

III. Proofs at Trial

A. Respondent's Personal History and Background

Respondent was born on August 2, 1940. Respondent graduated from Philadelphia Divinity School in 1966 and was ordained a deacon and later a priest in 1966. After ordination, Respondent served as a Curate at St. Ann's Church in Abington, Pennsylvania and from 1968 to 1976 was the Rector of Christ Episcopal Church in Collingswood, New Jersey. From 1976 to 1992, Respondent was the chaplain at Our Lady of Lourdes Medical Center in Camden, New Jersey. While serving as Chaplain, Respondent received a Master's Degree in psychology and counseling from Glassboro State (now Rowan) University. Contemporaneous with his position as Chaplain, Respondent also served first from 1976 to 1985 as an assistant at Grace Church in Haddonfield, New Jersey and then as part of a team ministry at Our Savior in Camden, New Jersey. Respondent was called to be the rector of Trinity Church in Vineland, New Jersey in early 1992 and served as rector until his inhibition by the Bishop of New Jersey on February 24, 1997. Since his inhibition, Respondent has completed three additional quarters of Clinical Pastoral Education (CPE).

It appears from the evidence that Respondent began to suffer from serious health related issues as early as his freshman year in college. In essence, it appears that Respondent was diagnosed with extreme ulcerative colitis also known as Crohn's Disease. As a result, Respondent has, over time, endured a series of

surgical procedures resulting in the removal of his large intestine and rectum. Respondent also had an ileostomy procedure performed such that he has to wear an ileostomy pouch. Testimony indicated that the shape and placement of the pouch has changed somewhat over the course of time. Other consequences of this condition followed. Subsequent surgeries resulted in the removal of large portions of Respondent's small intestine.

As part of the treatment for Crohn's Disease, Respondent received massive doses of steroids such as Prednisone. As a result of Respondent's steroid treatment, his vision began to degenerate resulting in the need for a lens transplant in 1995. His jaw and facial bones began to degrade. In addition, Respondent has also been diagnosed with Aseptic Necrosis of the femurs, bilateral. This condition began to develop approximately twenty years ago and is apparently degenerative. Respondent claims that as a result, for much of the 1990s, his freedom of movement was restricted. In addition, the degenerative nature of the Aseptic Necrosis condition resulted in his need for hip replacement surgery conducted in June, 2000.

Based upon the testimony, during the period of the early to mid-1990s, Respondent had no difficulty in bending his knees. He did have significant difficulties in rotating his legs giving him some level of impairment in performing certain kinds of movement such as getting on or off of a bicycle. Respondent frequently rode his bicycle to Church from the rectory which was more than one

mile from the Church. At some point in 1995, Respondent stopped riding his bicycle because of his Aseptic Necrosis condition.

Respondent was also an avid weight lifter and body builder. Respondent and many parishioners testified that after his arrival at Trinity, Respondent established a weight room in a vacant classroom in the basement of the Church where he would lift weights to strengthen his upper body. At various Churches where he served and at Trinity, Respondent established a group called the "Sons of the Carpenter" which was apparently a group of men who came to the Church to lift weights and exercise. Female parishioners also used the weight room. Respondent lifted weights and exercised in this room regularly throughout the period of his service at Trinity.

The proofs establish that Respondent was also having difficulty in his marriage. Respondent's marriage to his first wife ended in divorce in 1986 after 20 years of marriage. Respondent then met and married his current wife, Anna Maria Berlenbach³ in February, 1992. While there is a dispute as to the extent and nature of any marital difficulties between Anna Maria and Respondent, it is clear that by 1994 there was certainly some substantial amount of strain in the marriage. Anna Maria expressed concern to Respondent about the amount of time he was devoting to the Church and particularly to the preparation of his sermons. Several members of the Parish testified that at various times Respondent would complain to them

that Anna Maria was denying him sex, not feeding him or giving him money for food or for various expenses. Linda Chance, Dorothy Torchio, Arthur Bretnall, Bonnie Hood, Pat Polhamous and Dale Nichols testified about various occasions where Respondent made statements to them along these lines. Respondent acknowledged making these comments to various parishioners and, at trial, acknowledged that they were inappropriate. Issues about Anna Maria soon developed at the Parish where there was a concern about her alleged lack of involvement in Church activities.

B. Allegations by Linda Chance, Bonnie Hood and Dale Nichols Concerning Events in 1992 and 1993

Beginning in late 1992, a series of incidents then occurred which ultimately gave rise to the filing of several of the complaints at issue in this Presentment. In either September or October, 1992, Linda Chance alleged an inappropriate encounter with Respondent. At the time, Chance was the Sunday School Superintendent. She came to Respondent's office at the Church to discuss her concern that Respondent was not providing promised help with the operations of the Sunday School. Chance described herself as being "very angry" because of Respondent's inactivity. As the meeting concluded, Chance rose to leave and, according to her testimony, Respondent "looked me up and down" and she said "Boy, you can really fill out a sweater." Chance testified that on this occasion she

³ While Anna Maria Berlenbach attended one day of the trial, she did not testify at trial even though she was listed as a witness.

was wearing a "form fitting" short-sleeved, teal sweater which she subsequently disposed of out of her disgust at the encounter.

Respondent has a different recollection of events. Respondent testified that "early in his tenure" he recalled being at a post-service coffee hour with Chance. Respondent testified that he knew that Chance had been trying to lose weight and that she, in fact, appeared to have lost weight. Respondent wanted to encourage her and told her that "you look good in the outfit." Respondent denied ever commenting upon the way in which Chance "filled out a sweater."

It appears from the record that Respondent felt that it was part of his duty as Priest to provide affectionate and supportive comments to people in an effort to encourage people. Most witnesses agreed that Respondent, in his own way, tried to be supportive but that he was awkward, to say the least, in the manner of his presentation. This awkwardness became apparent even through the testimony of these witnesses who could be deemed supportive of Respondent's position.

