

IN THE MISSOURI SUPREME COURT

STATE ex rel. MARIANIST	)	
PROVINCE OF THE UNITED	)	
STATES,	)	
	)	
Relator-Defendant,	)	
	)	
vs.	)	No. SC88779
	)	
HONORABLE JOHN A. ROSS,	)	
JUDGE, CIRCUIT COURT,	)	
COUNTY OF ST. LOUIS,	)	
DIVISION 15	)	
	)	
Respondent.	)	

**REPLY BRIEF OF RELATOR
MARIANIST PROVINCE OF THE UNITED STATES**

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ARGUMENT

A. Introduction

Nowhere in Plaintiff's Eighty-Five (85) page Respondent's Brief¹ does he address the following key issue raised by these writ proceedings: Should a reasonably prudent person have inquired at some point *over two decades* when he always remembered at the age of seventeen (i) having a knife held to his throat; (ii) being blindfolded; (iii) hyperventilating to the point of unconsciousness; (iv) stripping down to his underwear; (iv) and having gel put in his hair? Plaintiff's position is that he had no obligation under the law to question this type of conduct for well over two decades. However, *Powel* and four decades of sound precedent dictate otherwise. The law requires "reasonable diligence" on the part of a plaintiff in order to prevent running of the statute of limitations. *O'Reilly v. Dock*, 929 S.W.2d 297, 301 (Mo. App. S.D. 1996). Under the objective, reasonably prudent person standard, Plaintiff's claims are time-barred.

The events giving rise to Plaintiff's abuse claim, the bulk of which Plaintiff admits he always remembered, took place nearly a quarter century ago. In his Petition, Plaintiff

¹ Plaintiff's "Supplemental Statement of Facts", which stretches forty-one (41) pages, is replete with argumentative, biased, conclusory and wholly irrelevant and unsupported assertions. Since it appears that prohibition proceedings are governed by Rule 84.04, Relator respectfully suggests that Respondent's brief fails to comply with Rule 84.04. The "statement of facts" section of any brief should contain a fair and concise overview of the facts; it is not the place for argument.

alleged that William Mueller assaulted and battered Plaintiff in 1984 while Plaintiff was a senior at St. John Vianney High School. (A18.) Plaintiff admits that he *always* remembered the acts constituting the alleged assault and battery, including (i) having knife held to his throat; (ii) hyperventilating to the point of unconsciousness; (iii) being blindfolded; (iv) stripping down to his underwear; and (v) having gel put in his hair. (A102 at 264; A79 at 169; A83-A84 at 188-189; A86 at 200; *see also* Resp. Brief at p. 5). According to Plaintiff's Petition, the above offensive actions on the part of Mueller (which Plaintiff always remembered) "put plaintiff in fear of bodily harm." (*See* A21.) Under the objective "capable of ascertainment" standard set forth in RSMo § 516.100, the "fact of damage" could have been discovered or made known at the time the assault and battery allegedly occurred or shortly thereafter. *See Klemme v. Best*, 941 S.W.2d 493, 497 (Mo. banc 1997)("Damage is ascertainable when the fact of damage can be discovered or made known, *not when a plaintiff actually discovers injury or wrongful conduct.*")(emphasis added).

In his Respondent's Brief, Plaintiff in effect asks this Court to re-write RSMo § 516.100 and decades of sound precedent in support of a subjective statute of limitations standard. Plaintiff asks this Court to hold that the statute of limitations did not begin to run on his claim until he "discovered" injury or wrongful conduct on the part of William Mueller. This has never been the law in Missouri. Note the key modifiers in *Powel* and *Klemme* which draw the clear distinction between actual knowledge of harm/wrongful conduct as opposed to potential harm. (*Powel v. Chaminade College Preparatory, Inc.*, 197 S.W.3d 576, 584)("The issue...is when a reasonable person would have been put on

