

## MEMORANDUM

**Date:** February 10, 2011

**To:** The Holy Synod of Bishops of the Orthodox Church in America

**From:** Sexual Misconduct Policy Advisory Committee of the Orthodox Church in America

**Re:** Report Regarding Handling of Cases and Allegations of Sexual Misconduct

*This urgent communication has been prepared for the Holy Synod of Bishops of the Orthodox Church in America by the Sexual Misconduct Policy Advisory Committee (the "SMPAC"). During the course of their regular meetings, the members of the SMPAC became seriously alarmed by how cases of sexual misconduct were being handled. Some of the members of the Holy Synod also became concerned and, after conversations with members of the SMPAC, they requested that a formal presentation be made to the entire Holy Synod. In response, the SMPAC has collectively produced this document. In order to generate a readable document in a timely manner, citations and footnotes are not included; however, all of the facts and observations contained herein are based on documentary evidence available in the OCA Chancery and/or on verifiable, trustworthy statements.*

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Your Beatitude, Your Eminence, Your Graces,

We ask your blessings!

### **1. Introduction.**

In April 2003, the Holy Synod adopted a set of policies and procedures to address situations when the Orthodox Church in America (the "OCA") was challenged with allegations and incidents of sexual misconduct. These policies, which are binding on all clergy and laity of the OCA, are described in the official document "Policies, Standards, and Procedures of the Orthodox Church in America on Sexual Misconduct" (the "**Sexual Misconduct Policies**"). While the Sexual Misconduct Policies are significant they are in need of review and revision, which was made clear in - and indeed, required by - the settlement of the Paul Sidebottom case in 2009.

About two years ago, it became apparent that the OCA's Office for Review of Sexual Misconduct Allegations (the "**Office for Review**"), which was established by the Sexual Misconduct Policies, was in considerable need of revamping to fulfill its role in responding to cases of allegations of sexual misconduct in a timely manner that is appropriate spiritually, ethically, pastorally, professionally, and legally. In responding to these needs, His Beatitude, Metropolitan Jonah, blessed the creation of the SMPAC within the administration of the OCA Chancery.

In addition to reviewing and revising the Sexual Misconduct Policies, the SMPAC's mandate is to assist the Metropolitan as the one under whose authority the Office for Review operates, and the Chancellor, who manages the Office for Review in its daily operations. From its inception, the SMPAC has been involved in the task of proposing revisions to the Sexual Misconduct Policies,

meeting for this purpose on numerous occasions at the OCA Chancery and by teleconference. During these meetings, the SMPAC has also responded to requests from the Chancellor to assist the Office for Review in addressing allegations of misconduct that have come to the OCA Chancery. Some members of the SMPAC have also been asked to serve in actual investigations of sexual misconduct cases, although such service is not due to or required by their membership on the SMPAC.

An essential duty of the SMPAC, as provided in its Charter, is to *"Assist in reviews of the extent to which the Church's Policies, Standards, and Procedures on Sexual Misconduct are implemented in practice and how compliance with them is ensured"*. It was in fulfilling this duty that the SMPAC became familiar with some alleged and actual cases of sexual misconduct by OCA clergy and how they were addressed by the Church. The more we learned, the more we individually and collectively became extremely concerned by how cases are being handled and how professional advice is being disregarded. A culture of denial regarding clergy misconduct has resulted in a failure by the Church to investigate allegations with due diligence, a failure to apply consistent discipline to clergy found to have engaged in misconduct, and a failure to ensure that victims and perpetrators receive the appropriate pastoral care.

Although these aforementioned problems are in many ways systemic, a main and central issue is the response of His Beatitude to cases of clergy sexual misconduct. His response often appears to be either indifference or in deliberate conflict with the decisions of the Holy Synod, with the OCA's Best Practices, and with other established policies and procedures (including the Sexual Misconduct Policies). His Beatitude's responses often seem to be based on his personal choices and ideas, rather than on sound pastoral, ethical, or legal considerations.

Because His Beatitude's behavior affects not only these critical issues of clergy sexual misconduct but also the integrity of the Holy Synod and very viability of the OCA, we believe we are obligated to bring such vital issues to the attention of the entire Holy Synod, although we are pained to do so. In this Memorandum, we offer instances in which His Beatitude's critical lapses in judgment and actions caused further deterioration in certain situations, caused potentially irreversible harm to all involved, and prevented a fitting resolution to the problem. Even if we had not been asked to present these issues to the entire Holy Synod, we feel ethically compelled, as Orthodox Christians and as members of an official OCA committee dealing with sensitive and critical problems of our Church, to bring this matter to your attention.

