

**Diocese of Bridgeport**  
**Briefing on the New York Times Case**  
**August 29, 2009**

You may have read or heard about the continuing developments in the New York Times matter. The following is a brief review of the history and the substantive issues of this matter.

Origin of the Case

This matter began in January 1993 with the filing of 23 lawsuits against the Diocese of Bridgeport by victims of sexual abuse on the part of several priests of the Diocese. The allegations involve conduct from the 1960's and the 1970's. During the course of litigation, but before any trials were held, the lower court ordered that certain documents be turned over to the plaintiffs and their attorneys. The Diocese objected on several grounds, including a concern over the privacy of medical records, pastoral concerns, and First Amendment privileges.

The First Amendment privileges pertain to the vital issue of Church autonomy; civil authorities are forbidden by the First Amendment to second-guess a church's decisions regarding its clergy. Various denominations have long invoked this principle of church autonomy. The U.S. Supreme Court has consistently recognized that the First Amendment protects not just the freedom of individuals to practice religion but also the freedom of churches to conduct their own affairs. It would be a dangerous invasion of religious freedom for the civil courts to be permitted to examine the decisions that a church makes in evaluating its own clergy, especially when such decisions are made in light of church doctrine and discipline.

The court responded to the objections of the Diocese by ordering a limited disclosure of the documents to the victims' attorneys and requiring that any of those documents be filed under seal with the court. Whether or not the sealed documents would be disclosed at trial would not be determined until or unless a trial took place.

In fact, there was no trial. In January, 2001, before Bishop Lori arrived, the Diocese under the administration of Monsignor Laurence Bronkiewicz, settled the cases and they were collectively withdrawn from the court docket. Over 16 months later, in March 2002, well past the four month time period for any party to object or intervene in the matter, and just as the documents were lined up for routine destruction by the court, *The New York Times*, later joined by the *Hartford Courant*, *Washington Post* and

*Boston Globe*, rushed into court. They filed an “emergency” motion to intervene in the matter in an attempt to get the files unsealed and made accessible to them. It should be noted that the sealing orders in these cases span seven years of litigation and the media did nothing to challenge those orders, despite reporting on the cases and settlement extensively between December of 1994 (when the protective orders were entered) and 2001 (when the cases were settled).

Notwithstanding the fact that the court had sealed the documents, on March 17, 2002, the *Hartford Courant* published a seven page article citing the sealed documents, thus flouting the protective order of the court. To our knowledge, the Judiciary did not attempt to investigate or determine how the court files were compromised.

In May 2002, Judge McWeeney granted the newspapers’ motion. In a decision riddled with anti-Church rhetoric, he allowed the intervention of the media by inventing a new process. The Diocese immediately appealed.

In 2003 the Connecticut Appellate Court reversed the lower court, ruling in favor of the Diocese. The Appellate Court held that the newspapers had no right to intervene in settled cases in order to obtain access to the sealed documents. The newspapers then appealed that decision to the Connecticut Supreme Court.

In November 2005, the Connecticut Supreme Court reversed the Appellate Court, granting the newspapers the right to intervene and restoring the cases to the docket for the limited purpose of addressing the newspapers’ right to access to the sealed documents. The case was sent back to another lower court judge, Judge Alander, to determine whether access should be allowed to any documents, and if so, which ones.

After the case was assigned to him, Judge Alander accepted an appointment to a judicial commission, comprised of judges and media advocates. *Its mission was to make policy recommendations for the maximum degree of public access to court files and cases!* This highly political committee grew out of a judiciary scandal wherein several highly notable divorce cases were not placed on the public court docket. The media had a field day with the issue, taking the court administration to task. Judge Alander not only was part of the commission, he also chaired the subcommittee on access to sealed documents, of which a reporter from the *Hartford Courant* was a member.

The Diocese moved for Judge Alander to disqualify himself from our case since he clearly had a conflict of interest. The Judge refused, continued serving on the committee with the *Hartford Courant* reporter, and then issued his opinion against the

Diocese. In December 2006, Judge Alander held that all but a few documents were to be accessible to the media because 1) in complying with the court ordered disclosure the Diocese had “waived” (given up) its First Amendment privileges and 2) under the Judicial Documents doctrine, most papers filed with the court are open to the public.