notice that an injury and substantial damages **may have occurred.**” (emphasis added); *Klemme v. Best*, 941 S.W.2d 493, 497 (Mo. banc 1997)(“...the fact of damage **could have been discovered** or made known.”(emphasis added); *see also Graham v. McGrath*, No. ED89168, 2007 WL 4301191 (Mo. App. E.D. 2007)(While a child victim may be unable to immediately recognize such harm [from wrongful acts], we fail to see how this inability prevents an adult with memory of the events of abuse from being on notice that harm **may have occurred.**”(emphasis added). The reason for the distinction is clear: If the statute of limitations does not begin to run until Plaintiff claims he actually discovered the harm or wrongful conduct, then RSMo 516.100’s “capable of ascertainment” becomes nothing more than a subjective standard. All tort plaintiffs would be free to claim that they did not discover the harm or wrongful conduct until decades after the events giving rising to the claim. Missouri’s statutes of limitation applicable to tort claims would be nullified. As Judge Wolff aptly noted in *Powel*, “Why have a statute of limitations?” *Powel*, 197 S.W.3d at 591.

In his Respondent’s brief, Plaintiff goes to great length to argue that at the time the alleged abuse incidents occurred in 1984-1985, he was trusting of religious figures and therefore did not appreciate the harm caused by the “assault and battery” referenced in the Petition and described above. Plaintiff’s argument should be rejected because (i) it pre-supposed a subjective “capable of ascertainment” standard, which *Powel* rejected; and (ii) it fails to address his failure to inquire further after he was armed with the permanent knowledge of the behavior described above for well over two decades.

B. A Writ of Prohibition is an Appropriate Remedy To Bar a Claim that is Time-Barred from Proceeding to Trial.

In his Respondent's Brief, Plaintiff's sole point relied focuses on whether a writ of a prohibition is an appropriate remedy where a defendant asserts that a claim is time-barred. Just recently, in a slip opinion dated January 15, 2008, this Court put the issue to rest: "Prohibition can be an appropriate remedy where a trial court erroneously permits a claim that is barred under the statute of limitations to proceed to trial." *State of Missouri ex rel. Bloomquist v. Schneider*, SC88456 (Slip Op. Jan. 15, 2008) citing *State ex rel. BP Products North America, Inc. v. Ross*, 163 S.W.3d 822 (Mo. banc 2005)(issuing writ or prohibition to forbid proceeding on time-barred claims). On October 30, 2007, this Honorable Court entered a Preliminary Order of Prohibition commanding Respondent to take no further action except to sustain Defendant's Motion for Summary Judgment, a motion that was filed on the ground that Plaintiff's claim is time-barred. Relator respectfully asks that this Court make permanent its Preliminary Order of Prohibition.

Incredibly, Plaintiff asks the Court to levy a sanctions order against Relator based on what Plaintiff describes as a "gross misuse" and "abuse" of the writ procedure. (See Resp. Brief at p. 81.) Relator, however, presumes that this Honorable Court knew what it was doing when it entered a Preliminary Order of Prohibition on October 30, 2007, and that it did so with careful deliberation and forethought. It appears that Plaintiff has been reduced to improperly attacking the integrity and motives of Relator in a frivolous request for sanctions simply because he is dissatisfied with this Court's October 30, 2007

Order.² Plaintiff's request is baseless. Frivolous requests for sanctions are in themselves sanctionable. *See Alliance to End Repression v. City of Chicago*, 899 F.2d 582, 583 (7th cir. 1990). Such is the case here. Plaintiff should be sanctioned appropriately to deter "hair-trigger" requests for sanctions by attorneys who do not understand the difference between "zealous advocacy" and frivolous conduct. *See Alliance*, 899 F.2d at 583.

C. The Material Facts Relative to the Statute of Limitations Issue Are Not in Dispute.

Plaintiff continues to insist that his claims against Relator are not time-barred as a matter of law because material facts remain in dispute. In conclusory fashion, Plaintiff states simply: "[I]n response to the underlying summary judgment motion, plaintiff provided a substantial amount of evidence and testimony supporting his version of the facts that credibly contradict Relator's mere allegations." (*See Resp. Brief at p. 61.*) Curiously, Plaintiff's brief then immediately proceeds to discuss prior case law discussing the standard for granting a writ of prohibition. It is entirely unclear what Plaintiff means by "mere allegations" raised by Relator, or how Plaintiff's "version of the facts" contrasts same. Throughout the summary judgment pleadings in the trial court

