decl., Ex. 9, at 2.

26 <sup>213</sup> Letter from McGowan to Connolly, dated July 18, 1973, Amala Decl., Ex. 11.

<sup>214</sup> Letter from Connolly to McGowan, dated August 3, 1973, Amala Decl., Ex. 140.

1 Council met in Vallejo and reported that the O’Dea contract “was sent to the Superior General  
2 for his signature.”<sup>215</sup>

3 By August 23, 1973, the O’Dea contract had been agents of the three defendants: (1)  
4 Archbishop Connelly, as Archbishop of Seattle, (2) John McGowan, as Vice-President and  
5 Provincial of the Christian Brothers Institute, and (3) Justin Kely as Superior General of the  
6 Congregation of the Brothers of the Christian Schools of Ireland.<sup>216</sup> The preamble of the  
7 contract notes that the Christian Brothers are based in Vallejo, California.<sup>217</sup>

8 The contract includes the following terms: (1) the Archdiocese “will retain over-all  
9 ownership of the property ...,” (2) “the Brother Principal shall be responsible for coordinating  
10 the school program in conformity with State and Archdiocesan regulations,” and (3) the  
11 Archdiocese was required to provide “[c]ompensation to the Brothers for each full-time  
12 Brother on the staff of the school at the rate of \$4,400 in exchange for teaching and  
13 administrative services ...”<sup>218</sup>

14 Although the defendants have produced very little documents regarding their  
15 operation of O’Dea High School, the few documents they have produced show that they  
16 operated the school as a joint venture. For example, from 1973 until at least 1976, the  
17 Archdiocese included the Christian Brothers as an additional insured on their Comprehensive  
18 General Liability insurance policy “with respect to the operation of O’Dea High School.”<sup>219</sup>

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22  
23  
24 <sup>215</sup> Minutes of the Council Meeting Held at Ryan Hall, dated August 26, 1973, Amala Decl., Ex. 141.

25 <sup>216</sup> O’Dea Contract, dated August 23, 1973, Amala Decl., Ex. 142.

26 <sup>217</sup> *Id.* at 1.

<sup>218</sup> *Id.* at 1-2.

<sup>219</sup> Comprehensive General Liability policy, dated April 18, 1973, Amala Decl., Ex. 143, at 3.

1 Similarly, the contracts for Frank LaFazia, the Vice Principal of O’Dea from 1974-  
2 1978, were each signed by the principal Brother on behalf of the Archdiocese’s school.<sup>220</sup>

3 The Christian Brothers also described O’Dea as an Archdiocesan school. In 1975, a  
4 summary of their Western Province notes that O’Dea is a “Diocesan” school, of which the  
5 Brothers “form part of a staff made up of Brothers, Sisters, priests and laymen and  
6 laywomen.”<sup>221</sup>

7 Similarly, in May 1975, Father Clark wrote to the State of Washington and listed  
8 O’Dea as a school “under the jurisdiction of the Archdiocesan Office of Education” and  
9 confirmed that O’Dea met certain basic state standards for approval.<sup>222</sup> Father Clark’s Office  
10 of Education also collected an annual tax from O’Dea for its operations.<sup>223</sup>

11 The Christian Brothers were also assimilated into the operations of the Archdiocesan  
12 school district. For example, on October 19, 1975, the Personnel Director from the  
13 Archdiocese’s Office of Education, Sister Agnes Huck, asked the Christian Brothers to meet  
14 with her office in order to keep them “informed of our educational planning, policies,  
15 procedures and current events relative to the schools. We also strongly feel that you have  
16 professional expertise, plans, and policies that affect our Archdiocesan personnel that you  
17 would be willing and anxious to share with us.”<sup>224</sup>

18 A few weeks later, Brother McGraw attended a “Meeting of Education Office Staff  
19 with Directors of Education” that was held by the Archdiocese’s Department of Education.<sup>225</sup>

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22 

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<sup>220</sup> See generally LaFazia contracts from 1974-1978, Amala Decl., Ex. 144.

23 <sup>221</sup> Western American Province, Amala Decl., Ex. 14, at 2.

24 <sup>222</sup> Letter from Clark, dated May 29, 1975, Amala Decl., Ex. 145, at 1, 3.

25 <sup>223</sup> Letter from Clark, dated August 8, 1978, Amala Decl., Ex. 146.

26 <sup>224</sup> Letter from Huck to Brickell, dated October 17, 1975, Amala Decl., Ex. 147.

<sup>225</sup> Meeting of Education Office Staff with Directors of Education, dated November 13, 1975, Amala Decl., Ex. 148.

1 The purpose of the meeting was to discuss the “educational focus” of Archdiocesan schools  
2 for 1975-1978 and various personnel programs.<sup>226</sup>

3 The Archdiocese also oversaw critical decisions at O’Dea and dictated school policy.  
4 For example, in March 1976, Father Clark wrote to Archbishop Hunthausen because Brother  
5 McGraw had expelled a Filipino student from O’Dea. After interviewing the student, his  
6 mother, McGraw, and the student’s pastor, Clark told Hunthausen that he believed McGraw’s  
7 decision was “procedurally correct” and felt that the ultimate decision rested with McGraw.<sup>227</sup>

8 Similarly, on April 4, 1978, Archbishop Hunthausen sent McGraw a copy of the  
9 “Personnel Policy Revisions recommended for my approval by the Archdiocesan Education  
10 Board,” and asked McGraw to “thoroughly acquaint yourself and your Board members with  
11 these materials as you finalize your hiring negotiations for the coming year.”<sup>228</sup>

12 Prior to McGraw leaving O’Dea in June 1980, he and the other Brothers at O’Dea  
13 became eligible for the Archdiocese’s retirement program. As Father Clark stated, “[t]o deny  
14 the Brothers this benefit could have serious morale effects on our relationship with them.”<sup>229</sup>

15  
16  
17 **S. Defendant Christian Brothers Institute Signed the 1973 O’Dea Contract and Was  
Recognized by McGraw and Reilly as Being Involved with O’Dea’s Operations**

18 When shown a copy of the 1973 O’Dea contract, Brother McGraw shed light on the  
19 difference between defendants Congregation of the Christian Brothers and the Christian  
20 Brothers Institute:

21  
22 Well, the Congregation of the Brothers of the Christian Schools, that’s the  
23 European reference to the Brothers. The Christian Brothers Institute would have  
been the United States, in my recollection. And in my understanding, even today,

24 <sup>226</sup> *Id.*

25 <sup>227</sup> Memorandum from Clark, dated March 8, 1976, Amala Decl., Ex. 149.

26 <sup>228</sup> Letter from Hunthausen to McGraw, dated April 4, 1978, Amala Decl., Ex. 150.

<sup>229</sup> Memorandum from Father Clark, dated March 13, 1980, Amala Decl., Ex. 151.

1 the Christian Brothers Institute would be the individual provinces in this  
2 country.<sup>230</sup>

3 Similarly, Brother Reilly testified that the Christian Brothers Institute is the “financial  
4 institute of the Christian Brothers” that it is controlled by the Provincial Council, and that it  
5 oversaw the financial operations of the O’Dea community.<sup>231</sup>

6 Their testimony is not surprising, as the Christian Brothers’ internal documents refer  
7 to O’Dea as an “establishment[] in The Christian Brothers Institute of New York.”<sup>232</sup>

### 8 III. EVIDENCE RELIED UPON

9 This opposition brief relies upon the Declaration of Jason P. Amala that is  
10 submitted in support thereof, as well as the pleadings, exhibits, and documents  
11 previously filed in this case.

### 12 IV. LEGAL ARGUMENT

13 Negligence, even gross negligence, does not sufficiently describe the underlying  
14 misconduct of the defendants. Their attempt to evade liability and damages for their  
15 egregious actions should be denied.

## 16 **DEFENDANTS ARE LIABLE TO J.B., M.B., D.L., AND D.F. FOR CLAIMS ARISING 17 OUT OF THEIR INTENTIONAL MISCONDUCT**

### 18 **A. Defendants are Vicariously Liable for Letting Their Managing Agents Expose 19 Plaintiffs to a Serial Sexual Predator**

20 The defendants are vicariously liable for Courtney’s abuse of Plaintiffs because their  
21 managing agents knew that he was molesting boys and they made the deliberate decision to  
22 continue giving him access. Their decisions were made within the scope of their employment  
23 and with the knowledge of the defendants.

24 \_\_\_\_\_  
25 <sup>230</sup> Deposition of John McGraw, dated October 8, 2009, Amala Decl., Ex. 24, at 49-52.

26 <sup>231</sup> Deposition of Kevin Reilly, Amala Decl., Ex. 16, at 55-57.

<sup>232</sup> List of Internal and External Establishments of CBI, Amala Decl., Ex. 152.



1 Unlike *Niece, C.J.C.* and the other cases cited by the defendants, this is not a case  
2 where their managing agents “step[ped] aside from the employer's purposes in order to pursue  
3 a personal objective of the employee.” *Niece v. Elmview Group Home*, 131 Wn.2d 39, 47-48,  
4 929 P.2d 420 (1997).

5  
6 Instead, a reasonable jury could conclude that their managing agents, including  
7 Provincial McGowan, the Provincial Council, Brother McGraw, Brother Reilly, Father  
8 Sarkies, Father Clark, Patrick Crowley, and the Archdiocese’s Office of Education, were  
9 acting on the defendants’ behalf when they decided to continue giving Courtney access to  
10 Plaintiffs and other school boys. *Id.* at 48 (employer is liable for an employee’s acts when the  
11 employee is acting on the employer’s behalf).

12 The decisions of these managing agents were not made on a “frolic and detour.” To  
13 the contrary, these decisions were made with their employer’s full knowledge of what they  
14 were doing and the ramifications of those actions.

15 For example, the Christian Brothers cannot claim that its Provincial and its Provincial  
16 Council were acting outside the scope of their employment when they voted dozens of times  
17 to transfer Courtney between schools, despite his long history of abusing students while in  
18 treatment. These decisions were codified in dozens of minutes and their Superior General  
19 was actively informed of them. The correspondence and reports being sent back to the  
20 Provincial and his Council also show that they were aware of, and approved of, the decisions  
21 of McGraw and Reilly to keep Courtney at O’Dea despite the constant complaints they  
22 received about his abuse of boys.  
23

24 Similarly, the Archdiocese cannot claim that McGraw, Reilly, LaFazia, Sarkies, Clark,  
25 Crowley and its Office of Education were acting outside the scope of their employment or that  
26

1 it was ignorant of those decisions. The evidence shows that these managing agents actively  
2 communicated about their efforts to retain Courtney and their efforts to avoid reporting him.  
3 They wanted his cheap labor, and when they could no longer ignore complaints coming to  
4 their offices, they worked together to keep his abuses quiet in order to protect the “name and  
5 reputation” of their employer.  
6

7 The decisions of these managing agents were made within the scope of their  
8 employment. They had the apparent and actual authority to make these decisions and they did  
9 so, with the full knowledge of their employer. They chose to expose Plaintiffs and other  
10 school children to Courtney rather than give up the fruits of his cheap labor and expose  
11 themselves to liability. Given the evidence present, a jury should be allowed to determine  
12 whether these managing agents acted with the actual or apparent authority of their principals.  
13 *Bill McCurley Chevrolet, Inc. v. Rutz*, 61 Wn. App. 53, 57, 808 P.2d 1167 (1991) (whether an  
14 agent had actual or apparent authority to act is a question for the jury).  
15

16 Unlike *Niece*, vicarious liability in this case is not premised solely on the special  
17 relationship between the defendants, their managing agents, Courtney, and the Plaintiffs. It is  
18 also premised on knowledge and ratification: the defendants knew of their employee’s  
19 intentional and wrongful acts, the defendants knew that Plaintiffs and others would continue  
20 to suffer harm, but they did nothing to stop them because they benefited from those acts.  
21 *Newton Ins. Agency v. Caledonian Ins.*, 114 Wn. App. 151, 157-58, 52 P.3d 30 (2002) (an  
22 entity acts intentionally if it desires to bring about the result or if the result is substantially  
23 certain to occur because of the entity’s actions).  
24

25 In other words, these are not the intentional acts of the employees, but the intentional  
26 acts of the employer. They may be intentional acts, but they are intentional acts that were

1 committed within the scope and agency of employment. *Cf. Niece*, 131 Wn.2d at 56 (only  
2 rejecting vicarious liability for intentional acts “outside the scope of employment”). For that  
3 reason, holding the defendants vicariously liable for the intentional acts of their managing  
4 agents would not be the same as the concept of strict liability that the Court rejected in *Niece*.  
5 Instead, the jury here would be holding the defendant employers liable for the intentional acts  
6 of their employees of which they had knowledge and from which they benefited.  
7

8 The defendants cannot evade liability for the intentional acts of their managing agents  
9 when they knew of those acts, benefited from those acts, and took no steps to cure them.  
10 Under the facts of this case, if the defendants were correct on this issue, an employer could  
11 never be held liable for the intentional acts of its employees of which it is aware. That is not  
12 the law, or should not be the law. Corporations can only act through their agents.