We recognize that the issues that we are raising are solely within the competency and authority of the Holy Synod to address. As members of the SMPAC, we categorically reject any assertion or implication that this Memorandum is meant to question the roles, prerogatives, and authority of any of the members of the Holy Synod. Rather, the members of the SMPAC strongly affirm our commitment and devotion to the spiritual, structural, and canonical principles of the Orthodox Church. We here simply present the facts (according to our understanding), our observations, and our concerns, and we entrust ourselves and the issues discussed in this document to your hierarchal and pastoral judgment.

We offer below specific concerns, instances, and events involving His Beatitude that have caused us unease and even alarm. This is not a complete list of all the situations we have encountered in our committee work. There are other serious cases of which we are aware and which have been discussed by the OCA's Legal Committee and/or by the Metropolitan Council. The cases we have detailed in

this Memorandum have been selected because they serve as concrete examples of what we have come to see not just as mistakes by His Beatitude, but rather as an unchanging pattern of deliberate behavior that has not benefited from lessons learned and will also negatively affect the OCA as a whole.

## **2. Concerning Attitudes and Actions.**

His Beatitude presented the "Zero tolerance policy" as an organic part of our response to sexual misconduct in the Church. He publicly stated, *"If a priest drops his pants, he loses his stole."* In light of His Beatitude's response to actual cases of sexual misconduct, we cannot help but notice a glaring discrepancy between his official statements and his actions. His Beatitude has proceeded in ways that leads us to doubt the veracity of his professed position in the matter of allegations of clergy sexual misconduct. When actually dealing with clergy who "dropped their pants," His Beatitude has not demanded accountability but has instead adopted an immediate position of tolerance of the behaviors; tolerance that is now labeled forgiveness, even when all evidence pointed to the perpetrator's impending relapse which in some cases has happened. This has created confusion for all involved and lends itself to claims of unreliability and dishonesty.

Regrettably, His Beatitude has not been decisively engaged - whether with the Chancellor, the Chancery, the Office for Review, or the SMPAC - in responding to allegations of sexual misconduct, even when actual criminal charges were attracting international media attention. We have not witnessed a willingness to take into consideration advice from the SMPAC that is offered as part of our mandate and according to our respective areas of professional expertise. When on the few occasions that His Beatitudes ought he advice of individual SMPAC members, only rarely did he follow it, responding instead in direct opposition to what was suggested and all the while ignoring the written Sexual Misconduct Policies and even the law.

When allegations have been made, His Beatitude defaults to an immediate conclusion of "false accusations" without actually assessing and investigating the matter. Without a proactive approach in the matter of sexual misconduct, a culture of inertia and deception is allowed to flourish.

Such behaviors by His Beatitude put the OCA at legal risk in cases of sexual misconduct, since any criminal or civil court is going to examine whether or not the OCA follows its own policies and procedures. Ignoring policies and following unsubstantiated personal ideas is in opposition to the Church's ethical standards and the best interest of the OCA. It has also been shown to further increase the suffering of victims and can become the trigger for damaging civil liability suits.

## **3. Fr. Isidore (Brittain).**

The disturbing case of Fr. Isidore (Brittain) provides several examples of confusing inconsistency and disordered response by His Beatitude.

As you are aware, Fr. Isidore is an admitted alcoholic, whom the federal Equal Employment Opportunity Commission (the "EEOC") determined committed act of sexual misconduct in Alaska against Reader Paul Sidebottom. In addition, evidence came to the attention of the Office for Review – and subsequently to Metropolitan Jonah - that, while Fr. Isidore was living in Australia, he sought sexual interaction with other men through a gay internet matchmaking site.

Fr. Isidore was never suspended- or even disciplined - for any of his sexual misconduct in Alaska or Australia. (It is important to note that it was Metropolitan Herman who suspended Fr. Isidore, and only because he uncanonically moved to Australia.) This failure to suspend or discipline Fr. Isidore is unconscionable to the members of the SMPAC.