² Plaintiff's request for sanctions is even more remarkable when one considers his statement to Respondent in the trial court below that "the proper procedure" to challenge Respondent's summary judgment denial is through a writ. (*See Ex. B attached to Relator's Reply to Plaintiff's Suggestions in Opposition.*) Thus, it appears that Plaintiff is asking that Relator be sanctioned for following "the proper procedure."

below, Relator simply assumed as true, for purposes of raising its statute of limitations defense, Plaintiff's participation in "experiments" with Mueller. In this context, then, Plaintiff cannot point to a single material fact that he contends remains in dispute.³ Even accepting as true Plaintiff's participation in the Mueller experiments, Relator is entitled to judgment as a matter of law because his claim is time-barred under *Powel*. The fact that the parties disagree about the legal effect of the material factual allegations raised by Plaintiff does not create a fact issue required to defeat summary judgment. See *Betts-Lucas v. Hartmann*, 87 S.W.3d 310, 323 (Mo. App. W.D. 2002).

D. Assuming *Arguendo* Plaintiff was not Put on Notice of a "Potentially Actionable Injury" in 1984-1985 when the Events Occurred, *Powel* Does not Allow Plaintiff to Shut His Eyes to a Potential Claim for Well Over Two Decades.

³ Perhaps in a desperate attempt to create a factual dispute, Plaintiff states in his brief that he "never consciously or purposely attempted to avoid Mueller" after the last experiment in 1985. (See Resp. Brief at p. 17.) This is at direct odds with Plaintiff's sworn answers to interrogatories attached hereto where he indicated, "After this [final] session plaintiff...made excuses to not help Brother Mueller any longer." (See A576-A580 attached hereto.) As this Court is well aware, "a party may not avoid summary judgment by giving inconsistent testimony and then offering the inconsistencies into the record in order to demonstrate a genuine issue of material fact." *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 388 (Mo. banc 1993).

Plaintiff argues throughout his brief that he was not put on notice of a potentially actionable injury when the underlying events took place (1984-1985) because he trusted William Mueller's representation that the experiments were part of a legitimate experiment. (Resp. Brief at 74.) Although wholly irrelevant to an *objective* "capable of ascertainment" inquiry, Plaintiff even offers the testimony of several other plaintiffs from other William Mueller suits who also claim to have participated in "experiments" with William Mueller: Matthew Giegling, Timothy Kluempers and John Doe 12.⁴ Harry Suda, who is identified in Respondent's Brief at Pages 26-30—was not subjected to the same conduct at issue here, i.e, Mr. Suda never had a knife placed to his throat, he never stripped to his underwear, he was never blindfolded, etc. (A506-A519.) Mr. Suda's testimony has no bearing on the objective inquiry before the Court.

The fundamental flaw in Plaintiff's argument is that even if the Court accepted as true Plaintiff's premise that a reasonable seventeen year old (nearly eighteen) would have accepted having a knife held to his throat as "legitimate" *at the time it occurred*, he fails to address how a reasonably prudent person would have failed to question this bizarre, offensive conduct for well over two decades without a least some type of minimal inquiry.⁵ In other words, even if the Court accepts that a reasonable seventeen year old

⁴ Mr. Giegling and Mr. Kluempers are represented by Plaintiff's current counsel, Daniel Craig.

⁵ Similarly, as set forth in Relator's Response to Respondent's Suggestions in Opposition, the testimony of Fr. Hakenewerth and Fr. O'Shaughnessy taken out of context and