13 Plaintiffs have produced substantial evidence that the intentional acts of the  
14 defendants’ managing agents were made within the scope of their employment in order to  
15 benefit the defendants. A jury should be allowed to make the ultimate decision on this issue.  
16

17 **B. Defendants Ratified Courtney’s Conduct and that of Their Managing Agents**

18 The defendants are directly liable for Courtney’s abuse of Plaintiffs because they  
19 ratified that conduct over many, many years, reaping the benefits while later trying to  
20 repudiate its consequences. *Gaffney v. Megrath*, 23 Wn. 476, 492-93, 63 P. 520 (1900).

21 A principal ratifies the unauthorized act of its agent if the principal avails itself of the  
22 benefit of the act. *Id.* at 493. As the Washington Supreme Court noted in *Gaffney*, “The  
23 methods by which a ratification may be effected are as numerous and as various as the  
24 complex dealings of human life.” *Id.*

1 The Christian Brothers and the Archdiocese knew for many, many years that Courtney  
2 was sexually abusing students. They knew that Courtney had molested students while  
3 receiving therapy from at least three different therapists. They knew that no cure existed for  
4 pedophilia. They knew that he would continue molesting students if given access. They  
5 ignored that knowledge. They gave him access. He continued abusing Plaintiffs and other  
6 students in their care. They did nothing.  
7

8 Instead, throughout this period, they repeated the benefits of his labor. The Christian  
9 Brothers reaped the financial benefits of the Archdiocese's payment for his services, and the  
10 Archdiocese, in turn, reaped the benefits of his cheap labor. And when push came to shove,  
11 they pulled out all stops to help their "problem" obtain employment in the public schools.

12 By keeping his abuses quiet, and by keeping Courtney under their control and in their  
13 favor, the defendants also reaped the benefit of avoiding liability and protecting "their name  
14 and reputation."

15 "The principal cannot avail himself of the benefit of the act and repudiate its  
16 obligations." *Gaffney*, at 493, This is particularly true where both defendants, through  
17 Provincial McGowan, Brother McGraw, Brother Reilly, Father Sarkies, Father Clark, and the  
18 Archdiocese's Office of Education, were repeatedly informed that Courtney was continuing to  
19 molest students, but they simply looked the other way. They were financially motivated to  
20 keep Courtney at O'Dea and they were financially motivated to keep his abuses quiet. They  
21 accepted the benefits of Courtney's labor. Now that they have been caught, they cannot  
22 "repudiate its obligations."  
23

24 Moreover, as noted by a case relied on by the Archdiocese, even if the intentional  
25 decisions of the defendants' managing agents were outside the scope of their employment, the  
26

1 defendants ratified those decisions by possessing full knowledge of the act, accepting the  
2 benefits of the act, and intentionally assuming the obligation of the act without inquiry.  
3 *McCurley*, 61 Wn. App. at 57.  
4

5 Under the compelling facts of this case, a jury should be allowed to decide whether the  
6 defendants ratified Courtney's conduct for their own benefit.

7 **C. Plaintiffs May Pursue Claims for Outrage and Willful and Wanton Misconduct**

8 When applied to the facts of this case, Washington law allows Plaintiffs to pursue  
9 claims for outrage and willful and wanton misconduct.

10 **1. Plaintiffs May Pursue Claims for Outrage Because They Were Within the**  
11 **Zone of Foreseeable Danger Created by the Defendants' Outrageous**  
12 **Conduct**

13 A plaintiff establishes a claim for outrage when there is evidence of (1) extreme and  
14 outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) severe  
15 emotional distress on the part of the plaintiff. *Robel v. Roundup Corp.*, 148 Wn.2d 35, 51, 59  
16 P.3d 611 (2002); *see also Kloepfel v. Bokor*, 149 Wn.2d 192, 193 n.1, 66 P.3d 630 (2003).

17 The defendants have not moved for summary judgment on these elements.

18 Instead, they assert that Plaintiffs cannot move forward on their claims because they  
19 were not physically present when the Provincial, the Provincial Council, McGraw, Reilly, and  
20 LaFazia gave a known sexual predator the keys to O'Dea High School and kept him there  
21 despite years of complaints that he was sexually abusing Plaintiffs and other students. Nor  
22 was D.F. present when they conspired to keep Courtney's abuses quiet and worked together to  
23 help him obtain employment in the public school system, including Othello.

24 They also assert that Plaintiffs cannot bring claims for both outrage and negligence.  
25  
26

1 First, Plaintiff J.B. was very much present when he repeatedly told Brother McGraw  
2 that Courtney was molesting him, McGraw feigned ignorance and innocence, and then  
3 expelled J.B. from O’Dea because he refused to be molested again by Courtney at detention.  
4 If that conduct is not outrageous, what is?  
5

6 Second, the policy rationale behind the “presence” requirement is to ensure that a  
7 plaintiff falls within a zone of protection; in other words, within the scope of foreseeable  
8 harm. Through their outrageous acts, the defendants started a chain of reaction that caused  
9 Plaintiffs to be sexually abused. While they may not have been physically present for those  
10 outrageous acts, they are surely within the zone of foreseeable harm.

11 For that reason, the defendants’ reliance on cases like *Reid v. Pierce County*, 136  
12 Wn.2d 195, 961 P.2d 333 (1998), is misplaced. In *Reid*, the plaintiffs suffered extreme  
13 emotional distress when they learned that pictures of their deceased relatives had been  
14 circulated at cocktail parties and in scrapbooks. *Id.* at 198-200. Despite the emotional  
15 distress they suffered, the Court held that the plaintiffs could not recover under a tort of  
16 outrage because they were not present for the outrageous conduct. *Id.* 201-04.  
17

18 However, in re-affirming the presence requirement, *Reid* relied on its earlier decisions  
19 in *Schurk v. Christensen*, 80 Wash.2d 652, 656-57, 497 P.2d 937 (1972), and *Lund v. Caple*,  
20 100 Wash.2d 739, 742, 675 P.2d 226 (1984), which both involved claims for emotional  
21 distress by a plaintiff whose relative was the person actually injured or harmed. *Id.* at 203.

22 *Reid* also noted that the presence requirement stems from comment l of Restatement §  
23 46(g) (Supp.1948), which required that “the plaintiff must be an immediate family member of  
24 the person who is the object of the defendant's actions, and he must be present at the time of  
25 such conduct.”  
26

1           These cases, and the quoted portion of the Restatement, demonstrate that the tort of  
2 outrage requires a plaintiff to be present only when the plaintiff is not the one who is  
3 physically harmed by the defendant's outrageous conduct. That is not the case here. Through  
4 their outrageous conduct, the defendants directly caused Plaintiffs to suffer sexual abuse. The  
5 fact that they were not sexually abused in the office where the outrageous conduct occurred,  
6 such as the meeting location of the Provincial Council, in McGraw's office, or at the  
7 Archdiocese's Office of Education, does not preclude them from recovering for that conduct.  
8

9           Allowing a jury to hold the defendants liable for their outrageous conduct also  
10 comports with the Court's rationale in *Grimsby v. Samson*, 83 Wn.2d 52, 530 P.2d 291  
11 (1975), the first Washington case that codified the tort of outrage.

12           In *Grimsby*, the Court acknowledged the policy consideration that "unlimited liability"  
13 could result from "extending recovery for harm to others than those directly involved in the  
14 accident," but also noted that Washington allows recovery for mental anguish and distress in  
15 cases (1) involving malice and wrongful intent, or (2) where there has been "an actual  
16 invasion of a plaintiff's person or security, or a direct possibility thereof." *Id.* at 56, 58.  
17 While the Court acknowledged the "presence" requirement found in Restatement § 46(g), it  
18 did so in the context of addressing the prospect of a defendant having "potentially unlimited  
19 liability." *Id.* at 59.  
20

21           That public policy consideration does not exist here. Plaintiffs seek to hold the  
22 defendants liable for their outrageous conduct that caused them to be sexually abused and to  
23 suffer severe emotional distress. They are not seeking damages for emotional distress to their  
24 wives, their parents, their children, their relatives, or their friends.  
25  
26



1                   **2. Plaintiffs Have Provided Evidence of Willful and Wanton Misconduct and**  
2                   **May Pursue Causes of Action for that Misconduct**

3                   A cause of action for willful misconduct requires a showing that the defendants  
4                   intended to injure, and a cause of action for wanton misconduct requires a showing that the  
5                   defendants were recklessly indifferent to injury that would probably result from their conduct.  
6                   *Adkisson v. Seattle*, 42 Wn.2d 676, 684-85, 258 P.2d 461 (1953); WPI 14.01 (wanton  
7                   misconduct requires that “a reasonable person would know, or should know, that such  
8                   conduct would, in a high degree of probability, result in substantial harm to another”).

9                   Washington recognizes causes of action for both willful and wanton misconduct.  
10                  *Adkisson*, 42 Wn.2d at 684-85 (recognizing both); *Sorensen v. McDonald’s Estate*, 78 Wn.2d  
11                  103, 109-10, 470 P.2d 206 (1970) (recognizing “concepts of intentional accident, wanton  
12                  misconduct and gross negligence” and holding that plaintiff was not restricted to a cause of  
13                  action for gross negligence); *Hanson v. Freigang*, 55 Wn.2d 70, 73-74, 345 P.2d 1109 (1959)  
14                  (recognizing separate causes of action exists for negligence and wanton misconduct).

15                  Plaintiffs have provided substantial evidence that would allow a jury to conclude that  
16                  the defendants acted willfully and wantonly when they transferred Courtney to O’Dea High  
17                  School, ignored complaints that he was sexually abusing Plaintiffs and others, and then solved  
18                  their “problem” by helping him obtain employment in the public school system.

19                  By the time he was transferred to O’Dea, the Christian Brothers knew that Courtney  
20                  had molested scores of boys, had physically ejected him from one school for molesting  
21                  students, and had barred him from returning to three others. They also knew that all of that  
22                  abuse occurred while Courtney was in sexual deviancy treatment. When Courtney  
23                  immediately began abusing students at O’Dea, they did nothing. Instead, they obtained a self-  
24                  serving letter of recommendation from a third or fourth therapist and returned him to the  
25                  26

1 classroom. This is not negligence or gross negligence. At best for the defendants, it is  
2 reckless.

3 Similarly, the Archdiocese's principal, McGraw, and its teacher, Reilly, were well-  
4 aware of Courtney's history of molesting students before he came to O'Dea. McGraw admits  
5 that he met with Courtney's therapist about a singular "incident" and was told to keep  
6 Courtney away from students. Reilly admits that he knew Courtney was an incurable  
7 pedophile, and that they needed to keep him away from students, but he claims protecting  
8 students was not his job. Despite their knowledge, they allowed Courtney to immediately  
9 start coaching basketball, and within a year, Courtney was back in the classroom.  
10

11 Moreover, during that first year, the Archdiocese's principal and teacher found  
12 themselves huddled in a car with their lay vice-principal, LaFazia, discussing a complaint that  
13 Courtney was engaging in inappropriate contact. LaFazia testified that McGraw and Reilly  
14 agreed to handle the situation, but nothing was done. Similarly, Plaintiff J.B. and other boys  
15 have testified that McGraw did nothing when he learned of their abuse.  
16

17 When they were finally forced to remove Courtney from O'Dea and St. Alphonsus,  
18 the defendants did not report him. Instead, they wrote him letters of recommendation,  
19 actively assisted him in obtaining and retaining his teaching certificate, and pushed him into  
20 the public school system.

21 The Archdiocese cannot side-step the knowledge of McGraw, Reilly, LaFazia,  
22 Sarkies, Clark, Crowley, or its Office of Education, because it had a non-delegable duty to  
23 protect Plaintiffs from foreseeable harm. These men were the Archdiocese's managing agents  
24 and employees at its schools. Clark was its Superintendent.  
25  
26

1 The Archdiocese cannot now distance itself from the Christian Brothers. It paid them.  
2 It insured them. It ensured they had teaching certificates. It dictated their policies and  
3 procedures. It notified the State of Washington of their faculty positions at O’Dea. And it  
4 took the position that O’Dea High School was its high school, an Archdiocesan high school.  
5

6 If the Archdiocese wants to blame the Christian Brothers, it should have filed a cross-  
7 claim against them. It strategically chose not to do so.