Respondent presented the testimony of several female parishioners who testified that they had been the recipient of comments and hugs from Respondent during his tenure and were not offended by his conduct. Brenda Bretnall testified that Respondent once said to her "Gee, Brenda you look sexy today" and on another occasion kissed her on the lips. Brenda Bretnall testified that she was "surprised," but not upset by Respondent's conduct. She

acknowledged that other parishioners were upset by similar conduct. Elizabeth Swanson Goldberg testified that she was hugged and kissed during a counseling session with Respondent. She described the hug as being "full" and "warm" and testified that she considered his conduct to be "appropriate" under the circumstances.

At some point during this period, Respondent also had occasion to visit Bonnie Hood, a parishioner who had once been a member at Trinity and who returned to Church specifically because she met Respondent after his call as Rector. At the time Hood was divorced. Hood had heard a rumor from her daughter that Respondent was "interested" in her. At an unspecified time in 1992, Respondent called Hood to say that he was at the home of one of Hood's neighbors and to ask if he could come for a visit. She agreed and gave Respondent directions to her home. She viewed his appearance as a pastoral visit. Respondent appeared and they discussed her night school courses and a paper she was writing on China. Nothing of any consequence occurred during this visit.

In January 1993, Hood's father died and she called Respondent to discuss the funeral arrangements. Respondent came to her house and after a time rose to leave. As he did so, Respondent asked Hood if he could hug her. Respondent proceeded to make "full body contact" and then asked if he could kiss Hood. She denied his request and he said "that's okay" and left. Hood was shocked but made no complaint until some time later when she spoke to Pat

Polhamus Lindenlaub, who related an incident that she had with Respondent mid-1995. Hood still did not tell any member of the Church leadership until late 1996 when she reported these events to Dorothy Torchio.

While Respondent denied ever hugging Hood, he did recall visiting her home to discuss the funeral of her father. He recalls sitting at the kitchen table to work out the details of the service. Based upon Respondent's recollection, the meeting would have lasted between thirty minutes to one hour. Respondent testified that upon leaving, he asked if Hood would like a hug. He also denied ever trying to give her a kiss or talking to Hood's daughter about Hood other than to ask about how she was doing.

The proofs at trial contained allegations about additional comments about parishioners made by Respondent. In approximately February, 1993, Dale Nichols, then Junior Warden, was preparing a portion of the Parochial Report relating to the Church membership. Respondent and Nichols decided to meet in the secretary's office at Trinity to discuss a portion of the report. Nichols testified that she had been uncomfortable in Respondent's presence in the past because of some of his prior conduct primarily related to the tone of voice Respondent used in speaking to her in private conversations.

On the evening at issue, Nichols and Respondent were working together alone in the secretary's office. Nicholas testified that they were seated together at a desk reviewing documents. For reasons that were not clear, Nichols

described Respondent's behavior and demeanor that evening as "different" and "not business like." Nichols testified that as the evening progressed, Respondent got progressively closer to her to the point that she was increasingly uncomfortable. At some point during the evening, Nichols told Respondent: "Father Berlenbach, you do understand the only relationship we can have is a business relationship don't you?" According to Nichols, Respondent appeared shocked at this statement and seemed to "lose some of his prior softness." According to Nichols, Respondent agreed that this was the nature of their relationship and, apparently, the meeting continued. In his testimony, Respondent recalled the meeting but denied any improper conduct on his part.⁴

C. Investigation By Senior Warden Regarding 1992 and 1993 Allegations

At some point in 1994 concerns about Respondent's comments and conduct came to the attention of Dorothy Torchio, the Senior Warden. Based upon the testimony, it appears from notes kept of the meetings that on April 10, 1994, Torchio spoke to Dale Nichols and had related the substance of the incident in February 1993 relating to her as well as other unstated concerns. Torchio had also had a meeting with Ann Speer on April 6, 1994 in which some of Speer's concerns with Respondent were discussed.⁵

⁴ Nichols testified about various other comments made by Respondent to other parishioners about her including one to parishioner Arthur Bretnall regarding the "trimness" of her figure. The timing of these comments is subject to great dispute by the parties.

⁵ During the time pertinent to this case, Anne Speer was the wife of Rev. William Speer, another Priest in the Diocese of New Jersey and the Assistant at Trinity Church. Mrs. Speer was apparently a parishioner at Trinity

As a result of these discussions, Torchio approached Arthur Bretnall, a longtime parishioner, member of the Vestry and, at the time, Lay Eucharistic Minister who frequently assisted Respondent in performing his pastoral duties. Torchio apparently conveyed some of the substance of the complaints by Dale Nichols, Linda Chance and Ann Speer to Bretnall. According to Respondent's testimony, Torchio and Bretnall both had independent phone conversations with Respondent to set up a meeting to discuss the allegations.

According to notes kept by Torchio, on April 16, 1994, she, Art Bretnall and Respondent met in his office at Trinity to discuss the allegations. Respondent was told of the identities of the complainants and apparently apprised of the nature of the allegations. There was also a discussion about the state of the Respondent's marriage and concern in some quarters about Anna Maria's lack of participation in Church activities. During this session, Torchio told Respondent that "if this happens again, you're out." While the details are unclear, it also appears from the record that information with regard to these initial charges were brought to the attention of the Rt. Rev. Mellick Belshaw, then Bishop of New Jersey.

Church during the initial period of Respondent's tenure. Based upon the content of certain pretrial motions, it appears that Speer made various complaints about Respondent regarding his actions and conduct. These complaints resulted in the filing of a formal complaint with the Diocesan Bishop. While these complaints were pending, Mrs. Speer moved and has taken no further part in these proceedings with the result that the Speer complaint was not included in the Presentment filed by the Standing Committee. Attempts by the prior Church Attorney to have these hearsay allegations presented to the Court in the absence of the complaining witness were rejected by the virtue of this Court's ruling on in limine motions. Other than the fact that charges were made and that they contributed to a course of conduct by Ms. Torchio and others, the Court had not been aware of the content of the charges and the fact of the charges played no part in the Court's deliberations.

