

**THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA
BEFORE THE COURT FOR THE TRIAL OF A BISHOP**

**The Protestant Episcopal Church
in the United States of America,**

Complainant,

v.

The Right Reverend Charles E. Bennison, Jr.,

Respondent.

**ORDER ON COMPLAINANT'S
MOTION TO SEAL**

On April 17, 2009, the Respondent filed a Motion for Extraordinary Relief Seeking the Dismissal of the Presentment Or, In the Alternative, A New Trial (hereinafter "Respondent's Motion"). On April 30, 2009, the Complainant filed a Motion to Seal Certain Post-Trial Proceedings and for Other Relief (hereinafter "Motion to Seal"). The Complainant's Motion to Seal seeks to put under seal the Respondent's Motion, the materials upon which the Respondent's Motion is based, and any documents that describe those materials. The Complainant has further moved that any proceedings of the Court on the Respondent's Motion be closed to the public and that the parties and their counsel be enjoined from revealing the content of any sealed document to the public.

After filing the Motion to Seal, the Complainant asked the Court, in an e-mail sent to the Court's Lay Assessors on April 30, 2009, which has been made a part of the Record in this proceeding, to enter a temporary order enjoining the parties from revealing the content of the materials underlying the Respondent's Motion to the public and from disseminating the Respondent's Motion to the media, at least until the Court could adjudicate the Motion to Seal. Respondent filed an objection to the Motion to Seal on May 11, 2009.

On May 19, 2009, the Court issued its Order on Request for Emergency Relief, in effect sealing the documents described in Complainant's Motion to Seal until further Order of the Court.

After review of the materials underlying the Respondent's Motion, and the parties' submissions relating to the Complainant's Motion to Seal, the Court makes the following Findings and Order.

1. The materials filed with and underlying the Respondent's Motion consist of approximately 287 documents or communications reportedly preserved by John Bennison and provided to the Respondent after entry of the Judgment of the Court (hereinafter, the "Materials"). Approximately 250 pieces of the Materials are represented to be written by Martha Johanna Alexis Oslovar, the minor victim of John Bennison's sexual abuse (hereinafter, the "Minor") to John Bennison, between July 17, 1974 and November 7, 1976, when the Minor was age 16 to 18. A more complete description of the Materials can be found in the Court's Memorandum and Decision on Respondent's Motion for Dismissal or for a New Trial, issued on this date ("Memorandum and Decision").

2. The Respondent has acknowledged that the Materials "...contain intimate, private thoughts [of the Minor] from over 30 years ago that could cause severe pain and embarrassment to her and her family...."

3. The Complainant contends that public dissemination of the Materials would cause damage to the Minor, and reports that the Minor has expressed the desire that the Materials be sealed from the public.

4. The Complainant submitted an Affidavit from Mary Anne Layden, Ph.D. (psychology) setting forth her opinion that the release of the Materials to the public would be

harmful to the Minor. The Respondent submitted an Affidavit of Mark J. Blotcky, M.D. opining that the presumption that publication of the Materials could damage the Minor was completely speculative. Both affidavits expressed opinions on issues beyond the scope of Complainant's Motion to Seal. The Court has not considered such opinions.

5. The Court has considered the portions of the expert affidavits which were arguably relevant to this Motion, and has found them not to be helpful, probative or necessary to the Court's decision.

6. In its Memorandum and Decision, the Court has found that the Materials, even if properly authenticated and admissible, "would not be material and would not have had any effect on the outcome of the trial." *Id.* at p. 18.

7. Having witnessed the Minor's testimony at the trial, and understanding the facts that gave rise to this case, the Court recognizes that these proceedings have been extremely difficult for the Minor. The Court regrets any additional pain that may result from further public examination of this chapter of her life.

8. The Court finds that the Complainant has not met its heavy burden to overcome the presumption of openness that pertains to these proceedings, or to establish that the harm that publication of the Materials might inflict on the Minor is so great as to overcome that presumption.

9. The Court notes that the originals of the Materials, and perhaps unknown numbers of copies, are in the possession and control of persons not subject to the jurisdiction of the Court.

10. The Court will not participate in the public disclosure of the Materials, and will not release to the public, from the Court's file, copies of the Materials, or of the parties'

submissions on either the Respondent's Motion or the Complainant's Motion to Seal, or other submissions of the parties which quote the Materials.

11. The Court admonishes all involved and fervently prays that the parties and all persons in possession of the documents described in paragraph 10 will continue to extend the most sensitive pastoral concern to the Minor in their decisions regarding any use or release of such documents.

Therefore, it is ORDERED:

The Complainant's Motion to Seal Certain Post-Trial Proceedings and for Other Relief is DENIED.


BY ORDER OF THE COURT THIS 24th DAY OF SEPTEMBER, 2009.

A handwritten signature in black ink, appearing to read "Bradford S. Babbitt", written over a horizontal line.

Bradford S. Babbitt
Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify and return that on September 24, 2009, I served the foregoing Order on Complainant's Motion To Seal on James A. A. Pabarue, Esq. and Carolyn Bates Kelly, Esq., both of the law firm of Christie Pabarue Mortensen and Young PC, at 1880 John F. Kennedy Boulevard, 10th Floor, Philadelphia, Pennsylvania, 19103 and Lawrence White, Esq., One South Broad Street, Suite 1850, Philadelphia, Pennsylvania 19107-3418, and Ralph Jacobs, Esq., 1515 Market Street, Suite 705, Philadelphia, Pennsylvania, 19102 by overnight mail, postage prepaid.



Bradford S. Babbitt
Clerk of the Court