8 The defendants can argue to the jury that Courtney was in treatment, so their actions  
9 were “only negligent,” but viewing the evidence in a light most favorable to Plaintiffs, a  
10 reasonable jury could conclude that they acted willfully and wantonly.

11 **3. Plaintiffs May Pursue Multiple Claims for the Same Misconduct and Are**  
12 **Only Prevented from Double Recovery**

13 The defendants suggest that under *Rice v. Janovich*, 109 Wn.2d 48, 61-61, 742 P.2d  
14 1230 (1987), Plaintiffs claims for outrage and willful and wanton misconduct must be  
15 dismissed because they have also pled negligence. This is an incorrect reading of *Rice*.

16 In that case, the Court held that it was error for the trial court to instruct the jury on  
17 both assault and outrage because the former subsumes the latter. *Id.* at 61-62. In other words,  
18 it would provide the plaintiff with an impermissible double-recovery. *Id.* at 62.

19 The Court did not, however, hold that a trial court should dismiss a plaintiff’s claim  
20 under one legal theory because the plaintiff may eventually be able to recover damages under  
21 another legal theory with a lower burden of proof. Plaintiffs are not required to elect their  
22 remedies before trial, and the defendants have provided no legal authority for that position.  
23

24 **D. Plaintiffs May Pursue Claims for Outrage and Willful and Wanton Misconduct**

25 As discussed above, and as outlined in Plaintiffs’ pending motion for summary  
26 judgment on the issue of duty, the Archdiocese cannot side-step the knowledge or acts of

1 McGraw, Reilly, LaFazia because it had a non-delegable duty to protect Plaintiffs from  
2 foreseeable harm. A school district, its schools, its administrators, and its teachers owe a non-  
3 delegable duty to protect their students from foreseeable harm. *Carabba v. Anacortes School*  
4 *Dist. No. 103*, 72 Wn.2d 939, 955-58, 435 P.2d 936 (1967); *Niece v. Elmview Group Home*,  
5 131 Wn.2d 39, 54-56, 929 P.2d 420 (1997) (noting the same); *Travis v. Bohannon*, 128 Wn.  
6 App. 231, 244, 115 P.3d 342 (2005) (school district’s duty is non-delegable); *see generally*  
7 *McLeod v. Grant County School Dist. No. 128*, 42 Wn.2d 36, 255 P.2d 360 (1953) (“... the  
8 protective custody of teachers is mandatorily substituted for that of the parent”).  
9

10 McGraw, Reilly, and LaFazia were the Archdiocese’s managing agents and employees  
11 of O’Dea. It paid them. It insured them. It ensured they had teaching certificates. It dictated  
12 their policies and procedures. It notified the State of Washington of their faculty positions at  
13 O’Dea. And it took the position that O’Dea High School was its high school, an  
14 Archdiocesan high school. If the Archdiocese wants to blame the Christian Brothers, it  
15 should have filed a cross-claim against them. It strategically chose not to do so.  
16

17 Moreover, if the Archdiocese wants to take the position that it exercised “no control or  
18 oversight” over McGraw, Reilly, or LaFazia, then the Court should enter summary judgment  
19 in Plaintiffs’ favor – that admission would mean no genuine issue of material fact exists as to  
20 whether the Archdiocese made any effort to protect the students in its care from foreseeable  
21 harm, regardless of its non-delegable duty. *C.J.C. v. Corporation of the Catholic Bishop of*  
22 *Yakima*, 138 Wn.2d 699, 720-21, 985 P.2d 262 (1999); *McLeod v. Grant County School Dist.*  
23 *No. 128*, 42 Wn.2d 316, 320-22, 255 P.2d 360 (1953) (a school has a duty to protect its  
24 students from foreseeable harm).  
25  
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1 **E. Debate Regarding the Due Diligence Exercised by Plaintiffs, Combined with**  
2 **Undisputed Evidence of Concealment, Presents a Factual Dispute Precluding**  
3 **Summary Judgment on the Issue of Fraudulent Concealment**

4 Plaintiffs reasonably believed that the sex abuse perpetrated by Courtney was isolated,  
5 and never suspected the defendants had failed to properly protect them. Due diligence is  
6 satisfied when, as here, the defendants' concealment explains why the Plaintiffs did not  
7 investigate their claims. Had the defendants abided by their duty and disclosed the fact that  
8 scores of boys had been abused by Courtney, Plaintiffs would have had notice of their claims,  
9 and could have thoroughly investigated those claims.

10 The defendants' reliance on *August v. U.S. Bancorp* is misplaced, as the case supports  
11 denying summary judgment on a fraudulent concealment claim when the defendants violated  
12 their duty to disclose information. The case has two basic holdings: 1) that an institution  
13 commits fraudulent concealment when it contravenes its duty to disclose information which  
14 implies liability, and 2) that a plaintiff's duty to exercise "due diligence" depends on when  
15 information is available.  
16

17 What information was available, and when, is a factual determination that makes  
18 summary judgment improper:

19 The Bank argues that the failure to provide information does not establish  
20 fraudulent concealment. But *Thorman* held that silent or passive conduct is not  
21 deemed fraudulent unless there is a fiduciary relationship; under these  
22 circumstances, there is a duty upon the defendant to make a disclosure.  
23 *Thorman*, 421 F.3d at 1096. The Bank also argues that Nick did not file suit in  
24 2002 and never filed a motion to compel production of the documents he  
25 believed were missing or withheld. Again, *Nick's duty to be diligent relies on*  
26 *the factual determination as to when Nick knew, or should have known, the*  
*elements of a cause of action.* The question as to what Nick knew is a question  
of material fact that cannot be resolved here.

1 146 Wn.2d 328, 348-9, 190 P.3d 86 (2008) (emphasis added); *see also Allen v. State*,  
2 118 Wn.2d 753, 826 P.2d 200 (1992) (holding that exercise of due diligence is typically a  
3 question of fact.)  
4

5 Similarly, under the mandatory reporting act, RCW 26.44, the defendants were  
6 required to disclose the ample evidence they had of Courtney's prolific sexual abuse. They  
7 did not. Fraudulent concealment is established per se under *August*.

8 The Archdiocese's retort, that Plaintiffs failed to exercise due diligence, presupposes  
9 that they had available adequate information to trigger that duty. Clearly, they did not. It was  
10 not until Plaintiffs became aware that they were not alone, that Courtney's sexual misconduct  
11 was not an isolated act of perversion unknown by their Church, that the defendants' liability  
12 was revealed and their duty to exercise due diligence triggered.

13 At issue is whether the Plaintiffs should have known they had a cause of action against  
14 the defendants for bringing a known pedophile into their school and into their lives. If they  
15 did, the next question is whether they exercised due diligence in unearthing the Church's  
16 liability which, to all Plaintiffs and all reasonable people, was simply unthinkable.

17 A jury must decide whether the trust of Plaintiffs J.B., M.B., and D.L. in their Church  
18 and school was unreasonable, such that their failure to vigorously investigate Church liability  
19 was a failure of due diligence. This is a purely factual question. The defendants claim that  
20 knowledge of a cause of action against Courtney alerted Plaintiffs to a cause of action against  
21 the defendants is not factually correct as a matter of law. There is an alternative reasonable  
22 account: Plaintiffs reasonably believed the Church was innocent, and Courtney an aberration.  
23 This is not the forum to resolve this factual dispute. As *August* commands, this is a factual  
24 question for the jury. Summary judgment should be denied on this basis.  
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Moreover, even if the Court concludes as a matter of law that Plaintiffs' failure to investigate Church liability was unreasonable and a failure of due diligence, the question remains whether the exercise of due diligence would have succeeded in uncovering evidence of Church liability. As the Court of Appeals explained in *Douglas v. Stranger*, a party's failure to bring a claim is excusable if the basis for the claim "could not [be] discovered until within 3 years prior to the commencement of the action." 101 Wn.App. 243, 255, 2 P.3d 998 (2006) (*emphasis added*) (quoting *Interlake Porsche & Audi, Inc. v. Bucholz*, 45 Wn.App. 502, 518, 728 P.2d 597 (1986)).

In this case, there is ample evidence that no measure of "due diligence" would have compelled the defendants to produce evidence of their complicity, let alone admit to it.

As the Court is aware, the defendants stonewalled producing documents on Courtney for years, going so far as to accuse Plaintiffs' counsel of "harassing" them when they insisted that more documents must exist. Eventually, bits and pieces of the truth emerged, but major parts have apparently been scurried away to the darkest corners and farthest reaches of the defendants' archives. If Plaintiffs have barely been unable to obtain the truth through formal discovery, a reasonable jury could conclude that they would have had no chance on their own.

Plaintiffs diligently pursued their claims once they became aware of the Church's involvement in transferring Courtney from school-to-school-to-school-to-school-to-school-school. Their motion should be denied.

**F. Washington Law and Public Policy Weigh Heavily Against the Laches Defense**

Washington's strong and unequivocal public policy in favor of allowing victims of childhood sexual abuse to assert their claims severely undercuts the Archdiocese's attempt to



1 hide behind a laches defense, particularly where the defendants knew of Courtney's abuses in  
2 the 1970s and did nothing to stop him.

3 The doctrine of laches rests upon considerations of public policy – exactly the concern  
4 of the Legislature in the enactment of the statute of limitations. *See Crodle v. Dodge*, 99 Wn.  
5 121, 130-131, 168 P. 986 (1917); laws of 1991, ch. 212, § 1(1)-(6) (amending RCW 4.16.340  
6 in part to clarify the application of the discovery rule to childhood sexual abuse cases).  
7

8 The legislative findings when RCW 4.16.340 was modified demonstrate the  
9 Legislature's knowledge of an abuse victim's potential inability to recognize the harms that  
10 flow from childhood sexual abuse and emphasize that the limitation periods set forth in  
11 RCW 4.16.340 are to be liberally construed in favor of childhood victims of sexual abuse.

12 The Legislature noted:

- 13 (1) Childhood sexual abuse is a pervasive problem that affects the  
14 safety and well-being of many of our citizens.
- 15 (2) Childhood sexual abuse is a traumatic experience for the victim  
16 causing long-lasting damage.
- 17 (3) The victim of childhood sexual abuse may repress the memory  
18 of the abuse *or be unable to connect the abuse to any injury*  
19 *until after the statute of limitations has run.*
- 20 (4) *The victim of childhood sexual abuse may be unable to*  
21 *understand or make the connection between childhood sexual*  
22 *abuse and emotional harm or damage until many years after the*  
23 *abuse occurs.*
- 24 (5) *Even though victims may be aware of injuries related to the*  
25 *childhood sexual abuse, more serious injuries may be*  
26 *discovered many years later.*
- (6) The legislature enacted RCW 4.16.340 to clarify the application  
of the discovery rule to childhood sexual abuse cases. At that  
time the legislature intended to reverse the Washington  
Supreme Court decision in *Tyson v. Tyson*, 107 Wn.2d 72, 727  
P.2d 226 (1986).

1 Laws of 1991, ch. 212, § 1 (emphasis added).

2 The Washington Supreme Court has held that in enacting this statute the Legislature  
3 "specifically provided for a broad and generous application of the discovery rule to civil  
4 actions for injuries caused by childhood sexual abuse." *C.J.C. v. Corporation of the Catholic*  
5 *Bishop of Yakima*, 138 Wn.2d 699, 712, 985 P.2d 262 (1999).  
6

7 In *C.J.C.*, 138 Wn.2d 699 (1999), the Court recognized the Legislature's articulated  
8 public policy in favor of allowing victims of childhood sexual abuse to bring claims against  
9 religious entities like the Archdiocese. *Id.* at 712-714. Given the legislative history, the Court  
10 concluded that there is a strong public policy in favor of protecting children against acts of  
11 sexual abuse. *Id.* at 726.

12 Similarly, the Washington Court of Appeals has held that the legislature enacted Part  
13 (c) of the statute in order to address instances "where the victim of childhood sexual abuse  
14 was initially unable to connect the abuse to mental or emotional disorders caused by the  
15 abuse." *See Hollmann v. Corcoran, et al.*, 89 Wn. App. 323, 325, 949 P.2d 386 (1997).  
16

17 The *C.J.C.* decision directly disposes of the Archdiocese's arguments based on the  
18 timing of Plaintiffs' claims, because in that case the abuse had occurred over thirty years  
19 earlier, and the perpetrator had died by the time the plaintiffs brought suit against the Church.  
20 138 Wn.2d at 705. The Court allowed the plaintiffs to pursue their claims against the  
21 religious entity, noting that "[n]owhere in RCW 4.16.340 does the Legislature articulate  
22 concern for defendants who might be sued." *Id.* at 713.

