

Diocesan Archives

Canonical and Civil Law Issues



Dr. Diane L. Barr, JD, JCD

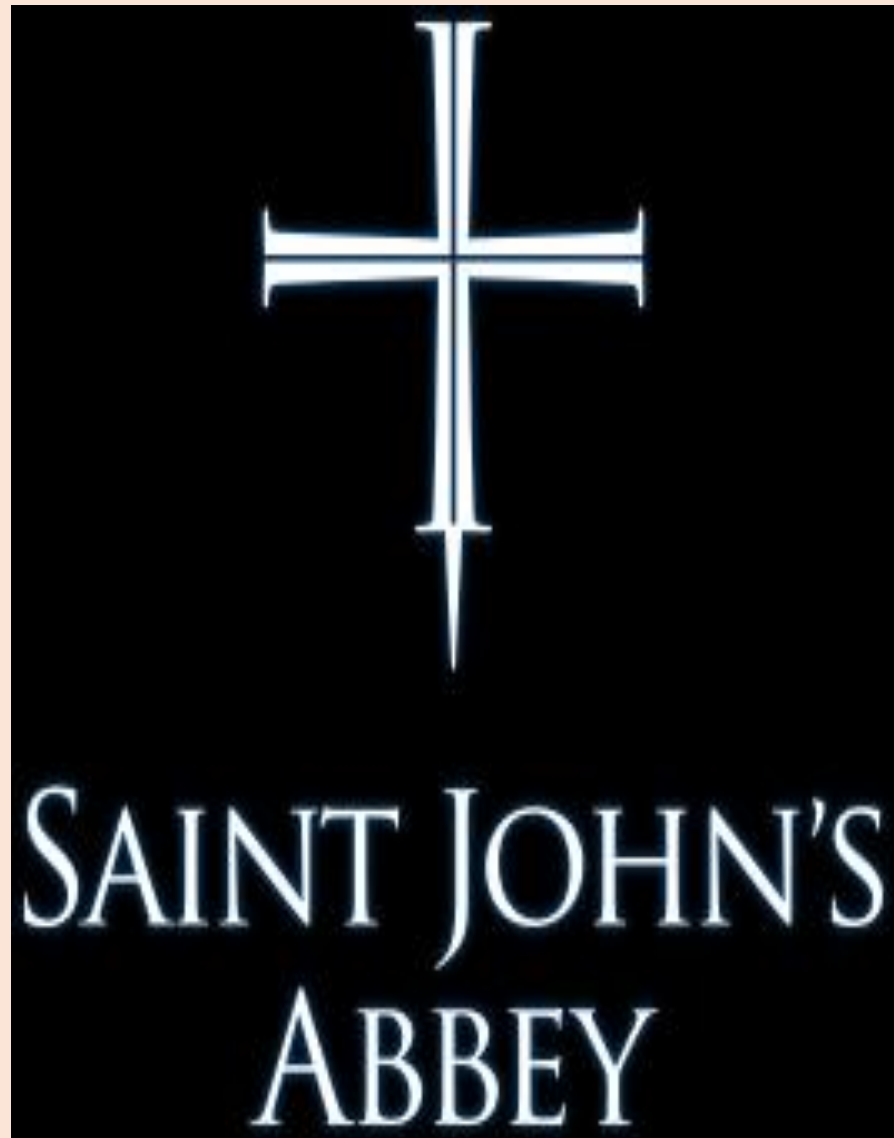
Presentation II

July 13, 2016

Jesus the Law Giver

Metropolitan Museum of Art
New York City





• In a landmark move, St. John's Abbey releases files on accused of abuse monks

- These 18 were credibly accused of sex abuse; victims' advocates insist there should be more.

• **Release secret
clergy abuse
files, lay
Catholics urge
Archbishop
Sartain**



**Attorneys
release files of
Winona
diocese priests
accused of
abuse**





**Last batch of
Los Angeles
Catholic Church
molesting files
released**

Civil Litigation – Common Areas

Most Common Areas

- Tribunal Cases
- Human Resources
- Finances
- Property Use
- Sexual Misconduct



Civil Litigation - Tribunal

Tribunal Cases

- Custody
- Defamation
- Can be related to Sexual Abuse reporting



Civil Litigation – Human Resources



Human Resources

- Employment
- Termination
- Protection of Community
- Volunteers

Civil Litigation - Finances

Finance

- Misuse of funds in parishes or schools
- Embezzlement of funds (criminal or civil actions)



Civil Litigation – Property Law



Property Law

- Use of Property Issues – building churches or other parish buildings
- Risk Issues – slip and fall, other personal injury while on property
- Damage to property from natural or man made events