lacks the maturity and judgment to question (i) having knife held to his throat; (ii) hyperventilating to the point of unconsciousness; (iii) being blindfolded; (iv) stripping down to his underwear; and (v) having gel put in his hair, there is no dispute whatsoever that a reasonable twenty-six year old would question this type of conduct. Indeed, even Mr. Kluempers, whose testimony Plaintiff offers to support his position that it was not reasonable not to question the legitimacy of the Mueller conduct at the time it occurred, admitted under oath that he would have considered Mueller's conduct (placing a sharp metal object to the neck, etc.) to be offensive by the time Kluempers was twenty-five or thirty years of age. (A249.) Plaintiff fails to address this point because it is fatal to his claims. While *Powel* allows for the possibility that a cause of action may not necessarily accrue at the instant the wrongful conduct occurs (particularly in the repressed memory context), *see Powel*, 197 S.W.3d at 585, *Powel* does *not* stand for the proposition that a plaintiff can shut his eyes to any potential claims for decades when he always remembered the wrongful conduct. In fact, even in the true repressed memory context, not at issue here, *Powel* specifically referenced whether the memory of wrongful conduct was repressed “before the victim knew sufficient facts *to be put on notice* of the need to inquire furthers as to these matters.” *Powel*, 197 S.W.3d at 584. (emphasis added). Plaintiff's argument misses the point that the statute of limitations does not toll where

objectionable on its face due to lack of foundation, in no way addresses the issue of inquiry notice, i.e., whether Plaintiff was put on inquiry notice as to a “potential” injury at some point over two decades.

“reasonable diligence” on the part of a plaintiff would have revealed the injury or wrongful conduct. *O’Reilly v. Dock*, 929 S.W.2d 297, 301 (Mo. App. S.D. 1996); *see also Cook v. DeSoto Fuels, Inc.*, 169 S.W.3d 94 (Mo. App. E.D. 2005)(“[C]apable of ascertainment may be construed to mean capable of being ascertained by a reasonable person using *reasonable diligence*.”)(emphasis added). Whether Plaintiff was subjectively ignorant that he could pursue a cause of action against Mueller is of no consequence. *Carr v. Anding*, 793 S.W.2d 148, 150 (Mo. App. E.D. 1990)(“[M]ere ignorance of the plaintiff of his cause of action will not prevent the running of the statute of limitations.”).

Indeed, this concept of “reasonable diligence” is embedded in the very concept of the hypothetical “reasonable person” or “reasonably prudent person.” According to Black’s Law Dictionary, a “reasonable person” (also termed a “reasonably prudent person”) is defined as follows:

reasonable person. 1. A hypothetical person used as a legal standard, esp. to determine whether someone acted with negligence; specif., a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. • The reasonable person acts sensibly, **does things without serious delay**, and takes proper but not excessive precautions. -- Also termed *reasonable man*; *prudent person*; *ordinarily prudent person*; *reasonably prudent person*; *highly prudent person*. See *reasonable care*

under CARE. [Cases: Insurance 1818; Negligence 233.
C.J.S. Negligence §§ 34, 118-121, 125-127, 130-131, 133.]

"The reasonable man connotes a person whose notions and standards of behaviour and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows his emotions to overbear his reason and whose habits are moderate and whose disposition is equable. He is not necessarily the same as the average man -- a term which implies an amalgamation of counter-balancing extremes." R.F.V. Heuston, *Salmond on the Law of Torts* 56 (17th ed. 1977).

Black's Law Dictionary (8th ed. 2004)(emphasis added).

Here, a reasonably prudent person in Plaintiff's position (acting without serious delay) would have at a minimum inquired, at some point over two decades, considering the fact that he always held the memories of: (i) having a knife held to his throat; (ii) being blindfolded; (iii) hyperventilating to the point of unconsciousness; (iv) stripping down to his underwear; and (iv) having gel put in his hair. (A102 at 264; A79 at 169; A83-A84 at 188-189; A86 at 200; *see also* Resp. Brief at p. 5). Missouri law requires that a plaintiff do so; otherwise, the statute of limitations will run. *O'Reilly v. Dock*, 929 S.W.2d 297, 301 (Mo. App. S.D. 1996).

As the Eastern District recognized recently in *Graham*, "While a child victim may be unable to immediately recognize such harm [from wrongful acts], we fail to see how this inability prevents an adult with memory of the events of abuse from being on notice that

harm *may have* occurred.” *Graham v. McGrath*, No. ED89168, 2007 WL 4301191 (Mo. App. E.D. 2007)(emphasis added). Similarly, even if the Court were to accept Plaintiff’s position that he was too young and naïve as a high school senior to recognize potential harm in having a knife held to his throat, stripping to his underwear, etc., it is impossible to see how this inability would prevent a twenty-five or thirty-year old with memory of the events from being on notice that harm may have occurred. Because Plaintiff at a minimum failed to make inquiry for well over two decades when he was placed on notice of a *potential* injury, his claims are time-barred under Missouri law.