23 Allowing the Archdiocese to avoid the plain intentions of *C.J.C.* and RCW 4.16.340  
24 through a backdoor laches defense would defeat the strong public policy enunciated in the  
25 statute. Given the Legislature's intent, the Archdiocese's laches analysis is not available  
26 under these circumstances. All of Plaintiffs' claims fall squarely within this state's statute of

1 limitations period. There is nothing unusual or unfair about a plaintiff bringing a claim  
2 pursuant to a statute that clearly provides for injuries that emerge many years after child  
3 sexual abuse. Public policy and the law favor a remedy for victims, not a shield (much less a  
4 shield grounded in equity) for perpetrators.

5 **G. The Claim of Laches is Contrary to the Separation of Powers**

6 The United States Supreme Court long ago recognized that, while the doctrine of  
7 laches has survived as a limitation upon certain relief in equity, "[l]aches within the term of  
8 the statute of limitations is no defense at law." *United States v. Mack*, 295 U.S. 480, 489  
9 (1935).

10 In a more recent case, Justice Stevens observed that the inapplicability of laches to  
11 certain legal actions is a matter of separation of powers between the legislative and judicial  
12 branches: "In deference to the doctrine of the separation of powers, the Court has been  
13 circumspect in adopting principles of equity in the context of enforcing federal statutes."  
14 *Oneida County v. Oneida Indian Nation of New York*, 470 U.S. 226, 262 n. 12, 105  
15 S. Ct. 1245, 84 L. Ed. 2d 169 (1985) (Stevens, J. dissent). The Washington Supreme Court  
16 has repeatedly stated the same concern:

17  
18 While we may find a waiting period of years to be intolerable,  
19 we would find it even more intolerable for the judicial branch of  
20 government to invade the power of the legislative branch. Just  
21 because we do not think the legislators have acted wisely or  
22 responsibly does not give us the right to assume their duties or  
23 to substitute our judgment for theirs. The judiciary is the  
24 branch of government that is empowered to interpret statutes,  
25 not enact them.

26 *Hillis v. Dept. of Ecology*, 131 Wn. 2d 373, 390, 932 P.2d 139 (1997).

This concern is particularly true where the Legislature has made definitive legislative findings of public policy. For example, in *Weyerhaeuser Company v. Commercial Union Insurance Company*, 142 Wn. 2d 654, 688, 15 P.3d 115 (2000), the Washington Supreme

1 Court noted that the plaintiff's arguments were "best categorized as matters of 'sound public  
2 policy'. ... [A]s such, this Court is not the proper forum..." It disposed of the arguments by  
3 noting that public policy is a matter usually left to the Legislature, not to the courts. *Id.*

4 In short, the Archdiocese's laches arguments do not provide the Court with a legal  
5 basis for making a determination contrary to the statute of limitations. The Legislature has  
6 fully occupied this field. Public policy is settled to promote a remedy for victims, not relief  
7 for perpetrators and those who harbored them.

8 **H. The Defense of Laches is Not Available Where Plaintiffs Only Recently Gained  
9 Knowledge of the Facts Constituting a Cause of Action Against the Archdiocese**

10 Laches is an affirmative defense and it requires that the defendant prove two elements:  
11 (1) inexcusable delay and (2) prejudice to the other party from such delay. *Clark County  
12 Public Utility District No. 1 v. Wilkinson*, 139 Wn.2d 840, 848, 991 P.2d 1161 (2000).

13 In order to meet the "inexcusable delay" element, the Archdiocese must meet its  
14 burden of proof by showing that "the plaintiff had knowledge of the facts constituting a cause  
15 of action or a reasonable opportunity to discover such facts." *In re Marriage of Hunter*, 52  
16 Wn. App. 265, 270, 758 P.2d 1019 (1988) (quoting *In re Marriage of Watkins*, 42  
17 Wn. App. 371, 374, 710 P.2d 819 (1985)). A plaintiff must know of his legal right and  
18 negligently fail to enforce that right before a defendant may avail himself of the laches  
19 defense. *Johnson v. Schultz*, 137 Wn. 584, 588, 243 P. 644 (1926); *see also Crodle*, 99  
20 Wn. 121.

21 In *Johnson*, the Washington Supreme Court noted that the touchstone is the plaintiff's  
22 negligence: "When a court sees negligence on one side and injury therefrom on the other it is  
23 ground for denial of relief." 137 Wn. at 588; *see also Hogan v. Kyle*, 7 Wn. 595, 601, 35 P.  
24 399 (1894) (a plaintiff must acquiesce "for an unreasonable length of time after the party was  
25 in a situation to enforce his right under the full knowledge of the facts...").

1 The requirement that a plaintiff must know all of his rights is directly related to the  
2 "inexcusable delay" element of the laches defense. *Hunter*, 52 Wn. App. at 270. As in the  
3 present case, Washington courts have repeatedly recognized that victims of childhood sexual  
4 abuse often do not discover their cause of action until many years after the abuse occurs. *See*,  
5 *e.g.*, *Cloud v. Summers*, 98 Wn. App. 724, 734-735, 991 P.2d 1169 (1999). Victims of  
6 childhood sexual abuse "may not know ... that the abuse might have been prevented if  
7 persons having a special relationship with the child had not breached a duty to protect the  
8 child from abuse." *Id.* Accordingly, the statute of limitations for a claim based on childhood  
9 sexual abuse is not triggered until the victim subjectively makes the connection between the  
10 abuse and his or her harm. *Id.* at 735; *Hollman*, 89 Wn. App. at 324-325.

11 The defendants have failed to show that Plaintiffs had knowledge of their claims  
12 "since the late 1970s" because a reasonable jury could very easily decide that Plaintiffs had no  
13 reason to believe the defendants had enabled Courtney to abuse them.

14 This is borne-out by the testimony of the Plaintiffs, who each testified that they were  
15 not aware of the role of the defendants in enabling their abuse until very recently.<sup>233</sup>

16 Moreover, the defendants have made zero showing of prejudice from the asserted  
17 delay. The paragraph of their motion devoted to this issue was apparently copied and pasted  
18 from an earlier motion in the *Biteman* litigation because it refers to Archbishop Connolly,  
19 Monsignor Doogan, Archbishop Hunthausen, and "other Archdiocese officials or  
20 witnesses."<sup>234</sup> The Christian Brothers also offers no evidence of prejudice.

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25 <sup>233</sup> Deposition of J.B., Amala Decl., Ex. 161, at 60-62 Deposition of M.B., Amala Decl., Ex. 162, at 34-35, 51,  
82; Deposition of D.L., Amala Decl., Ex. 163, at 48-50, 53-55; Deposition of D.F., Amala Decl., Ex. 164, at  
177-80.

26 <sup>234</sup> Defendant Archdiocese's Motion for Summary Judgment Re: Various Claims, at 19-20.

1 This is not surprising, because the following key witnesses are still alive (and have  
2 been deposed): Courtney, McGraw, Reilly, LaFazia, Sarkies, Clark, Huck, and Crowley. No  
3 prejudice exists.

4 **I. Equitable Defenses Are Not Available to a Defendant with Unclean Hands.**

5 He who seeks equity must do equity. Washington follows the rule that equitable  
6 defenses are available to innocent parties only. *Mut. of Enumclaw Co. v. Cox*, 110 Wn.2d  
7 643, 651, 757 P.2d 499 (1988). Since laches is an equitable defense, it does not benefit those  
8 who withheld information that would have prompted action at an earlier time. *Shew v. Coon*  
9 *Bay Loafers, Inc.*, 76 Wn.2d 40, 51, 455 P.2d 359 (1969); *see also Retail Clerks Health &*  
10 *Welfare Trust Funds v. Shopland Supermarket*, 96 Wn.2d 939, 949, 640 P.2d 1051 (1982)  
11 (rejecting the defense as defendants withheld "information which would have prompted action  
12 at an earlier date"). The defense of laches thus cannot be based on omissions that were in any  
13 part induced by the defendants' own conduct, concealment, or representations.

14  
15 Any prejudice suffered by the defendants is from the deliberate choices they made: to  
16 harbor a known serial sexual predator in order to protect the name and reputation of the  
17 Church, to conceal evidence of its knowledge from the public, and to ignore allegations of  
18 Courtney's abuse by disowning him when convenient.

19  
20 A competent inquiry, begun when Courtney's misconduct first became public, would  
21 have uncovered his rampant sexual abuse and given the Plaintiffs an opportunity to begin to  
22 heal. That did not occur. The defendants have no standing in equity in this Court.

23 **J. Plaintiffs' Claims are Governed by RCW 4.16.340, not RCW 4.16.100**

24 The defendants' mistakenly rely on RCW 4.16.100 to argue that a two-year statute of  
25 limitations applies. To the contrary, Plaintiffs' claims are based on the sexual abuse they  
26 suffered as children, which is governed by RCW 4.16.340. The fact that the sexual abuse was

1 “physical,” and that Plaintiffs have shown that the defendants intended for the abuse to occur,  
2 does not allow the defendants to bypass the statute of limitations for childhood sexual abuse.

3 By definition, intentional sexual abuse can only be brought about by intentional and  
4 physical acts. Their motions should be denied.  
5

6 **K. Division One Recently Affirmed that Plaintiffs May Pursue Punitive Damages  
Against the Christian Brothers for their Egregious Conduct**

7 Plaintiffs should be allowed to pursue punitive damages against the Christian Brothers  
8 defendants because their most egregious acts took place not in Washington, but at their  
9 Provincial Headquarters in California and Illinois.  
10

11 The Court need not review those acts in a light most favorable to Plaintiffs in order to  
12 appreciate the horrific nature of those acts; that lens simply provides more reason why a jury  
13 should be allowed to decide whether punitive damages are appropriate.

14 Although its conduct was also egregious, Plaintiffs do not seek punitive damages  
15 against the Seattle Archdiocese.<sup>235</sup>

16 **1. Plaintiffs May Pursue Punitive Damages Under the Laws of California  
and Illinois**

17 As recently as July 6, 2009, the Washington Court of Appeals reaffirmed that, when  
18 appropriate, Washington courts will apply the law of a different state on the sole issue of  
19 punitive damages. *Singh v. Edwards Lifesciences Corp.*, 151 Wn. App. 137, 210 P.3d 337,  
20 340 (July 6, 2009).  
21

22 In deciding that the trial court properly allowed the plaintiffs to pursue and obtain  
23 punitive damages under California law, the Court focused on (1) which state has the more  
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25 <sup>235</sup> To the extent CBI asserts that it is not liable for the actions of the Christian Brothers, as reflected below,  
26 Plaintiffs request a continuance under CR 56(f) because CBI is still producing discovery that it was ordered to  
produce more than a month ago and because Plaintiffs will be filing a motion to compel additional discovery  
that CBI refuses to produce.



1 significant contacts regarding the conduct at issue, and (2) which state has the greater interest  
2 in the determination of a particular issue. *Id.* at 143-48.

3 Here, as in *Singh*, the Court should apply punitive damages from California and  
4 Illinois, the two states where the Christian Brothers, through their Provincial and their  
5 Provincial Council, chose to:  
6

- 7 (1) sign the O’Dea contract, which required them to protect its students from  
8 foreseeable harm (California);
- 9 (2) transfer Courtney to O’Dea, despite transferring him from his past four  
10 assignments for molesting boys (California);
- 11 (3) keep Courtney at O’Dea, despite frequent complaints that he was  
12 molesting Plaintiffs and others (California);
- 13 (4) return Courtney to the classroom under the auspices of a  
14 “recommendation” by his therapist, despite knowing that Courtney had  
15 molested scores of boys while in treatment with at least two prior  
16 therapists (California);
- 17 (5) keep Courtney at O’Dea, despite sending him to sexual deviancy therapy  
18 in Canada (California);
- 19 (6) conceal their knowledge of Courtney’s long history of abusing boys, from  
20 parents, children, and the authorities, despite finally removing him from  
21 O’Dea because so many boys and parents were complaining (California  
22 and Illinois);
- 23 (7) take no action to prevent Courtney from abusing Plaintiffs and other boys,  
24 despite actively supervising him before and after he was removed from  
25 O’Dea, even after their Provincial visited Courtney during his tenure as  
26 principal of a grade school in Washington (California and Illinois); and,
- (8) write numerous letters of recommendation for Courtney’s placement file,  
despite removing him from no less than five schools for molesting boys  
(Illinois).