As a result of this meeting, Respondent agreed to engage in counseling at the Trinity Counseling Service through the Rev. Peter Stimpson. While the details of the counseling sessions were not shared with anyone in the parish, it appears that the counseling sessions lasted approximately one year and took the form of marriage counseling between Respondent and his wife. Respondent testified that he was "incredulous" at the charges and "dumbfounded" at why these parishioners were making complaints against him. He believed that his intentions as to the complaints had been "misunderstood" and that there misunderstanding might have been caused by the acknowledged difficulties he was having with his wife. Respondent testified that he believed that if he corrected these issues with his homelife, his ability to relate to women in his parish would improve. The results of the counseling sessions were not made known to the Court, nor were any records from the sessions introduced into evidence. We assume, based upon Respondent's testimony, that these counseling sessions lasted into April or May of 1995. It is clear that the counseling sessions were completed by Christmas 1995.

D. The Alleged Rape of Patricia Ann Nichols in 1994

Patricia Ann Nichols was born on July 15, 1980. She is the youngest of four children of Chris and Dale Nichols. Dale Nichols was a member of Trinity Church and active in a number of parish organizations. Dale and Patricia were both parishioners at Trinity when Respondent was called as Rector. In July, 1994,

Patricia was fourteen years old. Patricia testified that early in 1994, when she was thirteen years of age, Respondent made her uncomfortable through a series of comments about her appearance, the smell of her hair and the manner in which she filled out her clothing. As a young girl, Patricia was sensitive to these comments but said nothing about them.

While there is great dispute about the actual date,⁶ it appears, based upon Patricia's testimony, that on a Sunday afternoon, after the last service at 9:30⁷ a.m., Patricia was in an internal room in the undercroft of the Church.⁸ Patricia testified that she was sitting on a couch in the room reading the novel 1984 by George Orwell as part of a school project for Honors English class. Patricia had attended services that morning and went downstairs to a quiet place to read, assuming that her father or mother would come to pick her up. (Her mother was one of the parishioners who locked the Church after Sunday services). Patricia

⁶ In her trial testimony Patricia Nichols testified that this incident occurred "about two weeks after my birthday" of July 15 making this occurrence on Sunday, July 31, 1994. At other times it appears that she asserted that the alleged rape occurred on August 7, 1994.

⁷ Based upon the testimony, it appears that during Respondent's tenure, Trinity traditionally had two services on Sunday morning at 8:00 a.m. and 10:30 a.m. In the summer months of July, August and part of September the 10:30 a.m. service was moved to 9:30 a.m. Coffee hour was held after the last service and, depending upon the testimony, lasted between sixty and ninety minutes.

⁸ A number of different drawings of the subject property were made and marked as exhibits at trial showing the layout of the property both before and after the reconstruction of large parts of the Church as a result of a 1995 fire. In addition, the Court made a site visit to Trinity Church and viewed, among other things, the internal room where the alleged rape occurred. Drawings showing the layout of the room at issue were marked as Exhibits R1, R16 at trial. The room at issue is a large rectangular shaped interior room reached through an interior hallway from steps leading down from the side entrance to the sanctuary of the Church. The room has a door at the far end and another door at the upper left-hand corner leading to an internal hallway with classrooms on the other side. One or more of these classrooms were used by Respondent as a weight room. The doorway at the upper left-hand corner of the room might have been locked at the time of the alleged rape. It appears that there was a window in the doorway at the end of the room. At the time, there were also windows at the far end of the room that have since been bricked in. A very small bathroom is off to the right-hand side of the room. Of significance to the Court is the fact that the walls were made of thick cinder block and that at the time, the room appeared to be darker in decoration and less well lit than it is today. At various times the room has been used for Church meetings and as a Sunday School room.

was seated on a couch which had its back to the door at the far end of the room. Diagrams of the room as it existed at the time were marked as Exhibits R1 and R16.

Patricia testified that she was up to page 136 of 1984 when Respondent entered the room. She and Respondent were the only people present. Patricia testified that Respondent looked "surprised" to see her in the room. According to Patricia, Respondent made a comment about "unfinished business." She started to pack up her things when Respondent came over and sat beside her on the couch. He placed his arm on her shoulder and pushed her down. He then "laid over on top of [Patricia]" and kissed her. (Patricia diagramed the relative positions in Exhibits marked as R2 and R4.) Patricia resisted Respondent and pushed him off of her with "her whole body." Respondent then stood up and while Patricia was trying to get away, punched Patricia in the face below her right eye causing her to develop a black eye. Patricia fell back on the couch hitting her head on the back corner of the seat.

Respondent then began to undress Patricia by unbuttoning her shirt and unfastening the clip on the men's pants she was wearing. At this point Respondent was apparently "laying back on top of" Patricia. Patricia, who had never had sexual relations before was crying, but does recall hearing Respondent unzip his trousers. She also recalls Respondent "laying back on top of me...spreading my legs open and forcing himself inside of me." Patricia recalls

nothing else other than the pain associated with what she believed was forced sexual intercourse.

After these events occurred Respondent stood up and went into the small bathroom adjacent to the meeting room and obtained some paper towels. According to Patricia, Respondent handed her the towels saying "Here." He may have kissed her on the forehead and then walked out of the room.

Patricia testified that after the Respondent left the room, she took the paper towels and "wiped up myself" and then walked into the bathroom grabbing more towels and some water⁹ from the sink to scrub some of the "blood" off the couch.¹⁰ Finding that she could not effectively scrub the couch, Patricia turned the cushion over to cover the stain. Patricia identified the cushion at trial as being the middle of three cushions in the couch. She threw the used towels into the

⁹ The condition of the bathroom was hotly contested at trial. A number of witnesses testified that the bathroom was not in working order and that it had not been used for some time. The witnesses testified that the bathroom was unusable, and that they had to go elsewhere to get water for preparation of coffee for meetings. There was also a significant dispute about what fixtures were present in the bathroom. Significantly, Frank Rizzo, a plumber who had done work at Trinity at various times testified he recalled being called to Trinity in the "late spring of 1995" to investigate what appeared to be a sewage leak in the basement. Upon investigation Rizzo determined that water was leaking in through the foundation. Rizzo recalls capping off the water supply into the bathroom at this time. He recalled there being cold water in the toilet at the time of his inspection and recalled having to drain the toilet by flushing. Rizzo also recalled there being cold water running to the sink. This testimony was confirmed by Serafin Rivera, Rizzo's assistant on the job who did not begin in his employ until February 7, 1995. See also C4, Letter from Frank Rizzo. In contrast Debra Wallace Long, a parishioner and owner of a plumbing supply business testified that she believed that the water supply to the bathroom had been cut off between 1990 and 1992. While a plumbing supplier, Ms. Wallace Long was not a plumber and could not have performed the actual work at the Church. Based upon this testimony, it is reasonable to conclude that while the bathroom might not have been suitable for general use (and was in fact not used) there was a supply of water to the room at the time of the assault.