Rather than discipline Fr. Isidore, Metropolitan Jonah instead went to the other extreme. When the settlement with Reader Sidebottom was reached, His Beatitude, Metropolitan Jonah, sent Mr. Sidebottom a letter, which included the following promise:

*"Archimandrite Isidore is currently under suspension. His case will be reviewed by the Holy Synod in the near future. Restoration to active ministry within the Orthodox Church in America seems highly unlikely, but should the merciful Lord guide him to repentance the process of recovery will be carefully monitored over such period of time as is determined by the OCA, in good faith, to be appropriate."*

That letter was written two years ago. Since that time, Fr. Isidore's sexual misconduct has not been reviewed by Holy Synod. Nor, seemingly, has it been "carefully monitored." Instead, His Beatitude canonically released Fr. Isidore to the Diocese of the West, without any discipline whatsoever and with seemingly no regard for what Reader Sidebottom experienced or the danger to other potential victims.

Amazingly, based on recent photos posted on the OCA's Facebook page and linked to from an official news release on the OCA's website, in November 2010, His Beatitude served Divine Liturgy with Fr. Isidore at Saint Anne Church in Corvallis, Oregon, in spite of the fact that Fr. Isidore's suspension for moving to Australia has never been lifted and in spite of His Beatitude's claim to Reader Sidebottom that *"Restoration to active ministry . . . seems unlikely."*

And, as if it could get any worse, the SMPAC has learned that Fr. Isidore was recently arrested for DWI, providing further evidence that he is not yet fit for active service in the Church.

We are concerned that His Beatitude's too quick willingness to forgive and restore Fr. Isidore will pose disastrous consequences for the Church, to potential victims, to Reader Sidebottom, and, indeed, to Fr. Isidore. We are convinced that His Beatitude's attitude and actions in the case of Fr. Isidore evidence a grave issue that the Holy Synod needs to address.

#### **4. Fr. Simeon (Kharon).**

The case of Fr. Simeon (Kharon) reveals a troubling lack of understanding and discernment by His Beatitude of the pastoral issues at stake.

Over a short period of time, Fr. Simeon has exhibited various dangerous and severe pathological behaviors (e.g., problems with alcohol, the actions that brought him into conflict with the police, which led to two incarcerations, and his previous history of reported disordered and abusive behaviors - including going AWOL - when he was still in Greece). The investigation team received testimony from witnesses that Fr. Simeon tried to force himself on a woman after having exhibited a knife in his possession. It was also reported by an OCA priest that, on another occasion, Fr. Simeon produced a handgun and started firing shots in the presence of a female parishioner.

Despite His Beatitude's admission that he was aware of these situations, and despite Fr. Simeon's total lack of insight into his own problems, His Beatitude allowed Fr. Simeon to serve in the OCA (including the hearing of Confessions) and recommended him for appointment to the Military Chaplaincy. His Beatitude was also considering allowing Fr. Simeon to perform the Sacrament of Marriage upon his release from jail.

The indifference by His Beatitude to the actual and potential victims of Fr. Simeon- for example, allowing Fr. Simeon to hear confessions and counsel the nuns and His Beatitude's instruction to Fr. Simeon to remain in the nuns' company- is incomprehensible and disturbing.

Furthermore, the official Investigative Report indicates that His Beatitude knowingly withheld pertinent information from the Chancellor and others about the allegations of misconduct and that he completely omitted informing the Military Chaplain recruiter of the issues involving Fr. Simeon. Yet, in a letter that he wrote to Fr. Simeon, His Beatitude was obviously aware of Fr. Simeon's severe problem with alcohol as well as the two incidents involving the police.

The investigative committee, which was headed by His Grace, Bishop Michael, made specific recommendations in Fr. Simeon's case. The Holy Synod accepted the report and its recommendations. Several of these recommendations have been ignored or singlehandedly overturned by His Beatitude.

Perhaps most notable is the conduct of the women monastics under the guidance of Abbess Aemiliane (Hanson). Her questionable involvement in the Fr. Simeon case was noted with emphasis in the Investigative Report. In a letter to the investigative committee, and in quoted statements, Abbess Aemiliane deliberately withheld information and did not offer objective testimony, according to the report on Fr. Simeon's verifiable actions and his serious problems. Instead, she threatened lawsuits against those who questioned Fr. Simeon's conduct and accused them of wrongdoing. Despite all of this, His Beatitude has continued to offer hospitality and protection to her and her co-monastics. Incredible as it may be, recent reports indicate that Abbess Aemiliane participates at meetings of the Parish Council at St. Nicholas Cathedral in Washington, DC. Other information about the monastic community raises serious questions that could be the subject of a separate inquiry.