Brothers McGraw, Reilly, and LaFazia all testified that these decisions rested with the  
Provincial and his Council:

1 “My job, as I saw it, was subject to reporting to my immediate supervisor. My  
2 immediate superior in the Congregation [of] Christian Brothers was Brother  
3 McGowan. It is to him that I provided all information that I had had.” – McGraw

4 “The government doesn’t ask you. They tell you.” – Reilly

5 Given their testimony, a jury could conclude the Provincial and his Council concealed  
6 the fact that they knew Courtney was a serial sexual predator before O’Dea, concealed the  
7 fact that he could not be cured, and concealed the reports that they were separately receiving  
8 from McGraw and Reilly.

9 It is difficult to imagine a set of facts that are more egregious than these. Consistent  
10 with the *Singh* decision, California and Illinois have a greater interest in making certain that  
11 businesses headquartered in their respective states are deterred from wrongful conduct.  
12 Washington, on the other hand, has a greater interest in ensuring that victims of childhood  
13 sexual abuse are allowed to pursue civil claims for their abuse and obtain full and fair  
14 compensatory damages.

15 The Court should allow Plaintiffs to pursue punitive damages under the laws of  
16 California and Illinois, while applying Washington’s statute of limitations for childhood  
17 sexual abuse.

18  
19 **2. Washington’s Courts Will Incorporate And Apply The Law of Another**  
20 **State On The Issue of Punitive Damages.**

21 The conflict of law analysis in Washington is “a hybrid of the Restatement (second) of  
22 Conflict of Laws and a governmental interest analysis.” *Singh*, 151 Wn. App. at 143-44.  
23 “Where a conflict exists, Washington courts decide which law applies by determining which  
24 jurisdiction has the most significant relationship to a given issue.” *Id.* at 143. “The court  
25 must evaluate the contacts both quantitatively and qualitatively, based upon the location of the  
26 most significant contacts as they relate to the particular issue at hand.” *Id.*

1 The relevant conflicts for evaluation include “(a) the place where the injury occurred,  
2 (b) the place where the conduct causing the injury occurred, (c) the domicile, residence,  
3 nationality, place of incorporation and place of business of the parties, and (d) the place where  
4 the relationship, if any, between the parties is centered.” *Id.* (quoting *Johnson v. Spider*  
5 *Staging Corp.*, 87 Wn.2d 577, 581, 555 P.2d 997 (1976)).  
6

7 “In holding that Washington law applied, the *Johnson* court enunciated a two-step  
8 analysis to be employed to determine the appropriate choice of law.” *Id.* at 143-44. “The  
9 court must first evaluate the contacts with each potentially interested state and then if  
10 balanced, evaluate the public policies and governmental interests of the concerned states.” *Id.*  
11 at 144.

12 *Singh* noted that Washington courts have held that these same choice of law principles  
13 apply to the issue of punitive damages.” *Id.* It quoted and endorsed *Kammerer v. Western*  
14 *Gear Corp.*, 96 Wn.2d 416, 635 P.2d 708 (1981), where the trial court allowed a jury to use  
15 California law to award punitive damages against a Washington corporation for a claim based  
16 on fraudulent representation:

17  
18 California has an interest in deterring fraudulent activities by corporations having  
19 a substantial business presence within its borders. Washington has no interest in  
20 protecting persons who commit fraud. Western Gear asserts that differences in  
21 Washington and California law governing fraud suggest that Washington has a  
22 policy of greater caution in allowing judgments for fraud. Because we do not find  
23 any difference, material to this case, in the laws of the two states, we do not find  
any interest served by application of Washington law. Because Washington has  
no interests superior to or inconsistent with the interests of California in this  
controversy, application of the Restatement rule dictates that California law  
govern the Kammerers' claim for fraud.

24 96 Wn.2d at 416.  
25  
26

1 In deciding whether to allow punitive damages, *Singh* noted that the most relevant  
2 factor was the location of the defendant's bad acts.

3 Although *Kammerer* involved fraudulent representations, which is analogous to the  
4 Christian Brothers' fraudulent representations that Courtney posed no harm to boys at O'Dea  
5 and beyond, *Singh* is even more analogous. There, the defendant manufactured a heart  
6 monitor that malfunctioned during a heart bypass surgery, resulting in irreparable damage to  
7 the patient's heart. 151 Wn. App. at 146-47. Evidence showed that the corporation's  
8 managing agents knew about problems with its monitors, but did not issue a recall. *Id.*  
9

10 The defendant was sued by the patient, Singh, and his family in Snohomish County  
11 Superior Court for a products liability claim. The hospital where the injury occurred also  
12 sued the corporation for fraud, violations of Washington's Consumer Protection Act and  
13 breach of contract. *Id.* at 141. All of the plaintiffs "sought punitive damages under California  
14 law." *Id.* The matter went to trial and resulted in an award of compensatory damages of  
15 \$31,750,000 and an award of \$8,350,000 in punitive damages based on California law. *Id.* at  
16 142. The defendant appealed the trial court's decision to apply California law for punitive  
17 damages. *Id.*

18 In affirming the trial court's decision and the jury's verdict, the Court reiterated that  
19 Washington will evaluate conflicts of law on "a given issue." *Id.* at 143 (emphasis added).  
20 The Court also noted that "[a]lthough there is presumption that the law of the state where the  
21 injury occurred applies in personal injury cases, this presumption may be overcome if another  
22 state has a greater interest in determination of a particular issue." *Id.* at 145-46 (emphasis  
23 added). Thus, the Court determined that it was appropriate to apply California law only  
24 on the issue of punitive damages. *Id.* at 146.  
25  
26

1 **B. This Court Should Apply California and/or Illinois Punitive Damages Law**

2 After explaining when Washington applies the punitive damages law from another  
3 jurisdiction, the Court in *Singh* went on to analyze whether it was appropriate to apply  
4 punitive damages law from California under the facts of that case.

5 The defendant argued that its contacts were more significant in Washington than  
6 California. *Id.* at 146-48. The Court disagreed because (1) the defendant’s headquarters were  
7 located in California, (2) the defective product was discovered in California as early as 1998,  
8 (3) by 2002, the foreseeable harm of that defect was known, but the decision was made in  
9 California not to recall the product or warn users. *Id.*

10 After analyzing the defendant’s contacts with California, the Court considered the  
11 relevant “governmental policy interest[s]” between Washington and California:  
12

13 In analyzing which state has the greater governmental policy interest, [the  
14 defendant] contends that it is Washington with its policy that rejects the award of  
15 punitive damages unless provided for by statute. [The defendant] argues that  
16 Washington's interest is in permitting full compensation for injured parties and  
17 none in permitting a windfall for Plaintiffs. But, as already noted, Washington  
18 courts have allowed punitive damages in other cases. In *Kammerer*, in particular,  
the court explicitly stated that Washington has no interest in protecting companies  
who commit fraud. The conduct that serves as the basis of the punitive damage  
award here occurred in California and that state has an interest in deterring its  
corporations from engaging in such fraudulent conduct.

19 *Id.* at 342.

20 Here, just as in *Singh*, an analysis of the relevant contacts and governmental interest  
21 demonstrates that the punitive damages laws of California and Illinois should apply.  
22

23 First, as with *Singh*, the Provincial Headquarters (the “corporate headquarters”) were  
24 located in California and Illinois. As documented in their own meeting minutes, and as  
25 discussed above, the key decisions regarding Courtney’s transfer to O’Dea, and the key  
26

1 decisions to keep him at O’Dea in a teaching position, were made by the Council at the behest  
2 of their Provincial.

3 Moreover, McGraw and Reilly testified that Provincial McGowan hid much of  
4 Courtney’s past abuses from them, that they had no idea he went to Southdown for sexual  
5 deviancy treatment, and that they were not aware of the complaints that each were providing  
6 to McGowan about his abuses at O’Dea.

7  
8 Second, as with *Singh*, the “defective product” was discovered in Illinois as early as  
9 the 1960s. As McGowan noted in 1979, “[t]he Provincial Council has been aware of Chris’  
10 problem with homosexuality for years. He had trouble in Brother Rice, Chicago, back in the  
11 sixties – then more trouble at Br. Rice, Birmingham, Leo, St. Laurence, and now O’Dea.”<sup>236</sup>

12 The Provincial and his Council were undoubtedly aware of the scope and magnitude  
13 of their “problem” when Courtney was physically ejected from one of their high schools in  
14 January 1974. A short while later, they barred him from going back to any of their former  
15 schools: “Chris is to have no contact with Rice, Leo or Laurence in any way, shape or form.”  
16 This decision was made from the Provincial’s Headquarters in Vallejo, California.

17  
18 Third, and as with *Singh*, despite barring Courtney from going back to any of his  
19 former schools, and despite knowing that his on-going sexual deviancy treatment with no less  
20 than two different therapists was not working, the Provincial and his Council decided not to  
21 recall their problem or warn users. Instead, from their headquarters in California, they chose  
22 to send him to O’Dea.

23 Finally, as recognized in *Singh*, Washington courts permit their citizens to apply the  
24 punitive damages laws of other states, particularly in cases where a defendant sends its

25  
26 <sup>236</sup> Form to Be Completed Concerning an Application for a Dispensation From Perpetual Vows or for  
Exclausatration, Amala Decl., Ex. 1.

1 “problem” into Washington, under the representation that no problem exists, and then does  
2 nothing to protect Washington citizens when the harm materializes.

3  
4 Moreover, Washington has repeatedly recognized its compelling state interest in  
5 protecting victims of childhood sexual abuse and allowing them full access to the courts. *See*  
6 *generally C.J.C. v. Corp. of the Catholic Bishop of Yakima*, 138 Wn.2d 699, 985 P.2d 262  
7 (1999); RCW 4.16.340; Laws of 1991, ch. 212, § 1.<sup>237</sup> Washington also allows a victim of  
8 childhood sexual abuse to recover his or her attorneys’ fees and costs. RCW 9.68A.

9 There is no conflict to allowing Plaintiffs to pursue their claims under Washington’s  
10 statute of limitations for childhood sexual abuse, while allowing Plaintiffs to pursue punitive  
11 damages for the Christian Brothers egregious misconduct in California and Illinois that gave  
12 rise to their claims. The former is compensatory, and as recognized by the Christian Brothers  
13 in their own motion, the latter is punitive and designed to punish and deter wrongful acts that  
14 are committed in those states. The Christian Brothers’ motion should be denied.

15  
16 **DEFENDANTS OWED A DUTY TO D.F. BASED ON THEIR RELATIONSHIP**  
**WITH COURTNEY AND THEIR AFFIRMATIVE ACTS AND OMISSIONS**

17 The defendants’ argument that they had no duty to prevent Courtney from molesting  
18 more boys, including D.F., is a sad reminder of their indifference towards the safety of school  
19 children.

20  
21 The defendants claim that, although they had knowledge of Courtney’s molestation of  
22 students, they were free to endorse Courtney’s teacher certification, had no duty to report  
23

24  
25 <sup>237</sup> *See also* Cal.C.C.P. § 340.1 (statute of limitations does not apply when an entity knew or had reason to know  
26 of unlawful sexual conduct by an employee and failed to take reasonable steps to avoid future unlawful sexual  
conduct by that person). Given the evidence that the Christian Brothers knew for years of Courtney’s abuses,  
and did nothing to stop him, Plaintiffs’ claims would not be barred by the statute of limitations in California.



1 founded accusations of his abuse of many boys to SPI, and had no duty to report Courtney's  
2 criminal sexual abuse to law enforcement once he left their employment.

3 The defendants claim that once Courtney ended his employment with them, they had  
4 no special relationship with him, had no special relationship with the students of Othello, and  
5 thus no duty to protect these foreseeable victims. Rather than take steps to end Courtney's  
6 career as a teacher, they armed him with letters of recommendation, verified his "successful"  
7 teaching and administrative experiences to SPI, assisted him in obtaining new teaching  
8 certificates in 1979, and did nothing to ensure that future schools were warned that his  
9 "impressive" history of teaching was riddled with abuse of children.  
10

11 They never lifted a finger to prevent Courtney from teaching again, even though they  
12 had at least twelve years (Christian Brothers) and seven years (Archdiocese) of experience  
13 with Courtney annually and repeatedly molesting boys. Every year, at every one of their  
14 schools, Courtney molested boy after boy after boy.  
15

16 They did nothing, other than aid and abet his efforts to find yet another school and yet  
17 another group of child victims. They solved their "problem" by sending him out into the  
18 public school system, even though there was absolutely no doubt that he would re-offend.  
19

20 They did this, but now claim they had no duty to keep a known sexual predator out of  
21 the classroom. That three institutions presently responsible for educating thousands of  
22 children and overseeing hundreds of teachers would present this argument for serious  
23 consideration by the Court is alarming. It is, in any case, contrary to well established law.  
24

25 The defendants were well aware that Courtney was a serial sexual predator whose  
26 abuse of children could not be stopped through treatment. McGowan, McGraw, Reilly,

1 LaFazia, Sarkies, Clark, Crowley, and the Archdiocese's Office of Education were all aware  
2 that Courtney had repeatedly abused students in their schools.