¹⁰ At trial the deposition and report of Mark D. Stolorow was jointly admitted into evidence. Mr. Stolorow is Director of Operations from Cellmark Diagnostics, a DNA testing laboratory located in Germantown, Maryland. Cellmark was retained to perform DNA and other tests on a portion of material taken from the middle cushion. The tests performed were negative for the presence of both blood and semen. The tests did indicate that the stain on the tested portion of the fabric removed from the cushion was caused by water and that the stain pattern is "inconsistent with having been rehydrated and diffused outward to its present location at some undetermined interval after it was originally deposited on the fabric." (Exhibit C-27)

bathroom. After a time, Patricia called her mother from a phone in the room, told her she was at Church and was eventually picked up and taken home.

Patricia said nothing to her parents about the assault by Respondent and apparently did not disclose the identity of her assailant until three years later in a meeting with Rev. James Fisher, a Priest and counselor sent by the Diocese. Patricia testified that she was afraid that no one would believe her and that any claim against Respondent would be held against her and her parents. She also feared hurting her mother who was very involved at Trinity.

Patricia testified that after the July encounter, she tried to stay as far away from Respondent as possible. At various times Respondent told her that she looked "sexy" and on more than one occasion touched her, including in the small of her back.

At a point later in the summer, Nichols and Respondent were together again with in the robing room when Nichols was removing her robe after serving as an acolyte during the Sunday service. No one else was in the robing room, and the doors to the room were open. According to Nichols, Respondent was removing his stole and placing it in the closet when he told Nichols "if you say anything, I'm going to come after you and your sister too." Nichols was crying at this point and walked out of the room. She said nothing to Respondent and told no one about this confrontation. Respondent denies this allegation.

Respondent vigorously denies these charges and asserts that no such assault occurred. He also asserts that he was never alone with Patricia in the room at the time at issue. In essence, Respondent asserts that it would have been impossible for the assault to have occurred in the manner described by Patricia. Specifically, Respondent asserts that on June 29, 1994, he was hospitalized at Newcomb Hospital for an attack of kidney stones which are apparently a side effect of Crohn's disease. Respondent was eventually transferred to the Hospital of the University of Pennsylvania where he eventually underwent an operation to remove the kidney stone. Respondent was discharged from the University of Pennsylvania on July 14, 2000. Respondent testified to being weak and extremely tender at the time of discharge and that he was experiencing bladder spasms.¹¹

Respondent's defense to the allegations made by Patricia Nichols were based largely, although not exclusively, on impossibility, arising from Respondent's alleged physical incapacities. The Court took note, however, that Respondent, through his own testimony, admitted that he could and did have sexual intercourse with his wife. In fact, he complained to parishioners that his

¹¹ While Respondent asserts that he was exhausted as a result of his hospitalization, a review of the parish register for that period (Exhibit C30) shows that he was, in fact, quite busy. Notwithstanding his testimony that he was discharged on July 14, the register shows that he conducted services at the Church on July 13 followed by hospital visitations at Quakertown Hospital on July 14. On Sunday, July 17, Respondent conducted the regular 8:00 a.m. and 9:30 a.m. services at the Church with a total attendance of 119 people followed by a wedding at 3:30 p.m. for 115 people. During the week of July 18, Respondent conducted some 27 individual services including a funeral on July 21 for 130 people and another funeral on July 22. Respondent conducted the usual two Sunday services on July 24 followed by another round of 18 largely private services at the Church and various nursing homes. On Sunday, July 31, Respondent conducted 2 Sunday services for 120 attendees. Beginning on August 1, Respondent conducted a total of 14 services including one burial service for 75 attendees on August 4.

wife withheld sex from him. The Court also believes that his physical incapacities are not inconsistent with the testimony of Patricia Nichols.

For example, Respondent described a crab-like walk that Respondent said was necessary in order for him to engage in sexual intercourse. The Court believed that such mobility would have been difficult if not impossible if Respondent had truly been unable to abduct his hips. In addition, the Court had the opportunity to observe the Respondent's mobility during the course of the trial. Even though the Respondent was still in recovery from his recent hip replacement surgery, his mobility, particularly during the site visit to Vineland, was impressive for a man as incapacitated as Respondent claims to be.

The Court also carefully considered the testimony of Dr. Fred Balduini, an expert witness and orthopedic surgeon retained by the Respondent. Dr. Balduini testified that he examined the Respondent in 1997 and formed a conclusion that Respondent's arthritis was so severe then that it must have also severely impeded Respondent's mobility in 1994. But Dr. Balduini did not examine Respondent in 1994, nor did any physician who did examine Respondent in 1994 testify. The surgeon to whom Dr. Balduini referred Respondent in 1997 for hip replacement surgery declined to operate because Respondent enjoyed sufficient mobility then. Testimony showed that Respondent rode his bicycle to church regularly from 1992 until at least sometime in 1995. Respondent also sought Dr. Balduini's advice only after Respondent was having difficulty tying his

shoes. The Court believes that if Respondent had such an incapacity in 1994, 1995 or 1996, he would have sought assistance then. The Court notes that Respondent also continued to lift weights and to practice boxing drills with a speed bag. He was acutely aware of his physical condition at all times and would have sought assistance as soon as his arthritis impaired his daily living. Having viewed the sanctuary at Trinity, Vineland, the Court is also unsure how Respondent carried out his duties at the altar (without apparent difficulty) if his hips were as impaired as he claimed.