E. Trial Courts, not Experts, Must Address the Objective “Capable of Ascertainment” Standard under *Powel*.

Respondent argues that the testimony of a self-styled clergy abuse expert (Doyle) and a psychologist (Harris) supports his position that it was objectively reasonable for Plaintiff to accept Mueller’s conduct as legitimate. (See Resp. Brief at 20-25.) The testimony of these two experts have no bearing on the statute of limitations argument before the Court. First, the objective capable of ascertainment test is an objective one based on the hypothetical “reasonably prudent person” standard. Without a doubt, it is the province of the Court to determine whether a Plaintiff is placed on notice of a potentially actionable injury based on the undisputed factual allegations. If Plaintiff’s position were the law, any plaintiff could easily defeat summary judgment on statute of limitations grounds by offering the conclusory testimony of an expert that “a reasonably prudent person would not have been put on notice of a potential injury for over two decades.” *Powel* does not permit a court to transfer its authority to determine whether a

claim is time-barred under the objective, reasonably prudent person standard to “hired-gun” experts. If summary judgment on statute of limitations grounds could be defeated simply through the conclusory, self-serving testimony of a retained expert, then Missouri would have a statute of limitations in name only. Defendants would be forced to litigate decades-old stale claims through trial even though they have a vested right to be free from suit. *See Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 341 (Mo. banc 1993).

Second, even if the retained experts’ conclusory testimony were somehow relevant to the statute of limitations analysis, Plaintiff still could not defeat summary judgment because Plaintiff does not offer any testimony from Doyle or Peterson to show how a reasonably prudent twenty-five or thirty-year old would have failed to inquire about potential harm when he always held the memories of: (i) having a knife held to his throat; (ii) being blindfolded; (iii) hyperventilating to the point of unconsciousness; (iv) stripping down to his underwear; and (iv) having gel put in his hair. (A102 at 264; A79 at 169; A83-A84 at 188-189; A86 at 200; *see also* Resp. Brief at p. 5).

It is the province of the Court to determine as a matter of law whether Plaintiff’s claims are time-barred under the “capable of ascertainment” standard set forth in RSMo § 516.100. *See Ferrelgas, Inc. v. Edward A. Smith, P.C.*, 190 S.W.3d 615 (Mo. App. W.D. 2006)(noting that whether damages are “capable of ascertainment” is ordinarily decided as a matter of law). This role cannot not and should not be turned over to expert witnesses.

F. *Martin* is Factually Dissimilar and Therefore not Controlling Here.

On Page 75 of Respondent's Brief, Plaintiff argues that his situation is analogous to that in *Martin v. Crowley, Wade & Milstead, Inc.*, 702 S.W.2d 57 (Mo. banc 1985). A careful examination of *Martin*, however, shows that one would be hard-pressed to find a more factually inapposite case.

In *Martin*, the plaintiff homeowners sued a land surveyor for damages based on a diminution in the property's market value. *Id.* at 57. In October 1973, the plaintiffs hired the land surveyor to survey their lot and to plot for the location of the plaintiff's home that they planned on building. *Id.* At the time, the plaintiff homeowners advised the surveyor that they wanted their house set back fifty feet from the front property line and twelve feet east of the west property line. *Id.* The defendant surveyor drew the plans for the lot and the plaintiff homeowners built their house on the lot. *Id.* Eight years passed before the plaintiffs discovered through a boundary dispute with their neighbor that their house was located only six feet from the true west property line rather than twelve. *Id.* at 57-58. As a result, the fair market value was less than it would have been if the plans had been properly drawn. *Id.* at 58. Accordingly, in August 1983, the plaintiff homeowners filed suit. *Id.* The trial court sustained defendant's motion to dismiss on statute of limitations grounds. *Id.* The plaintiff appealed. *Id.* In reversing the trial court's dismissal, the Court found that the facts before the Court were insufficient to find that the statute of limitations commenced running more than five years prior to filing of suit. *Id.* at 59. The Court remanded the case so that the parties could fully develop a factual record. *Id.* at 59. In so holding, the Court emphasized the fact that there was merely a technical breach of the surveyor's contract to produce an accurate survey; in creating a