Litigation – Sexual Misconduct



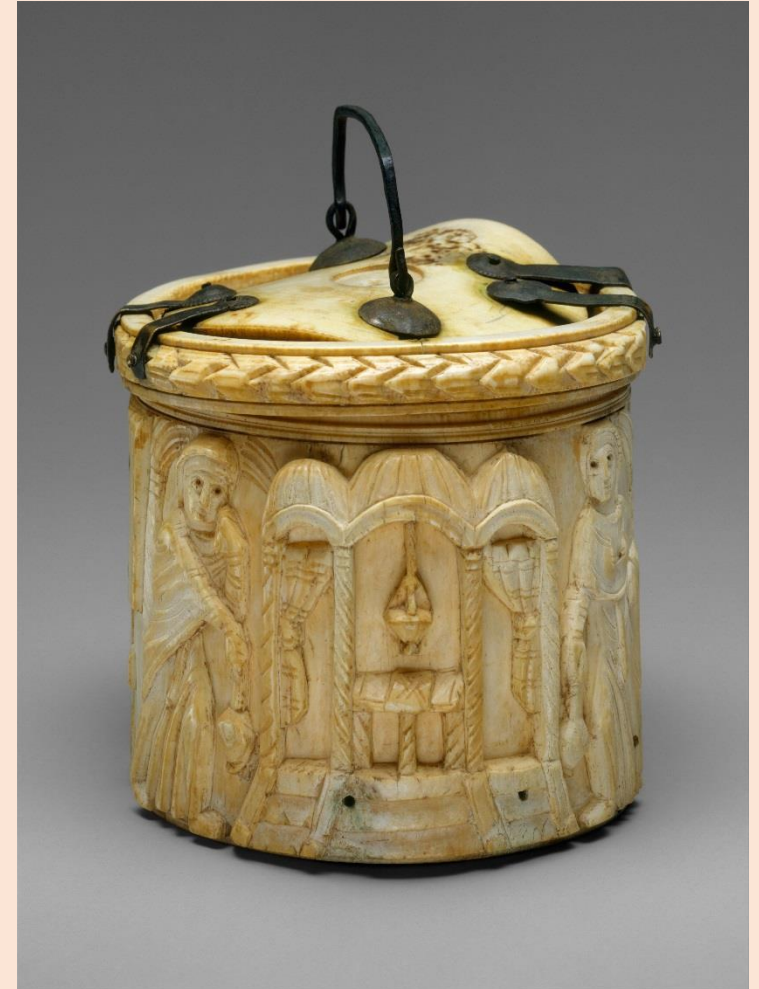
Sexual Misconduct

- **Criminal Actions** – state seeking information of wrongdoing
- **Civil Actions** – those abused or their families

Litigation – Basic Steps

Event Occurs

- Discussion regarding event happens
- Can be discussion of possible litigation
- Can be some time of public or private investigation
- Legal Documents Filed in Court by Plaintiff and serve Defendant with Pleadings
- Defendant Files an Answer



Litigation – Basic Steps

Discovery Begins – Interpreted broadly under Court guidance

Can Include:

- **Interrogatories** (written questions that must be answered under oath, sent from one party to another)
- **Deposition** (an in-person, out-of-court session where a party or a witness answers questions, also under oath, and the entire proceedings are recorded in a transcript)



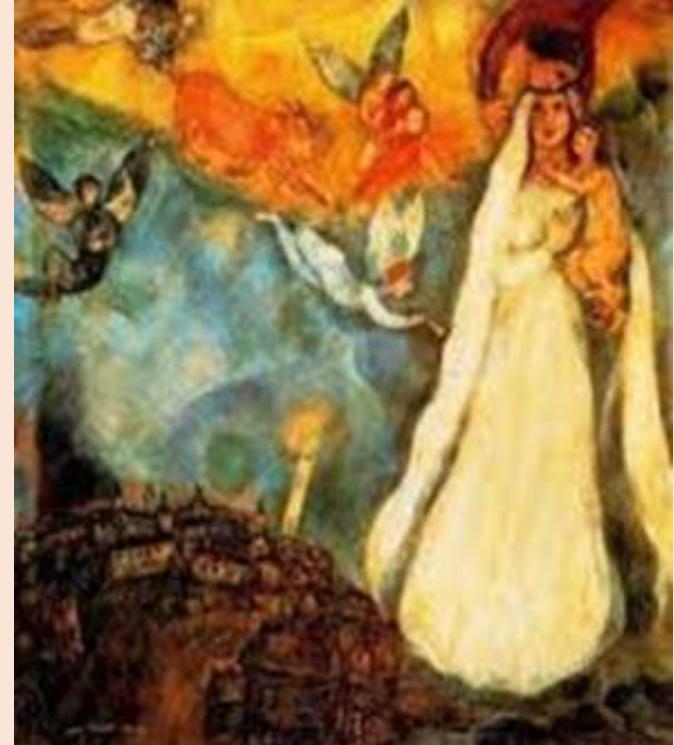
Litigation – Basic Steps



- **Deposition** (an in-person, out-of-court session where a party or a witness answers questions, also under oath, and the entire proceedings are recorded in a transcript)