Respondent testified that he could not have thrown his leg over Patricia as she claimed and therefore could not have assaulted her as she claimed. The Court disagrees. We believe that no credible testimony was offered as to Respondent's physical condition in 1994. We also believe that whether or not he could move his leg exactly as Patricia claim is probative but not dispositive as to whether Respondent assaulted her. The Court believes, for example, that Respondent's great upper-body physical strength, about which ample testimony was heard, would have been sufficient for him to subdue Patricia. In 1994, Respondent was six feet three inches tall and weighed as much as 185 pounds. Patricia, who was fourteen years old, was approximately five feet, three inches tall.

The Court also notes that Respondent believes that heavy steroid use caused the necrosis of his hips. Yet the steroid use was not contemporaneous with Respondent's hip problem. Respondent's difficulties in abducting his hips may

have been caused as the result of other conditions, including his Crohn's disease, and the onset of the impairment of his hips could have been later in time than Respondent believes.

Respondent also cited Crohn's disease as a reason why he could not have assaulted Patricia. Respondent testified about the procedures he undertook to eat at regular intervals and to empty his ileostomy pouch at regular intervals. The Court found unpersuasive Respondent's testimony about his habitual Sunday schedule and the times that he claimed to eat and to empty his ileostomy pouch. Based upon the evidence and our view of the credibility of the respective witnesses, the Court believes that Respondent could and did assault Patricia after a church service in July, 1994.

Respondent also asserted that he was not present at Trinity on the afternoon of July 31 at the time of the alleged assault. Respondent recalled that the parish held a surprise birthday party for him on July 31, 1994 because it was the closest Sunday in time to his actual birthday of August 2.¹² Respondent recalled the birthday party being part of the coffee hour after the 9:30 a.m. service. Respondent also testified that after the service he intended to visit his mother in Quakertown. Respondent arranged to borrow a van from Judy and Frank Densenvich, former parishioners, for the drive to Quakertown, assertedly because

¹² Parish records marked at trial (Exhibit R18) indicate that the surprise party was actually conducted on July 31.

the van was air conditioned. No corroboration of his arrangement with the Densenviches was introduced at trial.

E. The Allegations of Pat Polhamus Lindenlaub, Pauline H. Gannotta and Lorraine Petroski Neely Concerning Events in 1995 and 1996

At some point in either June or July 1995, Patricia Polhamus Lindenlaub was recovering from a cervical fusion procedure performed on her neck. As part of the recovery process, Lindenlaub was required to wear a cervical collar. Respondent called Lindenlaub one day during her convalescence and asked if he could come to her house for what presumably was a pastoral visit. According to Lindenlaub, Respondent came to her house and stayed for between thirty and forty-five minutes. During the visit, various issues were discussed including Respondent's issues with his wife. A relationship that Lindenlaub was involved in also was discussed. At the end of the visit, Respondent asked Lindenlaub if he could give her a "hug and a kiss." Lindenlaub agreed. According to Lindenlaub, Respondent "pulled me to him" and gave me an "inappropriate kiss." At the end of the encounter, Respondent uttered the phrase "so much peace" and left Lindenlaub in shock having never expected such conduct from a Priest. Lindenlaub apparently stayed away from Church for some period of time and relates receiving a call from Respondent approximately one month later in which he apologized for doing anything "inappropriate" during his visit.

Respondent acknowledged going to visit Lindenlaub and recalled a discussion of relationships between men and women. He also recalls kissing Lindenlaub "on the lips" and recalls that she was startled by his actions. He later assumed that she was startled because he came to understand that Lindenlaub was in an "abusive" relationship with her boyfriend. Respondent denied any wrong intent.

On December 24, 1995, Pauline Gannotta, a parishioner, had a gift to give to Respondent and his wife. Gannotta called Respondent to tell him that she had a Christmas gift for him and seeking permission to come to the rectory to deliver the gift. It was a cold and rainy evening. Respondent indicated that he would come to Gannotta's home to pick up the gift. Gannotta told him that this was unnecessary but he persisted and she agreed. Gannotta testified that at the time she had no concern about Respondent coming to her home. After a time, Respondent appeared and she presented him with the gift. They chatted for almost five minutes and then Respondent rose to leave. As they approached the door, Respondent "made an attempt to encircle [Gannotta's] waist" with his hand. She assumed that Respondent was attempting to kiss her. Respondent pulled Gannotta's body to him. She was surprised and protested saying "I think you better leave." He uttered some response which may have been "see you tonight in Church," and left. Gannotta told a friend about the incident but said nothing at the time to any member of the Church leadership.

Respondent recalls visiting Gannotta's home and recalls hugging Gannotta, describing the experience as a "mutual" hug. He also recalls sharing a "mutual" kiss but denies that Gannotta was startled by his action. He does not recall being asked to leave Gannotta's house. Respondent denies any ill motive or intent.

Further actions by Respondent gave rise to subsequent complaints. In February, 1996, Lorraine Petroski Neeley, a parishioner, had attended the second Sunday service. After the service she attended coffee hour in the portion of the gymnasium allocated for that purpose.¹³ As she was walking over to get coffee she encountered Respondent who said "Lorraine, you're a woman who's in her forties, yet you still seem to keep your figure slim and attractive." At the time, Neeley was wearing a long-sleeve pink dress which she subsequently threw away. Neeley was "stunned" by the statement, but apparently said nothing to Respondent by way of complaint. Neeley testified that Respondent made this statement using a voice that was more "assertive" and had more "confidence" than his usual voice. Neeley testified that after this incident, she looked in her closet every week to see if she

¹³ In the fall of 1995, a fire broke out in the chancel of Trinity Church that gutted portions of the chancel and sanctuary. The effect of the fire was that the sanctuary was not useable for worship services. After the fire and during the period of reconstruction of the resulting damage, the congregation held services in a large gymnasium adjacent to the sanctuary. Based upon the testimony of various witnesses, it appears that the gymnasium was separated by a rope into a temporary sanctuary and social meeting hall. Diagrams of this arrangement were made by various witnesses and marked as Exhibits R7. Coffee hour was held in the section of the gymnasium nearest the kitchen and was conducted around several large round tables placed there for this purpose. Reconstruction of the damaged portions of the Church did not begin until early 1997. Several witnesses testified about the physical changes to the property as a result of the reconstruction. Diagrams marked as Exhibits (R7, R17) detail these changes.

had anything to wear that was not "too revealing." If not, she would not come to Church because she did not want to receive any more comments.