survey that was off by a mere six (6) feet, the plaintiffs had no reason to question the defendant's work at the time the survey was prepared. *Id.* at 65. Notably, the Court focused on the point in time that the plaintiffs became involved in a boundary dispute with their neighbors as the moment that “*gave cause for plaintiffs to inquire if defendant's work had been faulty.*” *Id.* at 65 (emphasis added).

After carefully examining the facts of *Martin*, it is difficult indeed to see how Plaintiff attempts to draw an analogy between the two cases. *Martin* involved two homeowners who contracted with a land surveyor to draw a plot survey. The land survey was off by a mere six feet. The plaintiffs in *Martin* enjoyed their home peacefully for eight (8) years unaware that the surveyor had wronged the homeowners in any way.

Compare the slight, undetected property line error in *Martin* to the factual allegations raised in this case. Here, for well over two decades Plaintiff has held the permanent memories of (i) having a knife held to his throat; (ii) being blindfolded; (iii) hyperventilating to the point of unconsciousness; (iv) stripping down to his underwear; and (iv) having gel put in his hair. (A102 at 264; A79 at 169; A83-A84 at 188-189; A86 at 200; *see also* Resp. Brief at p. 5). Hence, Plaintiff is asking this Court to conclude that having a property survey inaccurately drawn by a mere six (6) feet is analogous to having a knife held to one's throat while being blindfolded and stripping to one's underwear for inquiry notice purposes. Logic and reason dictate otherwise. The facts of *Martin* are far too dissimilar from this case to offer any value. For the reasons stated above, the statute of limitations on Plaintiff's claims commenced well over five (5) years prior to the filing of his suit and are therefore time-barred.

CONCLUSION

This Court should make absolute its Preliminary Writ as the uncontested factual allegations show that Plaintiff's claim is time-barred under Missouri's five year statute of limitations set forth in RSMo § 516.120. Otherwise, Marianist Province will be forced to suffer the burden of unnecessary and burdensome litigation. This Court should make absolute its Preliminary Order of Prohibition by ordering Respondent to take no action in this case other than to vacate his Order of July 30, 2007, and enter an order granting summary judgment in favor of Marianist Province, and enter an order of sanctions against Plaintiff based on his frivolous and unwarranted request for sanctions, and for such other and further relief this Court deems just and proper.

Respectfully submitted,

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Certificate of Compliance

The undersigned certifies that this brief complies the limitation set forth Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word and contains approximately 3,698 words and approximately 284 lines. The font is Times New Roman 13 point type. The undersigned also certifies that a copy of the brief and appendix was filed with the Court on a CD-Rom (in lieu of a floppy disk) and that the CD-Rom has been scanned for viruses and it is virus-free.

Respectfully submitted,

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Certificate of Service

The undersigned certifies that two copies of the brief in printed form and one copy of the brief on CD-Rom in Microsoft Word format was served upon:

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via U. S. Mail this ____ day of _____, 2008, by enclosing same in an envelope addressed as aforesaid, with proper postage fully prepaid, and deposited same in the United States Mail.

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**STATE ex rel. MARIANIST
PROVINCE OF THE UNITED
STATES,**

VS.

Respondent.

Circuit Court Cause No. 06CC-000008

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**IN THE
MISSOURI SUPREME COURT**

STATE ex rel. MARIANIST PROVINCE OF THE UNITED STATES,	)	
	)	
	)	
	)	No. SC88779
	)	
Relator-Defendant,	)	St. Louis County, Missouri
	)	Judge John A. Ross
	)	
vs.	)	Circuit Court Cause No. 06CC-000008
	)	
	)	
	)	
HONORABLE JOHN A. ROSS, JUDGE, CIRCUIT COURT, COUNTY OF ST. LOUIS, DIVISION 15	)	
	)	
	)	
	)	
Respondent.	)	