3 Despite this knowledge, it is undisputed that they failed to report Courtney to law  
4 enforcement or SPI, and failed to take any other steps to ensure that Courtney was unable to  
5 continue teaching, as required by the relevant standard of care and RCW 26.44.030.  
6

7 It is also undisputed that rather than report him, the defendants protected his teaching  
8 certificate, protected his criminal record, protected his reputation, and endorsed his career as  
9 an educator with glowing letters of recommendation to SPI and verification to SPI of  
10 "successful" teaching experiences in their schools.

11 Moreover, after they wrote him glowing letters of recommendation, the Christian  
12 Brothers actively monitored Courtney, knew he continued working in schools, and knew he  
13 molested students at St. Alphonsus, all while they stayed in contact with his sexual deviancy  
14 therapist. Still, they did nothing, even though their own Provincial wrote in 1978 that "I do  
15 not believe he should be teaching at all and that he would be much better off physically,  
16 mentally, emotionally and spiritually anywhere except in a teaching Congregation."  
17

18 As a result of their acts and omissions, Courtney renewed his Washington State  
19 Teacher's Certificate, earned more teaching and administrative credentials, and stayed out of  
20 jail. Those credentials, and his "impressive" experience, allowed him to obtain a teaching  
21 position in Othello, Washington. He then repeated his behavior of the prior fourteen years:  
22 he molested Plaintiff D.F. and other students.  
23

24 The defendants owed a duty to D.F. and those other victims. A duty can be  
25 established in a number of ways that are present here.  
26

1 First, the defendants' failure to report Courtney's criminal misconduct to law  
2 enforcement, pursuant to RCW 26.44.030, gives rise to an implied civil cause of action. The  
3 mandatory reporting requirement exists to prevent future abuse by identifying and arresting  
4 individuals who harm children. The defendants failed to do this and D.F. was abused.

5 Second, the defendants' failure to report Courtney's professional misconduct to SPI  
6 was a violation of the standard of care and the common law duty of schools to protect  
7 foreseeable victims. The duty to report is based on the special relationship of control and  
8 oversight that they had over teachers. It required them to notify SPI when a teacher admits to  
9 molesting a student, rather than accepting the teacher's resignation and transferring him to a  
10 new school district. This duty is owed to all foreseeable victims, particularly those students  
11 who may fall victim to this child molester should he be allowed to continue teaching. This  
12 duty is based on the common law and Restatement of Torts (Second) § 315.  
13  
14

15 Third, the defendants were aware that their affirmative acts of renewing Courtney's  
16 teaching certificate, improving his credentials, and endorsing him to SPI, would cause him to  
17 have contact with students in the public school system. These affirmative acts were reckless,  
18 not merely negligent, and violated their common law duty based on Restatement (Second) of  
19 Torts § 302B.  
20

21 Finally, the defendants are liable for these affirmative, negligent representations they  
22 provided on Courtney's behalf. The record shows that the Othello School District relied on  
23 these representations when they hired Courtney to teach at D.F.'s schools in Othello.  
24 Pursuant to Restatement of Torts (Second) § 311, D.F. may pursue a cause of action for those  
25 negligent misrepresentations because he was directly harmed because of them.  
26

1 **A. The Court of Appeals Decision in *Doe v. Corp. of President of Church of Jesus***  
2 ***Christ of Latter Day Saints* Should Not Be Overturned and Supports a Private**  
3 **Cause of Action Based on Violations of RCW 26.44.030**

4 In *Doe*, the Court of Appeals recognized a private cause of action is available to  
5 victims of a party's failure to report a child molester in violation of RCW 26.44.030. *Doe v.*  
6 *Corp. of President of Church of Jesus Christ of Latter Day Saints*, 141 Wn.App. 407, 421-  
7 422, 167 P.3d 1193 (2007). The defendants recognize as much, but complain that "*Doe* is  
8 wrongly decided."<sup>238</sup>

9 Their attempt to distinguish *Doe* is unpersuasive.

10 First, defendants asserts that *Tyner v. Dep't of Soc. & Health Servs.*, 141 Wn.2d 68, 1  
11 P.3d 1148 (200), which identified a private cause of action based on this statute, "offers only  
12 an implied remedy of a parent against the State." This is correct, but irrelevant: the Court of  
13 Appeals relied on *Tyner* only to the extent it identified legislative intent to allow for private  
14 remedies based on RCW 26.44. The Court noted, "[i]f the legislature intended a remedy for  
15 parent victims of negligent child abuse investigations, it is reasonable to imply an intended  
16 remedy for child victims of sexual abuse when those required to report the abuse fail to do  
17 so." *Doe*, 141 Wn.App at 422.

18  
19 Second, the defendants assert that the criminal penalties available under RCW 26.44  
20 are "already a motivation" to report abuse. They suggest that the legislature is opposed to  
21 "over-motivating" professionals to report child abuse. This argument is contrary to well-  
22 established law. Statutes that impose criminal penalties very often imply an action sounding  
23  
24  
25

26 <sup>238</sup> Archdiocese's motion, at 8.

1 in tort. *Bennett v. Hardy*, 113 Wn.2d 912, 919, 784 P.2d 1258 (1990). *Doe* correctly found  
2 an implied cause of action in RCW 26.44.030. That judgment should be respected.

3 The defendants next argue that the implied cause of action should apply only to  
4 “known or readily identifiable potential victims.” Again, this argument is unpersuasive.

5 The Court in *Doe* observed that the legislature intended to “protect victims of  
6 childhood sexual abuse.” 141 Wn. App. at 422. The defendants disagree and assert the  
7 legislature only intended to protect some victims of childhood sexual abuse, and not others. It  
8 is an odd argument. The statute itself mandates reporting when, among others, professional  
9 school personnel have “reasonable cause to believe that a child has suffered abuse or neglect.”  
10 RCW 26.44.030(1)(a). It does not require reasonable cause to believe a “readily identifiable  
11 child” has suffered abuse or neglect. Regardless, in this case, a reasonable jury would very  
12 likely find that any boy at a school where Courtney taught would be a “readily identifiable  
13 child,” particularly with the defendants’ peculiar knowledge that Courtney could not be cured.  
14

15 The legislature intended to protect children from child abuse – both present and future.  
16 The declared purpose of the mandatory reporting statute is the protection of children. RCW  
17 26.44.010. On multiple occasions, the Washington Supreme Court has affirmed that “children  
18 are within the class of individuals the legislature intended to protect” in enacting RCW 26.44  
19 et seq., and that this protection is of “paramount” importance. *C.J.C. v. Corp. of the Catholic*  
20 *Bishop of Yakima*, 138 Wn.2d 699, 728, n. 16, 985 P.2d 262 (1999); *see also Tyner*, 141  
21 Wn.2d at 79; *Yonker v. DSHS*, 85 Wn. App. 71, 82, 930 P.2d 958 (1997).  
22  
23

24 The defendants’ argument that the legislature intended to protect some children but  
25 not others, or victims of current abuse but not future abuse, is unfounded and stretches the  
26

1 boundaries of common sense. The legislature intended to compel professionals to report child  
2 abusers, like Courtney, to the authorities in order to protect children from the dangers of serial  
3 abusers, like Courtney.

4 The defendants identify various features of RCW 26.44 that focus on “parents,  
5 custodians, and guardians,” and conclude that because the legislature focused so much  
6 attention on this class of potential child abusers, a civil cause of action should not be available  
7 to children harmed by a party’s blatant failure to report (to say nothing of their affirmative  
8 acts to help him continue abusing).

9  
10 The defendants want the Court to limit the private cause of action established in *Doe*  
11 to victims known to the mandatory reporter, because they argue such a limitation “is  
12 consistent with RCW 26.44’s primary focus on prevention of further abuse against children  
13 who have already reported abuse.”

14  
15 Although RCW 26.44 has many provisions that are specific to “parents, custodians,  
16 and guardians,” those provisions are irrelevant to the question of who the statute is intended to  
17 protect. *Most* instances of child abuse that present to a mandatory reporter are likely to occur  
18 when a parent or custodian or guardian is the abuser. But not all. And thus the statute does  
19 not limit the reporting requirement to those instances of abuse, nor did the legislature intend  
20 to protect only those “readily identifiable” victims.

21  
22 Instead, the legislature requires professionals to alert law enforcement of *any* instance  
23 in which one has “reasonable cause to believe that a child has suffered abuse or neglect.”  
24 RCW 26.44.030(1)(a). The legislature intended to require professionals, including school  
25 personnel like McGowan, McGraw, Reilly, LaFazia, Sarkies, Crowley, Clark, and the  
26

1 Archdiocese's Office of Education, to report abuse. It did so to protect children – all children  
2 – D.F. included. D.F. is entitled to pursue a private cause of action based on the  
3 Archdioceses' failure to comply with the mandatory reporting statute RCW 26.44.030.

4 Finally, the Archdiocese's argument that it is not liable for failing to report Courtney  
5 because Sarkies was a priest is misplaced for two reasons. First, even if that was true, which  
6 it is not, the Archdiocese does not explain why McGraw, Reilly, LaFazia, Clark, and its  
7 Office of Education are not mandatory reporters. To the contrary, as teachers, school  
8 administrators, and professional school personnel, who learned of Courtney's abuses of  
9 children in that capacity, each of these individuals had a duty to report. RCW 26.44.010  
10 (1975-80). They refused to do so, going so far as to conspire to avoid reporting Courtney in  
11 order to protect their "name and reputation."  
12

13  
14 Second, Sarkies learned of Courtney's sexual abuse of children in his capacity as an  
15 administrator of St. Alphonsus Parish School. The Archdiocese has failed to show that  
16 Sarkies was functioning in his ministerial capacity when he worked with Courtney, Clark,  
17 Crowley, McGraw, and the Office of Education to discretely remove Courtney from St.  
18 Alphonsus in order to protect the "name and reputation" of Courtney and his school.

19 Other than its unsupported, self-serving statements, there is no evidence to show that  
20 Sarkies received information regarding Courtney in confession or in any other privileged  
21 context. To the contrary, he actively discussed it with Clark, Crowley, McGraw, and the  
22 Office of Education.  
23

24 For that reason, the Archdiocese's reliance on *State v. Motherwell*, 114 Wn.2d 353,  
25 788 P.2d 1066 (1990) is highly misplaced. Although the Court did conclude that clergy for a  
26



1 time were exempt from RCW 26.44, it specifically held that (1) clergy can fall under other  
2 groups that have a mandatory duty to report, such as “social workers,” and (2) more  
3 importantly, “establishing one’s status as ‘clergy’ is not enough to trigger the exemption in all  
4 circumstances. One must also be functioning in that capacity for the exemption to apply.” *Id.*  
5 at 359-60.  
6

7 Given *Motherwell*, the Archdiocese’s suggestion that neither it, nor Sarkies, nor any of  
8 the above individuals are “social workers” or “professional school personnel” is more than a  
9 strained reading of the relevant statutes. These individuals learned of Courtney’s abuses “in  
10 the actual regular course of employment,” as required by *Doe v. Corporation of President of*  
11 *Church of Jesus Christ of Latter Day Saints*, 141 Wn. App. 407, 167 P.3d 1193 (2007)  
12 (mandatory reporting statute applies to professionals who learn of abuse in the regular course  
13 of employment).  
14

15 That role brings the Archdiocese, the Christian Brothers, and all of the individuals  
16 named above within the definitions of “professional school personnel” and “social worker.”  
17 RCW 26.44.010 (1975-80) (professional school personnel “shall include, but not be limited  
18 to, teachers, counselors, administrators, child care facility personnel, and school nurses;”  
19 social worker “shall mean anyone engaged in a professional capacity during the regular  
20 course of employment in encouraging or promoting the health, welfare, support or education  
21 of children, or providing social services to adults or families, whether in an individual  
22 capacity, or as an employee or agent of any public or private organization or institution).  
23  
24  
25  
26

1 **B. The Special Relationship Between the Defendants and Courtney Establishes a**  
2 **Duty to Report Courtney’s Abuses to SPI; This Duty Was Owed to All**  
3 **Foreseeable Victims**

4 Washington law has long recognized that those charged with overseeing third parties,  
5 and who have the ability to prevent those third parties from committing injury, are obligated  
6 to take reasonable steps to prevent foreseeable harms. *See Peterson v. State*, 100 Wn.2d 421,  
7 426, 671 P.2d 230 (1983) (citing Restatement (Second) of Torts § 315).