Some three or four months later during a similar coffee hour, Neeley again encountered Respondent who said "Lorraine, your hair looks very nice, but you always seem to manage to keep yourself attractive." Neeley was "upset" at this comment. She wanted to go home and never come back to Church if she did not have to. Respondent acknowledged making comments to Neeley about her appearance and specifically recalled telling her that she looked nice for a "woman of her age." Respondent acknowledged that his statements to Neeley were "awkward" but were also part of his efforts to be "affectionate" to parishioners.

Later in the summer of 1996, Respondent was in the parish hall during coffee hour. Pauline Gannotta had attended Church that day and was also present at coffee hour. When Gannotta was standing in the middle of the gymnasium, Respondent came over to her and said "you get sexier looking everytime I see you." Gannotta told Respondent that his comments were inappropriate coming from both as a married man and as a Priest. At some later point, according to Gannotta, Respondent was in the parish hall and apologized for his earlier comments by "apology for putting his needs as a man over his respect for a woman." Gannotta responded by saying that "it was about time." Respondent was not asked about these specific allegations at trial. Gannotta also imparted an

incident in which Respondent escorted her to her car after dark and after a Church meeting with the statement "don't worry I am not going to do anything."

F. Further Investigation By the Senior Warden in 1996

In September 1996 Dorothy Torchio, the Senior Warden, had a conversation with Bonnie Hood in which she related her experience with Respondent along with those of Pat Polhamus. Torchio then had a conversation with Respondent in which she indicated that she was going to present these complaints to the Diocesan Bishop. On October 4, 1996, Torchio wrote a letter to Bishop Doss apparently setting forth the allegations raised by Hood and Polhamus. Torchio also had a conversation with Arthur Bretnall in which she reported that additional complaints had been made by female parishioners. Armed with this information, Bretnall had a conversation with the Respondent in which he suggested that Respondent needed to be more sensitive towards women. Bretnall also suggested that it might be better for all concerned if he moved to another parish.

Respondent testified that he recalled receiving a call from Bretnall on September 30, 1996 in which Bretnall told him that there were two complaints by two unidentified parishioners. Respondent recalled Bretnall's suggestion that he leave the parish for a hospital position. Respondent declined to do so and, after consulting with his wife, determined to write a letter to Bishop Doss asking him to investigate the allegations. This letter was hand-delivered to the Rev. Jane

Henderson, Canon to the Ordinary on October 3, 1996. Respondent also elected to consult with his daughter-in-law, an attorney in Florida. Respondent received no response to this letter other than to hear from Rev. Henderson that he should "be patient."

**G. Allegations of Patricia Nichols and Linda Chance
Concerning Events in 1997**

By January 1997, Patricia Nichols had become a Lay Eucharistic Minister at the request of both Respondent and Arthur Bretnall. At the time Nichols was considering whether she had a vocation in the ministry. Nichols testified that after the events of 1994, she would make sure never to be alone with Respondent. On a Sunday in January 1997, after a Sunday service, Respondent asked Nichols to come into his office. As this request was made in the presence of other parishioners, Nichols did not believe that she could object. Other parishioners were present outside the office in the hallway and in the gymnasium, as coffee hour was apparently underway. Nichols entered Respondent's office and sat as far away from Respondent as possible in the chair closest to the door. (A diagram of the office was drawn by Patricia and introduced as Exhibit R5.) Respondent came in and placed another chair next to her chair. Respondent then slid his hand underneath Nichols' sweater and "grabbed her chest." Respondent attempted to kiss Nichols in a manner that was so "rough" that Nichols bit the inside of her lip. Nichols stood up trying to get Respondent off of her. She then

kicked Respondent in the shin. Respondent then hit or punched Nichols in the face causing her to fall back in the chair. Respondent then grabbed Nichols by the hair when there was a knock at the door of the office. In response, Respondent told Nichols to "get out of the office." Nichols left the office not knowing if there was anyone at the door. She went into the ladies room and tried to clean up. Nichols received a black eye as a result of being struck in the face. Nichols testified that she declined to report this new incident for fear that the Respondent would make good on his prior threat to harm her sister. Respondent denies that any of these events took place.

On or about February 22, 1997, Linda Chance was present in Church at the coffee hour having attended the Sunday service. Chance testified that coffee hour was winding down and that most of the parishioners had left the building. Chance and Respondent were sitting together at a round table when Respondent leaned over and put his hand on Chance's thigh. A diagram showing their relative positions at the table was marked as Exhibit R8. Chance testified that Respondent's hand was on her thigh momentarily and that Respondent did not squeeze or caress her thigh. Chance was wearing pants at the time and her legs were out from under the table. Chance acknowledged that Respondent's actions were done in full view of all present and not hidden from view. She testified that she was "shocked" by Respondent's actions. Chance immediately got up and walked out of the hall past Lorraine Petrosky Neeley. Chance denies knowing that

Respondent was about to be inhibited. In her testimony, Neeley reported seeing Respondent place his hand on Chance's thigh. Respondent denies placing his hand on Chance's thigh and denies sitting with Chance during coffee hour.

H. Respondent's Inhibition by the Bishop and Subsequent Events

On the evening before the incident with Ms. Chance, Respondent received a telephone call from the Rev. Alfred Niese, then President of the Standing Committee. Respondent returned the phone call and was informed of complaints by two female parishioners that were under investigation by Bishop Doss. Respondent called Bishop Doss that evening and left a message on his answering machine. Bishop Doss returned the call the next day after the second Sunday service and told Respondent to appear in his office the following day. On Monday, February 24, 1997, Respondent appeared before Bishop Doss and was inhibited pursuant to Canon 1.2(a). Respondent was told to contact Rev. Peter Stimpson at Trinity Counseling Service. Stimpson put Respondent in touch with Dr. Sally Oppenheimer, a psychologist. Respondent had one meeting with Dr. Oppenheimer during the following week. He was then advised not to continue sessions with Dr. Oppenheimer by his present attorney.