Related to all of this, and very troubling by itself, is that His Beatitude recently told Fr. Gregory Safchuk, the Chancellor of the Washington Diocese, that His Beatitude was working with Fr. Michael Matsko and the SMPAC on the Fr. Simeon case. This was blatantly false. Neither Fr. Matsko nor the SMPAC were ever consulted by His Beatitude about the case. Such a statement is not only disturbing but also exposes the members of the SMPAC to claims of professional misconduct and liability, since it makes it appear that the SMPAC has somehow approved His Beatitude's actions in the Fr. Simeon case.

## **5. Archbishop Seraphim.**

The case of the allegations of sexual misconduct against His Eminence, Archbishop Seraphim, raises many critical concerns.

In 2008, just prior to the All American Council, the Holy Synod was made aware by a senior OCA priest of grave allegations of sexual misconduct against Archbishop Seraphim. These allegations were

taken seriously enough that Archbishop Seraphim withdrew his name from consideration to become Metropolitan.

In 2009, His Beatitude decided upon a course of action that was merely a semblance of an investigation into the allegations, despite being advised by Fr. Michael Matsko that such action would not fulfill any of the professional standards demanded by such serious allegations. Fr. Matsko had insisted that a forensic evaluation be done according to accepted professional standards in order to proceed with due diligence, to show proper respect to all involved, and to avoid painful legal entanglement and liability. Such an evaluation would have been invaluable, especially given the legal situation with which the OCA is now faced.

However, the advice of Fr. Matsko was completely disregarded by His Beatitude. Instead, Archbishop Seraphim was sent to talk with Fr. Meletios Webber, who had not held a professional license for 18 years, and to Fr. David Fontes, who is a licensed clinical psychologist but who did not conduct any psychological evaluation of the archbishop. Neither Fr. Meletios nor Fr. Fontes produced a professional report of evaluation, although they each sent a letter to His Beatitude, which merely consisted of the conversations held between Archbishop Seraphim and Fr. Meletios and Fr. Fontes, respectively.

In a letter, His Beatitude publicly told Pokrov, the Orthodox victims advocate group, that an investigation into the allegations against Archbishop Seraphim was taking place, implying that the interviews by Frs. Meletios and Fontes constituted professional evaluations. Beside a conversation with two priests, no investigation was duly performed - no witnesses were interviewed, no evidence was gathered.

His Beatitude subsequently failed to provide Fr. Fontes' letter - which contained sensitive information - to the Holy Synod, to the Office for Review, to the SMPAC, or to the OCA's legal counsel - even after the OCA was notified that the Canadian law enforcements officials had begun an investigation in response to the allegations of sexual misconduct committed by Archbishop Seraphim. This could constitute a possible obstruction of justice, with His Beatitude exposing himself and the OCA to the risk of criminal charges. It required the collective intervention of the SMPAC, the Metropolitan Council Legal Committee, and the OCA General Counsel for the documents to be released to the Crown with the authorization of Bishop Tikhon and Bishop Melchisedek, head of the Synodal Commission.

Furthermore, His Beatitude made the statement to the Holy Synod that *"nothing reportable was discovered,"* although this is in contradiction to the facts. The failure of His Beatitude to apprehend the seriousness of the case increases the legal liability of the OCA. Furthermore, if the allegations are indeed true, the victims as well as potential victims have been willfully placed at risk by His Beatitude.

An urgency of attention into those matters has been lacking at every step of the response to this case. Three weeks after the Holy Synod placed Archbishop Seraphim on leave of absence because the Winnipeg police were investigating him. His Beatitude stated in an email that there are *"no allegations"* and there are *"no victims."* The events should have been treated with timely and intense attention. Instead, His Beatitude publicly stated, *"This will all blow over in a couple of months."* Even after Archbishop Seraphim was reportedly charged by indictment with two counts of sexual abuse against two pre-teenage boys and severe restrictions to his freedom were imposed on him by the

Canadian legal system, His Beatitude did not take an active interest or directly participate in the response to this crisis.