8 The defendants do not dispute that when Courtney was under their control as a teacher  
9 and administrator, they were obligated to exercise reasonable care to prevent foreseeable  
10 harms occasioned by his misconduct. *See generally Scott v. Blanchet High Sch.*, 50 Wn. App.  
11 37, 43, 747 P.2d 1124 (1987); *Niece v. Elmview Group Home*, 131 Wn.2d 39, 49, 929 P.2d  
12 420 (1997); *McLeod v. Grant County Sch. Dist. No. 128*, 42 Wash.2d 316, 320, 255 P.2d 360  
13 (1953); *see also J.N. ex rel. Hager v. Bellingham Sch. Dist. No. 501*, 74 Wn. App. 49, 871  
14 P.2d 1106 (1994); *Briscoe v. School Dist. No. 123*, 32 Wash.2d 353, 201 P.2d 697 (1949).

15 The lynchpin of the defendants’ argument is that they owed no duty to D.F. because  
16 D.F. was not their student and Courtney was not their teacher. This position is aptly  
17 summarized by the Archdiocese: “[t]he Archdiocese did not have a special relationship with  
18 either Plaintiffs or Courtney *at the time of the abusive acts* and thus no duty applies.”<sup>239</sup>

19 The defendants have confused the law of torts. The timing of the injury is irrelevant to  
20 their legal duty – the issue is the timing of the breach. If the defendants owed D.F. a duty to  
21 exercise reasonable control over Courtney, when it had a “special relationship” with him and  
22 the ability to control him, and during that crucial time period they breached that duty, it is a  
23 jury question as to whether they are responsible for the resulting conduct. A duty may end,  
24

25  
26 <sup>239</sup> Defendant’s Motion at 5 (emphasis added).

1 but a defendant is liable for all foreseeable injuries no matter how far into the future those  
2 injuries may materialize. A ticking bomb is a ticking bomb. *Theurer v. Condon*, 34 Wn.2d  
3 448, 460, 209 P.2d 311 (1949) (“[t]he defendant who sets a bomb which explodes ten years  
4 later, or mails a box of poisoned chocolates from California to Delaware, has caused the  
5 result, and should obviously bear the consequences.”)

6  
7 The defendants fail to recognize that when Courtney was employed as their teacher  
8 and principal, they had a “special relationship” with him pursuant to Restatement of Torts  
9 (Second) § 315 and they owed a duty to his foreseeable victims. Nor do the defendants  
10 recognize that by failing to take steps to revoke Courtney’s teaching certificate and by failing  
11 otherwise disclose Courtney to the authorities, including SPI, they violated the relevant  
12 standard of care. Instead, they advance the untenable proposition that they had to be in a  
13 “special relationship” with Courtney when he injured D.F.

14 The Court need look no further than the foundational case of *Petersen v. State*, 100  
15 Wn.2d 421, 424, 671 P.2d 230 (1983), where a psychiatrist negligently released a dangerous  
16 psychotic who, in the exercise of reasonable care, would have been committed to a psychiatric  
17 hospital:  
18

19 Dr. Miller discharged Knox from the hospital the following morning. At the  
20 time, it was Dr. Miller's opinion Knox was not schizophrenic but that he had  
21 suffered a schizophrenic-like reaction from the angel dust he had taken. In Dr.  
22 Miller's opinion Knox had recovered from the drug reaction, was in full  
23 contact with reality, and was back to his usual type of personality and  
24 behavior.

25 Five days later, the accident occurred in which Cynthia Petersen was injured.

26 Under the defendants’ analysis, Dr. Miller’s special relationship terminated when  
Knox was released from his care, the equivalent of the defendants’ terminating Courtney from

1 O'Dea and/or St. Alphonsus. *Petersen* rejected that argument because the “special  
2 relationship” was in place when they breached their duties. The consequences of that breach  
3 could be many days, months, or years away. The argument that the defendants had to be in a  
4 “special relationship” with Courtney at the time of injury was rejected.  
5

6 Finally, the defendants assert that they did not “know” D.F. when he was abused, so  
7 he was not a foreseeable victim. This misses the point. In *Peterson* and its progeny, the  
8 negligent tortfeasor rarely “knows” the exact foreseeable victim. Instead, “the scope of the  
9 duty to control a third person's conduct is limited to those precautions necessary to protect  
10 against the *foreseeable risks of danger* imposed by the third person.” *Petersen*, 100 Wn.2d at  
11 428 (emphasis added).

12 In *Peterson*, the psychiatrist did not know the plaintiff, just as the defendants did not  
13 know D.F., but the Court nevertheless imposed liability because the risk that the psychotic  
14 patient would harm someone, anyone, was foreseeable.

15 Similarly, in *Bailey v. Town of Forks*, Justice Utter explained that a police officer  
16 owed a duty to all “users of public highways” to properly enforce drunk driving laws. 108  
17 Wn.2d 262, 269, 737 P.2d 1257 (1987). In that case, a plaintiff was injured by a drunk driver  
18 who was detained and then released to his vehicle by a police officer, in violation of state law.  
19 The plaintiff sued the officer and the Town of Forks for negligence, claiming that the officer  
20 owed her a duty to enforce the law. The Court agreed and Justice Utter explained, “[w]hen  
21 statutes intend to insure the safety of the public highways, a governmental officer's knowledge  
22 of an actual violation creates a duty of care to all persons and property who come within the  
23 ambit of the risk created by the officer's negligent conduct.” *Id.* at 270. Said another way,  
24 “[w]hen a governmental agent knows of the violation, a duty of care runs to all persons within  
25  
26

1 the protected class, not merely those who have had direct contact with the governmental  
2 entity.” *Id.* at 269-70.

3 As in *Peterson* and *Bailey*, the question of whether D.F. was a foreseeable victim  
4 within the zone of danger, particularly under the egregious facts of this case, is for the jury.

5 Courtney molested numerous school children while a teacher and school principal for  
6 the defendants. McGowan, McGraw, Reilly, LaFazia, Sarkies, Crowley, Clark, and the  
7 Archdiocese’s Office of Education became aware of Courtney’s sexual abuse of boys while  
8 he was in that capacity and within their control.

9 Pursuant to the *Petersen*, the Restatement of Torts (Second) § 315, and the relevant  
10 standard of care, a “special relationship” existed that imposed upon those individuals a duty to  
11 exercise reasonable care to contain the threat posed by the man under their charge. They were  
12 duty bound to “anyone who might foreseeably be endangered by” Courtney. *Peterson*, 100  
13 Wn. 2d at 428. This included D.F. and other students who would be molested if Courtney  
14 was allowed to teach again. They failed to do so.

15 Instead, they concealed his abuses, they wrote him letters of recommendation, they  
16 helped him renew his teaching certificates, and they verified his teaching experience with SPI.  
17 Those affirmative acts and glaring omissions caused Courtney to gain employment in Othello  
18 and caused him to sexually abuse D.F. Public policy compels holding the defendants liable.  
19 *C.J.C. v. Corporation of Catholic Bishop of Yakima*, 138 Wn.2d 699, 726, 985 P.2d 262, 265  
20 - 289 (1999) (“Our decision not to foreclose the imposition of a duty as a matter of law under  
21 these facts is supported by the strong public policy in favor of protecting children against acts  
22 of sexual abuse.”)

1 **C. Affirmative Acts by the Defendants Enabled Courtney to Retain and Renew His**  
2 **Teaching Certificate, and Even Improve His Credentials, Establishing a Duty**  
3 **Under Restatement (Second) of Torts § 320**

4 As discussed above, the defendants had a special relationship with Courtney that  
5 required them to take reasonable steps to protect foreseeable victims from his dangerous  
6 misconduct. However, even in the absence of that relationship, the defendants created a duty  
7 by taking affirmative steps to protect Courtney’s teaching certificate.

8 A special relationship is “generally” the only occasion in which a defendant owes a  
9 duty to take reasonable steps to deter a third party’s misconduct, but it is not the only  
10 occasion. The commentary to the Restatement (Second) of Torts clarifies that a duty to  
11 protect a third party accrues “where the actor's own affirmative act has created or exposed the  
12 other to a recognizable high degree of risk of harm through such misconduct, which a  
13 reasonable [person] would take into account.” Restatement (Second) of Torts § 302B cmt. e  
14 (1965).

15 The Court of Appeals recently affirmed this principle, stating “a defendant may be  
16 liable for harm caused by a third party *even where there is no special relationship*. Such  
17 circumstances exist ‘where defendant affirmatively brings about ‘an especial temptation and  
18 opportunity for criminal misconduct’ which will give rise to a duty on defendant's part to take  
19 precautions against it.’” *Sourakli v. Kyriakos, Inc.*, 144 Wn. App. 501, 511-512, 182 P.3d 985  
20 (2008) (*quoting Hutchins v. 1001 Fourth Ave. Assoc.*, 116 Wn.2d 217, 230, 802 P.2d 1360  
21 (1991), *citing* W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on Torts* §  
22 33, at 201 (5th ed.1984)).

23 Section 302B itself provides that “[a]n act or an omission may be negligent if the  
24 actor realizes or should realize that it involves an unreasonable risk of harm to another  
25  
26

1 through the conduct of the other or a third person which is intended to cause harm, even  
2 though such conduct is criminal.” Restatement (Second) of Torts § 302B (1965).

3 Justice Madsen’s concurrence in *C.J.C.* directly addressed this theory of liability in the  
4 context of preventing sexual abuse of children:  
5

6 A duty as described in cmt. *e*, para. D might be found in this case if, for  
7 example, defendants knew Wilson was likely to molest children, yet allowed  
8 him association with children during church activities under circumstances  
9 where a peculiar temptation or opportunity for molestation existed. . . . There  
10 is no allegation or evidence in the record that defendants recommended Wilson  
11 or his wife as child care providers, or that they had anything to do with the  
12 child care arrangements.

13 ...

14 This case is thus unlike *Golden Spread Council, Inc. v. Akins*, 926 S.W.2d 287  
15 (Tex.1996), where the court held that under cmt. *e*, para. D, the Golden Spread  
16 Council of the Boy Scouts of America had a duty not to recommend an  
17 individual as a scoutmaster if the council knew or should have known that the  
18 individual was peculiarly likely to molest boys. Because defendants in this  
19 case made no comparable recommendation, reliance upon that case by  
20 plaintiffs and the Court of Appeals is misplaced.

21 *C.J.C.*, 138 Wn.2d at 739 n. 3,.

22 As Justice Madsen implies and *Golden Spread Council* holds, the defendants’  
23 affirmative acts and omissions in recommending a serial sexual predator for future teaching  
24 assignments, and endorsing the credentials that allowed him to obtain those assignments,  
25 creates a duty to protect his foreseeable victims, regardless of whether a “special relationship”  
26 exists.

In *Golden Spread Council*, the Texas Supreme Court explained that “GSC’s [Golden  
Spread Council’s] affirmative act of recommending Estes as a potential scoutmaster to the  
church created a duty on the part of GSC to use reasonable care in light of the information it



1 had received [that Estes may have molested young boys].” 926 S.W.2d at 291. This duty to  
2 use reasonable care applied, the Court explained, despite the fact that there existed no “special  
3 relationship:”

4 The dissent errs by concluding that absent a special relationship, there can be no  
5 duty in this case. 926 S.W.2d 293 (Enoch, J., dissenting). This Court, in *Bird*, 868  
6 S.W.2d at 769-70, set forth the proper duty analysis. First, the Court balanced the  
7 duty factors reiterated at length in this opinion. *Id.* at 769. The Court then, after  
8 deciding that these factors did not weigh in favor of imposing a duty, examined  
9 whether a special relationship existed. *Id.* at 770. This two-part analysis is proper  
10 when deciding whether a duty exists. There are some cases in which a duty exists  
11 as a matter of law because of a special relationship between the parties. *Otis*  
12 *Eng'g*, 668 S.W.2d at 309. In such cases, the duty analysis ends there. However,  
13 in most negligence cases a special relationship does not exist and, contrary to the  
14 dissent's view, the duty factors must be weighed by the Court. If the dissent's  
15 conclusion that without a special relationship there can be no duty were correct,  
16 there could be no recovery in most negligence cases.