The Diocese appealed to the Connecticut Supreme Court in December 2007. In June 2009 the Connecticut Supreme Court upheld Judge Alander’s decision.

The Connecticut Supreme Court ruled that all but a handful of the sealed documents in the file were to be released. The court said that by complying with the order to disclose documents, the Diocese had waived its right to the First Amendment privileges attached to the documents.

The Connecticut Supreme Court essentially ruled that most papers filed with a court are “judicial documents” and “presumptively open to the public”. This is an expanded notion of the concept which posits that documents that the court uses to render its decisions should be open to the public so that the public *can see how the courts are performing their duties*. It is not to allow the press and public access to the personal affairs of private litigants or to facilitate an historical exposé of matters long settled.

### Current Status

The Diocese was granted a stay (a hold) of the Connecticut Supreme Court decision, pending a final resolution of the stay issue by the U.S. Supreme Court. Justice Ruth Bader Ginsburg denied the initial stay application. The Diocese is asking the full U.S. Supreme court to hear our case and to stay the case until it does.

We are raising two important constitutional issues:

1. Whether the Diocese waived important First Amendment privileges by complying with a court order that compelled limited disclosure of the documents under seal.
2. Whether the Connecticut Supreme Court has erroneously interpreted the judicial documents doctrine.

### Summary of Important Facts

- These cases are long settled. The allegations date back to the 1960’s and 1970’s. Under the protective order, the documents were made available to the victims and their attorneys.

- All of the offending priests' names have been publicized — all have been removed from ministry.
- These cases were extensively covered by the media. In March 2002 the *Hartford Courant*, in flagrant defiance of the court, published many of the sealed documents. There is no evidence that the Judiciary investigated that breach.
- In fact the issue of sexual abuse of minors by priests has been extensively covered by the media. Some of the cases date back almost half a century and relate to a different time and era. Society and the Church now have a much greater understanding of the causes and contexts of sexual abuse.
- The Diocese of Bridgeport has a victims' assistance program to provide counseling and other assistance to victims of sexual abuse.
- Little media coverage has been given to the extraordinary measures which the Catholic Church in the United States has taken to address and prevent sexual abuses. These include background checks of all employees, volunteers, clergy, and religious. In addition, training in the prevention of sexual abuse is mandatory for all clergy, religious, employees, and volunteers. No other institution has done as much as the Catholic Church to provide a safe environment for our children and young people.
- Sexual abuse is a societal problem. However, government run boards of education are protected by "governmental or sovereign immunity" and are not subject to the same civil liabilities as private organizations like the Church.
- To repeat, the issues that are being litigated here involve two serious constitutional matters:

First, the Diocese produced documents for which it invoked a First Amendment privilege only under the compulsion of a court order. The Connecticut Supreme Court did not deny the validity of the constitutional privileges. It is a very serious matter that the Connecticut Supreme Court decided that compliance with a court order means giving up one's First Amendment privileges. It leaves parties to litigation with an untenable choice of being held in contempt of court or complying with an order and thus giving up one's rights.

Second, the issue of the scope of Judicial Documents is important to the privacy rights of all citizens. The Judicial Documents concept is that the public should have access to documents to evaluate how the courts are performing their adjudicative functions. It is not a mechanism for the media and public to pry into the private affairs of parties in a dispute. Oftentimes, documents filed during discovery are misleading. Unlimited access to every document filed during the course of litigation could impair reputations, ruin personal relationships and destroy businesses all on the basis of false or misleading information or information selectively presented by a media hungry for salacious allegations.

- Some may ask why we continue to press these constitutional questions. It should be noted that along the way, the Connecticut Appellate Court and two of the Justices of the Connecticut Supreme Court supported the position of the Diocese.
- Recall that we had to fight Bill 1098 — the unconstitutional attempt to reorganize Catholic Church governance to reflect a Protestant church model. Recall we had to fight the unconstitutional attempt by the Office of State Ethics to investigate the Diocese of Bridgeport for defending itself against Bill 1098. Now must we fight to the last any and all attempts to use the tragic history of sexual abuse as a means for the media and the courts to undermine the freedom of the Roman Catholic Church to operate under the full protection of the Free Exercise and Establishment Clauses of the First Amendment to the Constitution of the United States.