**APPENDIX OF DEFENDANT-RELATOR
MARIANIST PROVINCE OF THE UNITED STATES**

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IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

ROBERT WILLIAM VISNAW,	)	
	)	
Plaintiff,	)	
	)	Case No. O6CC-000008
v.	)	
	)	Div.No. 15
MARIANIST PROVINCE OF THE	)	
UNITED STATES, ST. JOHN VIANNEY	)	
HIGH SCHOOL, INC. and BROTHER	)	
WILLIAM MUELLER,	)	
	)	
Defendants.	)	

**PLAINTIFF VISNAW'S SUPPLEMENTAL ANSWERS TO SEPARATE
INTERROGATORIES OF DEFENDANT ST. JOHN VIANNEY
HIGH SCHOOL, INC. DIRECTED TO PLAINTIFF**

COMES NOW, plaintiff, and hereby provides supplemental answers (identified in italicized font) to the interrogatories of defendant, St. John Vianney High School, Inc., as follows:

INSTRUCTIONS

These interrogatories call for all information (including information contained in or on writings, records, photographs, or any other tangible thing or material) that is known or available to plaintiff, including all information in the possession of plaintiffs agents, attorneys, accountants, auditors, directors, officers, employees, or other persons or experts and any investigator or any person acting on plaintiffs behalf of under his attorney's employment, direction or control.

Each interrogatory is intended to and does request that each and every particular and part thereof be answered with the same force and effect as if each part and particular were the subject of partnership, and were asked by a separate interrogatory.

If you are unable to answer any interrogatory completely, answer to the extent possible

and set forth the reasons for your inability to answer more fully.

In responding to these interrogatories, the definitions set forth below are to apply unless the context of the interrogatory indicates otherwise,

DEFINITIONS

1. 'You' or 'your' refers to plaintiff and any other person (as defined below) acting on said Plaintiffs behalf.

2. 'Person' refers to the plural as well as the singular and means any natural person, firm, association, corporation or other form of legal identity.

3. 'Document' as used herein is defined to include any and all manners of written, typed, printed, computer generated messages, electronic e-mail, faxed, reproduced, filmed or recorded material, and all photographs, pictures, plans or other recorded material, and all photographs, pictures, plans or other representations of any kind of anything pertaining, describing, referring or relating, directly or indirectly, in whole or in part, to the subject matter of the interrogatory, and the term includes, without limitation all matters and items contemplated within Rule 57 of the Missouri Rules of Civil Procedure.

4. 'Identify' or 'identification' means such designation of such person or document as to facilitate discovery:

- (a) Unless otherwise indicated, when the terms are used to refer to any person, state such as person's name, last known business and residential address, last known place of employment, employment title, and last known business and residence telephone numbers;
- (b) Unless otherwise indicated, when the terms are used to refer to any document, state with respect to each such document: the nature and substance thereof, the date it bears, the date it was prepared, the identity of the present custodian thereof, the identity of the author thereof, the identities of each addressee, the present location of identifying the document. As an alternative, a copy may be attached to Plaintiffs responses.

plaintiff's legal counsel.

Mark and Cindy Sanderson, address unknown, (913) 764-9487.

9. Please state whether you have discussed Defendant William Mueller or the alleged abuse by William Mueller with any psychologist, psychiatrist, counselor or any other mental or medical health practitioner. If so, please state the name of each person and state the date of the discussion. (Alternatively, you may attach copies of such documents to your responses to these interrogatories.)

ANSWER:

Yes. Dr. George Harris, Psych Logic, 8080 Ward Parkway, KCMO 64114, (816) 361-3404. Exact dates unknown but plaintiff believes the sessions began in the Fall of 2005 and continue to the present. Plaintiff will provide an executed authorization.

10. With respect to the sexual contact/abuse/assault allegation(s) set forth in your Petition, state:

- (a) The date of each alleged sexual contact, sexual abuse or sexual assault;
- (b) The place where each abusive contact occurred;
- (c) The nature of each abusive contact;
- (d) The name and address of each and every person to whom you have spoken about each abusive contact;
- (e) The name and address of each and every person who has knowledge of each abusive contact; and
- (f) The last date of any abusive contact as alleged in your Petition.