The congregation at Trinity Church was told about Respondent's inhibition on the Sunday following the inhibition. Dr. Oppenheimer appeared at Trinity Church on March 9, 1997, at a Sunday service. Parishioners were eager to

learn the reasons for the inhibition which had not been explained to them. Instead, Dr. Oppenheimer conducted a discussion with parishioners in which unspecified issues of sexual harassment, sexual addiction and child molestation were discussed. No specification of the charges or the identities of any complaining witnesses were discussed. Following this one appearance, Dr. Oppenheimer did not return to the congregation.

The Diocese also retained the services of the Rev. James Fisher, a Priest of the Diocese of New Jersey and a therapist specializing in marriage and family issues. At the request of Bishop Doss, beginning in March, 1997, Fisher made frequent visits to the parish and apparently preached one or more sermons. Fisher's purpose was to provide support to the congregation in the form of both pastoral and counseling services. He held at least two meetings with the congregation and offered to hold individual therapy and counseling sessions with parishioners on an as-needed basis. As a result of this invitation, Dale Nichols, Patricia Nichols, Linda Chance and Lorraine Petroski Neeley made appointments to see Fisher. Fisher was either identified as or deemed as a "representative of the Bishop" by members of the congregation.

It is apparent at this time that certain parishioners, including Linda Chance, began to contact fellow parishioners to ascertain whether they had experienced similar encounters with Respondent. As a result of these inquiries,

various parishioners came forward and issued letters directed to the Standing Committee regarding Respondent.

In May, 1997, Chance had a conversation with Patricia Nichols in which she inquired as to whether Patricia had any "problems" with Respondent. Apparently, without being specific, Patricia told Chance that she had complaints about Respondent's conduct. Based upon the proofs, it appears that Patricia then began a counseling relationship with Father Fisher. According to Fisher's testimony, he had previously learned about general complaints of "inappropriate behavior" by Respondent directed to Nichols during a meeting of the Church held on June 2, 1997. On June 11, 1997, Fisher saw Patricia in an individual counseling session at which he learned some, but not all of the events that had taken place between Patricia and Respondent. As a result of this session, it appears that Fisher felt obligated by law to make a report of abuse to the Vineland Police Department. At some point, Respondent was arrested by the Vineland Police Department.¹⁴

During a later session on July 8, 1997, Patricia fully disclosed the allegations of the 1994 rape in the basement of the Church. The details of the rape as reported to Father Fisher in 1997 were consistent with details of the rape as testified to by Patricia at the trial. Fisher told Patricia that he was obligated, by law,

¹⁴ In a letter dated June 14, 1997, written to the Priest in charge, Wardens and Vestry by Rev. Fisher, he indicates that by that date, Respondent had "been arrested and charged with a crime because of his inappropriate and illegal behavior with a minor child of the parish." (Exhibit R6.) It is possible, based upon the contents of the letter and Rev. Fisher's deposition testimony that Respondent was arrested twice; once as a result of the charge of improper conduct and harassment of a minor arising out of the January 1997 incident and again as a result of the charge of rape arising out of the July 1994 incident.

to report the 1994 incident as well to the Vineland Police Department. This was done on either July 29 or 30, 1997. In the session held at Fisher's office on July 29, 1997, Patricia told her mother, Dale Nichols, of the allegation that she was raped¹⁵.

As noted, the details of the sexual assault reported to Rev. Fisher were consistent with Patricia's testimony at trial. Rev. Fisher related that as a result of several sessions with Patricia Nichols he learned that on the day of the alleged rape, she was downstairs in one of the basement rooms reading a book. She assumed that her mother or father would come back to pick her up because it was her mother's custom to return to Church on Sunday afternoons to insure that the Church doors were locked. The fact that Patricia was in the basement of the Church for as long as she was apparently as a result of a miscommunication with her parents about her intentions. Patricia described to Rev. Fisher the layout of the room and the position of the couch upon which the alleged rape occurred. She described Respondent's entry into the room and how he pushed Nichols back unto the couch after she had attempted to stand up and leave the room. After pushing and holding her down, Nichols related that Respondent began to "work at her clothing" which included unzipping her trousers. She related the fact that Respondent had struck her in the face rendering her unable to resist his advances and that he had "forcible intercourse" with her at that point. She described her

¹⁵ Dale Nichols apparently had some suspicion that her daughter had been assaulted after her daughter's disclosure in July 1997. Ms. Nichols had learned of a rumor that "something like a date rape" may have occurred. She testified that she came to have this information after Patricia's disclosure to her of the assault by Respondent. Dale Nichols

entry into a small bathroom which was attached to the larger meeting room where she obtained some paper towels in an effort to clean up both herself and the couch after Respondent had left the room. She reported that Respondent's actions had caused her to have a black eye and that she had bled considerably as a result of the incident and was in some degree of pain. Rev. Fisher indicated that he found Patricia's story believable.

On October 9, 1997, the Standing Committee of the Diocese of New Jersey issued an initial Bill of Presentment charging Respondent with seven counts of various offenses against the Canons. This Bill of Presentment was amended and reissued on March 12, 1998.

IV. Findings of Fact

1. Respondent was ordained as a Priest of the Episcopal Church in 1966.
2. After service in several different parishes and as chaplain at Our Lady of Lourdes Hospital in Camden, New Jersey, Respondent was called to be Rector of Trinity Church, Vineland, New Jersey in early 1992.
3. Respondent was twice married. His first marriage ended in divorce in 1986. Respondent married his present wife Anna Maria in February 1992.

subsequently had a conversation with Arthur Bretnall about the fact that Respondent had allegedly raped her daughter.