Finally, the sense of importance and transparency by His Beatitude of the Synodal Commission process/ mandate were absent, until pressure was brought to bear by the SMPAC to approve the mandate. He treated responses to issues arising within the Archdiocese of Canada with an almost total lack of urgency and interest. Little pastoral care or concern was shown toward the Canadian members of the OCA in the face of serious allegations of child abuse brought against their archpastor. Little guidance was offered to them, resulting in several serious, and potentially legally damaging, missteps in how the Archdiocese of Canada dealt publicly with the crisis. The much-needed ability to recognize the crisis, to provide proper administrative leadership, and to show even a little concern for the events as they unfolded did not materialize. His Beatitude has not once met with the professionals available to him to be briefed on the case or to offer direction and guidance.

## **6. Appointment of Fr. Gregory Jensen.**

His Beatitude's appointment of Fr. Gregory Jensen as a consultant to the Office for Review is indicative of an individualistic and impulsive approach to decision-making that can create one legal entanglement after another.

The appointment was made without consulting the Chancellor or the SMPAC, and apparently was in part due to His Beatitude's stated view that the SMPAC is a "*pool of amateurs.*"

Ironically, despite His Beatitude's desire not to rely on "amateurs," only after appointing Fr. Jensen did His Beatitude ask for his resume, but he did not request to see any official credentials. Therefore, His Beatitude had no credible reason - other than Fr. Jensen's own statements - to believe that Fr. Jensen would be able to provide qualified assistance to the Office for Review.

Without the support of any actual official documentation, His Beatitude publicly asserted that Fr. Jensen has a doctorate in psychology and is a trained and experienced psychologist. Although Fr. Jensen claims to be a psychologist on his resume, on his blog, on other websites, and on the brochures for conferences that he leads, he has limited training in psychology and does not hold a valid license. It is a criminal offense to claim to belong to a restricted profession without holding a valid license and also for someone to make such claims about another person. These spurious claims by His Beatitude about Fr. Jensen (now an official consultant to the Office for Review) put His Beatitude and the OCA legally at risk, create an ethical dilemma for the other professionals working on the SMPAC, and undermine the confidence of the faithful and all those who are looking at the OCA's manner of operating in the area of sexual misconduct issues.

In a puzzling incident, Fr. Jensen contacted Pokrov as a representative of the OCA, with the blessing of His Beatitude, in order to offer a joint response to cases of sexual misconduct. This was done without any consultation with the Office for Review or the SMPAC. In fact, the Office for Review had already made efforts in that direction about a year ago. The members of Pokrov reacted very negatively to the contact from Fr. Jensen, which has further alienated the work that others are doing to address sexual misconduct in the Church.

## **7. Further Disregard of Professional Advice.**

Fr. Michael Matsko, who has professional licensure and experience in dealing with cases of sexual misconduct, presented a paper to His Beatitude on June 19, 2009, entitled Some Reflections Regarding Clergy Sexual Misconduct. That paper outlined policies and procedures that the OCA should follow in dealing with problems of sexual abuse in the church. Fr. Michael stated in that paper: *"When the Church avoids the truth to protect its image, it becomes unloving toward its spiritual children and colludes in the secrecy and silence that constitute the infrastructure of sexual abuse."* Unfortunately, so far, this sound advice has not been followed. The paper also called for a "multidisciplinary compassionate approach" for dealing with misconduct cases that involves both the Church's leadership and professionals from several disciplines.

Unfortunately, time and again the SMPAC has witnessed the rendering of "unilateral pastoral judgment" by His Beatitude, without regard for the advice given by fellow bishops, clergy, senior staff, lawyers, and members of the SMPAC. His Beatitude's manner of decision-making is at odds with a true compassionate, professional, and pastoral approach toward the victims of clergy sexual misconduct. The refusal to follow proper OCA procedures will result in the undue protection of perpetrators - to their own detriment - and the marginalization and the revictimization of the victims. Recent experience has shown that judges and juries consistently decide against organizations which fail to take seriously allegations of sexual abuse or which show the slightest inclinations toward discouraging victims from coming forth to make their allegations.