17 *Id.* at 292.

18 The evidence supporting liability in *Golden Spread Council* was simply that the  
19 defendants recommended a scout master against whom allegations of sexual misconduct were  
20 reported. The Court observed that “the summary judgment evidence shows that GSC knew of  
21 complaints that Estes was ‘messing with’ some boy scouts and was concerned that they might  
22 be serious. Only two to three months later, a local church asked Herbert, a GSC employee, to  
23 introduce it to a potential scoutmaster. Herbert, with full knowledge of the allegations,  
24 recommended Estes to the church.” *Id.* at 290.

25 The evidence in this case is even stronger, and the imposition of a duty under § 302B  
26 even more compelling. The defendants were well aware of Courtney’s long history of  
abusing students – putting aside the direct complaints from boys and their parents, Courtney  
admitted to the abuse. Nevertheless, they recommended him to SPI and others and verified

1 that he had successfully served for a half-dozen years within their schools (and another half-  
2 dozen years within the Christian Brothers schools). Given their affirmative acts and  
3 omissions, Courtney obtained and retained his teaching certificates, improved his credentials,  
4 and was hired to teach at D.F.'s schools in Othello.

5 The duty owed under § 302B extends to all foreseeable victims, including D.F. The  
6 defendants could easily predict that, armed with a teaching certificate and their glowing  
7 endorsements of his service, Courtney would teach again. And if he taught again, he would  
8 molest again. D.F.'s injuries were foreseeable. The defendants' failure to take any steps, let  
9 alone reasonable steps, to counteract the consequences of their affirmative acts breached the  
10 duty they owed to D.F. and the other foreseeable victims.

11  
12  
13 **D. The Defendants Negligently Misrepresented Courtney's "Success" to SPI,**  
14 **Enabling Him to Maintain His Teaching Certificate, Obtain Employment with**  
15 **the Othello School District, and Molest D.F.; This Establishes a Duty Under**  
16 **Restatement (Second) of Torts § 311**

17 The defendants, with full knowledge of Courtney's long history of sexual abusing  
18 boys, misrepresented Courtney's background and qualifications to SPI, Seattle University,  
19 and Othello. They wrote positive letters of recommendation for his file, they formally  
20 verified his "successful" teaching experience in Seattle, they helped him obtain and retain  
21 teaching certificates, they helped him improve his credentials, and obviously, they never  
22 reported him.

23 From the forms they were filling out, as well as their own policies and procedures, the  
24 defendants knew, or should have know, that SPI, Seattle University, and Othello would rely  
25 on these false reports in deciding to maintain Courtney's teaching certificate and other  
26 credentials, to assist in placing him at Othello, and to hire him to teach in Othello.

1           These misrepresentations implicate Restatement (Second) of Torts § 311: Negligent  
2 Misrepresentation Involving Risk of Physical Harm:

3           (1) One who negligently gives false information to another is subject to  
4 liability for physical harm caused by action taken by the other in  
5 reasonable reliance upon such information, where such harm results

6                   (a) to the other, or

7                   (b) to such third persons as the actor should expect to be put in peril by  
8 the action taken.

9           (2) Such negligence may consist of failure to exercise reasonable care

10                   (a) in ascertaining the accuracy of the information, or

11                   (b) in the manner in which it is communicated.

12           Restatement (Second) of Torts § 311.

13           Under facts similar to this case, California and New Mexico have applied this section  
14 of the Restatement to former employers who, despite knowledge of their employees'  
15 dangerous propensities, wrote letters of recommendations endorsing the employees and  
16 omitting evidence of their dangerous misconduct. *See Randi W. v. Muroc Joint Unified*  
17 *School District*, 14 Cal.4th 1066, 1081, 60 Cal.Rptr.2d 263, 929 P.2d 582 (1997)); *Davis v.*  
18 *Board of County Commissioners of Dona Ana County*, 127 N.M. 785, 987 P.2d 1172, 1179  
19 (1999). In both cases the dangerous employees found new employment, aided in part by these  
20 letters of endorsement, and sexually assaulted victims entrusted to their care.

21           The Washington Court of Appeals, in *Richland School Dist. v. Mabton School Dist.*,  
22 111 Wn. App. 377, 387-389, 45 P.3d 580 (2002) described these cases in detail:  
23

24           In *Randi W.*, officials at several school districts gratuitously and unreservedly  
25 recommended a former employee who had been the subject of numerous  
26 complaints involving sexual misconduct with students. The employee moved  
from school district to school district as the complaints added up, each time

1 recommended without reservation by the previous administration. On two  
2 occasions, the employee was forced to resign under pressure due to sexual  
3 misconduct charges. *Randi W.*, 14 Cal.4th at 1072, 60 Cal.Rptr.2d 263, 929  
4 P.2d 582. Yet the recommendations from these school districts stated he was  
5 recommended ““for almost any administrative position he wishes to pursue,” ”  
6 and lauded his efforts to make ““a safe, orderly and clean environment for  
7 students and staff.”” *Id.* The California Supreme Court found that these letters  
8 of recommendation constituted affirmative representations that strongly  
9 implied the former employee was fit to interact safely with female students. *Id.*  
10 at 1084, 60 Cal.Rptr.2d 263, 929 P.2d 582. Because these representations were  
11 misleading in light of the school districts' knowledge that the former employee  
12 had been repeatedly charged with sexual improprieties, the court found that the  
13 injured student had established a prima facie case of negligent  
14 misrepresentation. *Id.*

15 In *Davis*, a New Mexico mental health technician, Joseph Herrera, sexually  
16 assaulted a woman under his care during psychiatric therapy. In a prior  
17 employment as a county detention sergeant, Mr. Herrera had been investigated  
18 for sexually harassing inmates under his authority. A report compiled by the  
19 sheriff's department concluded that while not all of the allegations against Mr.  
20 Herrera could be confirmed, his conduct was suspect. He resigned before the  
21 county could schedule a disciplinary hearing. Within days, the director of the  
22 detention center wrote a positive recommendation without reference to the  
23 reprimand, the allegations of sexual harassment, or the results of the  
24 investigation. *Davis*, 987 P.2d at 1175-76. The letter also lauded Mr. Herrera  
25 as an excellent employee who developed social programs for the inmates. *Id.* at  
26 1176, 987 P.2d 1172. The woman who was assaulted at Mr. Herrera's new job  
sued the county for negligent misrepresentation pursuant to Section 311.  
Finding that the allegations of sexual harassment were “far more than mere  
gossip or innuendo,” *Davis*, 987 P.2d at 1179, held that a reasonable person  
who had this information should have foreseen that omission of the report and  
disciplinary actions in the recommendation would pose a threat of physical  
harm to those like the plaintiff.

The facts of this case mirror those in *Randi W.* and *Davis*, and warrant the same result.

The defendants took affirmative steps to promote Courtney's career as a teacher, knowing that  
SPI, Seattle University, and Othello relied on those endorsements to perpetuate his teacher's  
certificate, assist in placing him in Othello, and hiring him to teach in Othello.

1 Section 311 is a variant of the tort of negligent misrepresentation, and it may be used  
2 by victims to whom the misrepresentation was neither made nor relied upon. The California  
3 Supreme Court explained, “the writer of a letter of recommendation owes to third persons a  
4 duty not to misrepresent the facts in describing the qualifications and character of a former  
5 employee, if making these misrepresentations would present a substantial, foreseeable risk of  
6 physical injury to the third persons.” *Randi W.*, 14 Cal.4th at 1081.  
7

8 D.F., as a future student who would very likely be subjected to Courtney’s abuses, was  
9 a foreseeable victim. He was owed the duty of an honest appraisal of Courtney’s background.  
10 By misleading SPI, Seattle University, and Othello, the defendants breached their duty to D.F.

11 The facts of this case are indeed unique – it is (thankfully) rare that an organization  
12 endorses a sexual predator as a school teacher. As such, the application of section 311 is a  
13 matter of first impression. The Court of Appeals observed, in *Richland*, that no Washington  
14 case has had occasion to adopt or reject it. *Id.* at 389. The Court declined to adopt section  
15 311 “on these facts,” citing the absence of reasonable risk of physical harm to students:  
16 “Mabton officials [defendant], with some personal knowledge of the parties involved in the  
17 allegations, decided that the [molestation] charges were baseless. A reasonable person would  
18 not foresee that a person with Mr. Caballero's record of questionable accusations and minor  
19 discipline problems posed a risk of physical harm to students.” *Id.* at 389. The Court further  
20 found, in accord with *Randi W.* and the Restatement, that the tort is inapplicable in the  
21 absence of a victim “physically harmed.” *Id.* (citations omitted).  
22

23 Unlike the Richland School District, who sought to apply section 311 in the absence of  
24 a real victim, D.F. was physically harmed as a result of the misrepresentations made by the  
25 defendants. These facts make the adoption of section 311, at least in this case. As in *Randi*  
26

1 W., Courtney moved from school to school, and with each new opportunity he molested new  
2 students. It was foreseeable that he would molest again. But rather than end Courtney's  
3 career of molesting boys, the defendants misrepresented his history so that their "problem"  
4 could obtain employment in the public school system. He did so, and he sexually abused D.F.  
5

6 **E. Causation is a Question for the Jury**

7 The defendants' argument that D.F. cannot prove causation is misplaced for several  
8 reasons.

9 First, Othello would not have hired Courtney but for the fact that he had a valid  
10 teaching certificate and his experience appeared to be "impressive." Moreover, the  
11 defendants do not dispute that Courtney was able to groom and abuse D.F. through his  
12 position as a teacher in Othello.<sup>240</sup> Evidence of "but for" causation is established.

13 Second, history disputes the defendants' argument that there is no evidence that  
14 Courtney would have been removed from Othello if the defendants had reported his earlier  
15 misconduct. As soon as Othello received a report of abuse, Courtney was immediately  
16 suspended. But for the failure of defendants to report him, he could not have molested D.F.  
17

18 Third, history also disputes the defendants' argument that it took "three years" for the  
19 authorities to ensure he was not teaching. To the contrary, the police immediately began  
20 investigating Courtney, which is why he fled to Nevada. Once he was extradicted back to  
21 Washington and SPI was made aware of the charges, SPI made sure his abuses were being  
22 investigated. Within a few months, his teaching certificates were revoked.

23 This is no surprise, as the former Superintendent at the time, Judith Billings, has  
24 testified that Courtney would have been investigated and his teaching credentials revoked if  
25

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26 <sup>240</sup> See also deposition of Deborah Cress, Amala Decl., Ex. 165, at 50-52, 87-89.

1 the defendants had reported his abuses earlier. She also testified that their failure to report  
2 Courtney, or take any other action to keep him from teaching, violated the relevant standard  
3 of care.<sup>241</sup>

4  
5 Ironically, by arguing that nothing would have happened if Courtney had been  
6 reported earlier, the defendants are basically asserting that they would have lied to the  
7 authorities in order to protect Courtney further. Public policy obviously cannot operate under  
8 that assumption. But for causation is established.

9  
10 Finally, to the extent the defendants want to suggest that other non-party entities  
11 caused D.F.'s injuries, they can make their causation argument to the jury. But the issue of  
12 foreseeable harm, and whether their acts and omissions were a proximate cause of D.F.'s  
13 harm, are questions of fact for the jury. This is particularly true where the defendants were  
14 aware of the scope and magnitude of Courtney's abuses. *Schooley v. Pinch's Deli Market,*  
15 *Inc.*, 134 Wn.2d 468, 477-79, 951 P.2d 749 (1998) (issue of foreseeability is a question for the  
16 jury).

17 //

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<sup>241</sup> Deposition of Judith Billings, Amala Decl., Ex. 166, at 11-13, 17, 63-64, 79, 158-59.



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V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny the defendants' motions to dismiss and for summary judgment.

Dated this 12<sup>th</sup> day of October 2009.

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**CERTIFICATE OF SERVICE**

I, **Bernadette Lovell**, hereby declare under penalty of perjury under the laws of the State of Washington that I am employed at Pfau Cochran Vertetis Kosnoff PLLC, and that on this 12<sup>th</sup> day of October 2009, I served Plaintiffs' Opposition to Defendants' Various Motions for Summary Judgment, including the Declaration of Jason P. Amala in support thereof, via E-Service, Legal Messenger, and/or U.S. Mail as indicated below by directing delivery to the following individuals:

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