4. Respondent and Anna Maria experienced a series of marital difficulties after Respondent's arrival at Trinity. While the exact cause and nature of these difficulties are not clear, it is apparent that they became more pronounced during Respondent's service as Rector of Trinity Church. Respondent made a series of inappropriate comments to various parishioners about the difficulty he was having in his marriage as well as the extent to which his wife was withholding sex, money and food from him as a result of these marital difficulties.

5. Respondent also suffered from a series of severe health conditions. During Respondent's time in college he was diagnosed with ulcerative colitis also known as Crohn's disease. As a result Respondent experienced a series of surgical procedures resulting in removal of his large intestine. Subsequent surgeries resulted in removal of large portions of Respondent's small intestine.

6. Respondent also had an ileostomy procedure performed requiring Respondent to wear an ileostomy pouch to collect human waste generated by elimination. Respondent was required to empty this ileostomy pouch at various times throughout the day. Respondent's condition also placed limitations on his ability to consume food.

7. During his time as Rector of Trinity Church, Respondent engaged in a pattern and practice of conduct offensive to and harassing of female parishioners, that, by itself, constituted conduct unbecoming a member of the clergy and, as a pattern of conduct, was immoral within the meaning of Title IV,

Canon 1.1(b) and (j). This is so even though certain individual actions by Respondent, taken alone, did not, in our view violate the Canons.

8. In or about September or October, 1992 made a comment to Linda Chance, then Sunday School Superintendent, to the effect that: "Boy, you can really fill out a sweater." This comment constitutes conduct unbecoming a member of the clergy in violation of Title IV, Canon 1.1(j). It does not constitute an act of immorality in violation of Title IV, Canon 1.1(b).

9. We find no evidence in the record to conclude that Respondent specifically referred to Linda Chance as "lovely Linda" or in words to that effect or touched her inappropriately on the hand, shoulder or arm when speaking to her. We do conclude that Respondent frequently used language similar to this, especially with alliteration, when speaking with Parishioners and that such language could be offensive to some people.

10. On or about February 22, 1997, during a Church coffee hour in the parish hall, Respondent placed his hand on Linda Chance's thigh. While inappropriate, based upon the vote of the members of the Court, this act by itself, does not constitute conduct unbecoming a member of the Clergy in violation of Title IV, Canon 1.1(j) or an act of immorality in violation of Title IV, Canon 1.1(b).

11. On December 24, 1995, during a visit to the home of Pauline Gannotta, Respondent hugged and attempted to kiss Ms. Gannotta in an

inappropriate and unpriestly manner. The actions undertaken on the evening of December 24, 1995 constitute conduct unbecoming a member of the Clergy in violation of Title IV, Canon 1.1(j) as well as an act of immorality in violation of Title IV, Canon 1.1(b).

12. During the summer of 1996, Respondent made a statement to Pauline Gannotta to the effect that "you get sexier looking everytime I see you." This action constitutes conduct unbecoming a member of the Clergy in violation of Title IV, Canon 1.1(j) as well as an act of immorality in violation of Title IV, Canon 1.1(b).

13. Regarding the allegations contained in the first section of Count III of the Presentment, the Court finds no evidence in the record to conclude that that Respondent expressed a "personal and apparent sexual interest" in complainant Bonnie Hood during conversations with her daughter during various pre-marital counseling sessions.

14. During the month of January, 1993 during the visit to the home of Bonnie Hood and while complainant was recovering from surgery, Respondent hugged and attempted to kiss Ms. Hood in inappropriate and unpriestly manner. These actions constitute conduct unbecoming a Member of the Clergy in violation of Title IV, Canon 1.1(j) as well as an act of immorality in violation of Title IV, Canon 1.1(b).

15. Regarding the allegations contained in the third section of Court Three of the Presentment, we find no evidence that during a Church vestry meeting in the parish hall, Respondent placed his hand on Bonnie Hood's thigh in an inappropriate and unpriestly manner.

16. In June, 1995, during a visit to the home of Pat Polhamus, during her recovery from surgery, Respondent hugged and attempted to kiss complainant in an inappropriate and unpriestly manner. The actions undertaken during this visit constitute conduct unbecoming a Member of the Clergy in violation of Title IV, Canon 1.1(j) as well as an act of immorality in violation of Title IV, Canon 1.1(b).

17. At various times, Respondent made inappropriate and unpriestly remarks to complainant Dale Nichols with regard to the trimness of her figure and condition of her hair. While inappropriate, based upon the vote of the members of the Court, this act by itself, does not constitute conduct unbecoming a member of the Clergy in violation of Title IV, Canon 1.1(j) or an act of immorality in violation of Title IV, Canon 1.1(b).

18. Regarding the allegation that on or about February, 1993 Respondent attempted to sexually harass Dale Nichols during a working session in the office of the parish secretary while completing a section of the parochial report, the Court finds insufficient evidence in the record to sustain this allegation against Respondent.

19. At some point in February, 1996, after the conclusion of a Church service and prior to the start of coffee hour, Respondent made an inappropriate and unpriestly remark to Lorraine Petroski Neeley to the effect that while she was in her forties “you still seem to keep your figure slim and attractive.” While inappropriate, based upon the vote of the members of the Court, this act by itself, does not constitute conduct unbecoming a member of the Clergy in violation of Title IV, Canon 1.1(j) or an act of immorality in violation of Title IV, Canon 1.1(b).

20. In the early months of 1994, Respondent sexually harassed Patricia Nichols in various ways, including making comments about her appearance, the smell of her hair and the manner in which she filled out her clothing. These actions constitute conduct unbecoming a Member of the Clergy in violation of Title IV, Canon 1.1(j) and acts of immorality in violation of Title IV, Canon 1.1(b).

21. On July 31, 1994, Respondent committed an act of sexual assault upon Patricia Nichols in that he committed an act of "sexual penetration" upon Patricia Nichols through the use "physical force or coercion" in a basement meeting room of Trinity Church following the Sunday service. This act constitutes conduct unbecoming a Member or the Clergy in violation of Title IV, Canon 1.1(j) and an act of immorality in violation of Title IV, Canon 1.1(b). It also constitutes a