Litigation – Basic Steps

- **Requests for Production of Documents** (usually this involves the parties asking for and exchanging documents that are relevant to the dispute)
- **Can include** electronic documents (all formats), paper files, emails



Litigation Hold

What is this?

- Method of preserving all records related to a specific legal matter or case

How is it triggered?

- Knowledge by archive authority that litigation may be likely – often by letter from attorneys is the formal method



Litigation Hold

What does it cover?

- Relevant documents as determined by the Court

Who is effected?

- All custodians or any relevant documents



Litigation Hold



How Long Does It Last?

- Legal Duty remains until the lawsuit is finally settled
- Means that all destruction of documents that are directly related or could be related to the matter must be preserved to assure the administration of justice

Litigation Hold



Team Planning Essential

- **Proper Policy to Anticipate Situation in Place**
- **Communication** - Need all members of team responsible for document retention/preservation to be aware of obligation

Litigation Hold



Evaluation of Entire Record

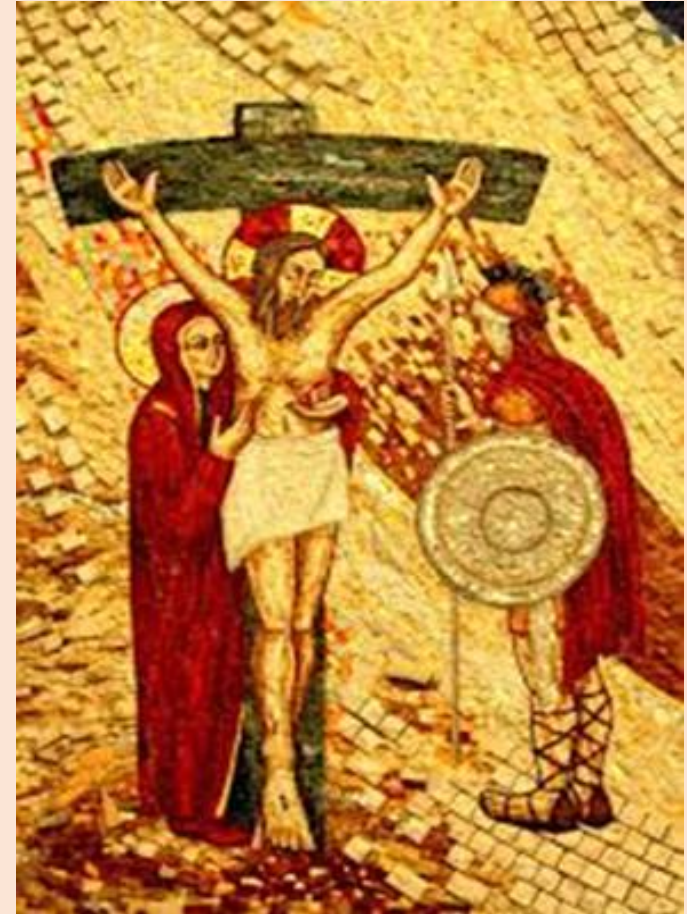
- IT
- Archives
- Risk
- Attorneys
- Chancery
- Related Departments or persons involved in decisions leading to lawsuit

Litigation Hold

Legal Consequences and Risks

Court Can:

- Assess Monetary Penalties
- Rule Adversely Against the Diocese
- Dismiss the Case in a Way that is Adverse to the Diocese
- Put Individuals in Jail



Litigation Hold



Properly Established Document (paper and electronic) Retention Policy Can Mitigate Risks and Preserve Options for the Diocese

- Needs to be more than a “paper” policy
- All must be educated to properly implement the policy – should be on-going given transition of staff
- Update regularly

Not So Secret Archives

- **Secret Archives not seen as secret** under the Clergy-Penitent Privilege – often seen as an attempt to truly subvert the course of justice;
- Some recommendations in the 80s and 90s to put all records related to clergy misconduct in these files later proved to be difficult to defend in legal arena;
- **May be able to obtain “in camera” review of documents** to determine relevance, but this will differ from jurisdiction to jurisdiction
- Depends on local state law – seek local legal advice



Questions?