## **8. Disregard of Crisis Management Committee.**

The value of the Crisis Management Committee, which was marginalized by His Beatitude from the onset, has become obvious through the case of the allegations against Archbishop Seraphim. Bernie Wilson and other Metropolitan Council members worked tirelessly to produce a Crisis Plan. His Beatitude showed very little interest in such a plan. Therefore, when the major crisis with Archbishop Seraphim came to light, the OCA was completely unprepared, which led to serious mistakes and has opened the OCA to potential civil liabilities and perhaps criminal proceedings.

In an email to Bishop Nikon on October 11, 2010, His Beatitude expressed the opinion that the Holy Synod has been and is being unduly pressed to conduct a needless investigation of Archbishop Seraphim, and he stated his belief that the present pressure is *"political"* and that the pressure preceding the previous AAC was *"vehement"* and *"reeks of politics."* The events have shown this position to be untenable. A situation that could have been easily averted by following the Sexual Misconduct Policies, as well as the advice of those who have experience in dealing with such issues, was instead made much worse. His Beatitude stood in the way of proper and dispassionate crisis management and the investigatory processes, and the OCA will pay the price, not only in treasure but very likely in souls.

## **9. Concluding Statement.**

The particular instances presented above represent a brief cross section of the collective observations of SMPAC members. Since the inception of the SMPAC, we have encountered numerous situations where we could not reconcile the statements, decisions, or conduct of His Beatitude with the Sexual Misconduct Policies, the Best Practices of the OCA, or our Orthodox Ethos. His Beatitude has often stated that he is not interested in administration. Such a position is incompatible with his role as



Metropolitan and the proper functioning of the Office for Review, for which His Beatitude has the authority under the oversight of the Holy Synod.

We have observed that the advice of the Holy Synod, senior staff, and unbiased advisors has been disregarded in favor of His Beatitude's unsubstantiated ideas or personal opinions, which are often in flagrant conflict with the Sexual Misconduct Policies and even the law. It becomes increasingly challenging to fulfill our duties, when we are constantly faced with patterns of behavior that obfuscate the truth with distorted and/or partial information, deceit, opposition to the accepted standards of the Church, avoidance of the people assigned to serve the office of the Metropolitan, and a chronically disordered decision-making process that compromises the Holy Synod and the OCA as a whole.

We are concerned that ignoring the Sexual Misconduct Policies, Best Practices, and professional advice places the OCA at risk legally, pastorally, ethically, and financially. His Beatitude's decision-making process exposes members of the OCA to risks, to further abuse and to possible lawsuits. Our concern for the Church and for His Beatitude is based on our observation that the common denominator in all the situations described above is a pattern of responding to problems. That pattern, unfortunately, is not the result of accidental mistakes. If those choices were simply mistakes, we would expect to see an improvement with each successive situation, rather than a seemingly endless repetition of decisions that have proven to be unworkable, erroneous, or dangerous. Nothing seems to be learned by His Beatitude from incident to incident. Rather, the maladaptive behavior of offering misinformation, changing positions, and then denying that such a change occurred repeats itself in each new situation.

We trust that the Holy Synod discerns the painful reality that this Memorandum underscores and will guide the OCA on its difficult road toward recovery. Although it will not be painless, a solution to the current situation must be found. If the current tragedy involving Archbishop Seraphim was not damaging enough, to continue on the present course will be to allow the OCA to deteriorate through one crisis after another, until soon we are no longer viable as a Church. It is likely that should a civil suit be brought against the OCA in the case of the allegations against Archbishop Seraphim, the OCA could become bankrupt. We, the members of the SMPAC, feel obligated to bring these issues to your attention because, in an autocephalous Church, the Holy Synod represents the highest authority, including oversight of the actions of the primate. The SMPAC was created to serve the Church by offering advice in dealing with serious misbehavior by clergy and the treatment of sexual misconduct allegations. We respectfully ask you to give audience to our concerns and lead us on the way of our Lord, Jesus Christ.

Respectfully submitted,

Sexual Misconduct Policy Advisory Committee of the Orthodox Church in America

/s/ Archpriest Alexander Garklavs (Chair)

/s/ Archpriest Eric Tosi

/s/ Archpriest Michael Matsko

/s/ Archpriest Theodore Bobosh

/s/ Protodeacon Peter Danilchick

/s/ Dr. Nikita Eike

/s/ James C. Spencer, Esq.