ANSWER:

To the best of plaintiff's recollection, he offers the following explanation of the abuse by Mueller:

The abuse began in late September, early October, 1984. Plaintiff was asked by Brother Mueller to help him with his Masters program. He told plaintiff that he had been authorized by the school to conduct the experiments with students so that members of the Order would not find out. Brother Mueller stated that he was sent to Vianney to assess why Brothers and Priests were leaving the Order. During the first session, Brother Mueller had told plaintiff that he was conducting experiments on fear. Brother Mueller had asked plaintiff if plaintiff had ever passed out. Plaintiff told him no. He said that he could make plaintiff pass out which he subsequently did. When plaintiff woke up he asked plaintiff how he felt and asked for how long plaintiff thought he was out. Plaintiff told him that he wasn't scared and that he thought he was out for maybe 10-15 seconds. Brother Mueller made plaintiff pass out several more times and would ask questions about the

colors that plaintiff saw or if he felt afraid. Plaintiff is not sure how long this session lasted.

The second session was almost an exact repeat of the first. Both of these sessions took place in Brother Mueller's office.

The third session Brother Mueller took plaintiff into the Varsity locker room, where he made plaintiff pass out almost immediately upon entering the locker room. At some point plaintiff woke up and felt someone massaging his genitals. Plaintiff also saw Brother Mueller with his penis in his hand masturbating while he was kneeling beside him. Plaintiff didn't say anything but Brother Mueller must have known that plaintiff was awake because he stopped and asked plaintiff how he felt. Plaintiff told him that he was scared and Brother Mueller said that this was the expected response and that plaintiff had nothing to worry about. When plaintiff tried to get up, he noticed that he was lying on one of the benches and that a towel had been placed under his head. After plaintiff was fully awake, Brother Mueller told him that if plaintiff had the opportunity, he should speak with two other students who were also involved in the experiments. After that plaintiff was allowed to leave.

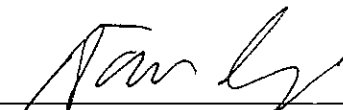
The fourth session happened sometime after the State Swimming and Diving Championships, and plaintiff thinks it was in early March, 1985, because the school held a Spring dance. Brother Mueller had asked plaintiff if he could find a reason to go to the dance. Plaintiff told him that he really did not want to go to the dance, but Brother Mueller insisted that plaintiff come to the school. Plaintiff went to the school and Brother Mueller met him at the main entrance to the school, near the office. Brother Mueller let plaintiff in the school and took him into a small office near the book store. Once they got into the office Brother Mueller asked plaintiff if he was afraid, and plaintiff said no. Brother Mueller asked plaintiff if plaintiff would have a problem with taking off his clothes, and plaintiff asked why, and Brother Mueller said that it was part of the experiment. Plaintiff agreed. Brother Mueller had plaintiff take his clothes off down to his underwear. Brother Mueller was not in the room while plaintiff undressed. Brother Mueller then came back into the room and placed a blindfold over plaintiff's eyes. He then began to rub plaintiff's back and ask if plaintiff was uncomfortable. Plaintiff said yes but not very. Brother Mueller then began to rub plaintiff's shoulders at which time he placed a knife to plaintiff's throat. He asked plaintiff if he was afraid and plaintiff was a little apprehensive but said that he was not afraid. Brother Mueller then pressed the knife harder on plaintiff's neck and asked again if he was afraid. Plaintiff said no. Brother Mueller then left the room and told plaintiff to get dressed. After plaintiff got dressed, Brother Mueller had him pass out. When plaintiff woke up, they left the school by an exit door near the track. Brother Mueller then had plaintiff walk around the track and at various points, he would ask plaintiff where they were at on the track. Brother Mueller had told plaintiff that this was to test plaintiff's perception after having been unconscious.

After this session plaintiff had no further sessions, and made excuses to not help Brother Mueller any longer.

The names of individuals previously named have knowledge of the abuse detailed above.

Respectfully Submitted,

SANDERS, SIMPSON, & FLETCHER, L.C.

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

A copy of the foregoing has been sent this 3rd day of May, 2006, via first class mail to the following:

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