

Revised 07/

COPY

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS

SUPERIOR COURT

* * * * *

THE STATE OF NEW HAMPSHIRE

V.

#93-S-0218, et al.

GORDON J. MACRAE

* * * * *

TRIAL BY JURY

Volume I

Pages 1 through 67

BEFORE:

The Hon. Arthur D. Brennan
Presiding Justice
Cheshire County Superior Court
Box 444
Keene, New Hampshire 03431

DATE:

Monday, September 12, 1994

APPEARANCES:

For the State:

Bruce E. Reynolds, Asst. Cty. Atty.
Robert Gainor, Asst. Cty. Atty.
(Rockingham)

For the Defendant:

Ron Koch, Esquire (New Mexico)
James R. Davis, Esquire

CLERK:

Stillman D. Rogers, Esquire

STENOGRAPHER:

Lorena Werner Patria, CSR
Certificate #41

(PHOTOCOPYING OF TRANSCRIPTS IS PROHIBITED)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

INDEX OF WITNESSES

Volume 1

Chambers Conference.....Page 1-3
Plaintiff's Opening Statement.....Page 1-34
Defendant's Opening Statement.....Page 1-45

Volume 2

Direct Cross Redirect Recross

Thomas Grover 2-19
Deborah Warner, Ph.D. 2-63 2-65/70

Volume 3

Thomas Grover (Con't.) 3-3 3-44

Volume 4

Thomas Grover (Con't.) 4-9/50

Volume 5

Thomas Grover (Con't.) 5-3 5-120
 Voir Dire 5-94/99 5-102

Volume 6

Thomas Grover (Con't.) 6-3 6-19
Patricia Grover 6-42 6-102 6-132
Robert Upton 6-139 6-150 6-152
Lucille Gorges 6-153 6-155/161
Francis Christian 6-172 6-178

1	<u>Volume 7</u>			
2	Pauline Goupil			
	Statement	7-5		
3	Voir Dire			
	By Mr. Koch		7-7	
4	By Mr. Reynolds	7-9		
5	Arthur Walker	7-13	7-15	
6	Jonathan Grover	7-17		
7	Daniel Dupuis	7-21	7-29	7-34
8	James F. McLaughlin	7-35	7-104	
9	Leonard. Fleischer	7-168	7-195	7-199
	Voir Dire			
10	By Mr. Reynolds	7-138, 7-162		
	By Mr. Koch	7-146		
11	Defendant's Motion to			
12	Dismiss		7-200	
13	<u>Volume 8</u>			
14	Defendant's Motion to			
	Strike Testimony of			
15	Dr. Fleischer	8-3		
16	Robert Biron	8-5	8-17	8-26
17	Frederick Laffond	8-28	8-38	8-43 8-45
18	Dennis Horan	8-48	8-52	
19	Deborah Karonis	8-56		
20	John Karonis	8-61	8-66	
21	Maurice Rochefort	8-66		
22	Dean Clay	8-81	8-86	
23	David Grover	8-99		

1	Jonathan Grover	8-104	8-106	8-107
2	Patricia Grover	8-108		

3

4 Volume 9

5 Defendant's Closing Argument 9-5

6 State's Closing Argument 9-47

7 Judge's Charge 9-79

8

9 Volume 10

10 Jury Question 10-3

11 Verdict 10-12

12

13 INDEX OF EXHIBITS

14

15 State's Exhibits

16

17

<u>Number</u>	<u>Description</u>	<u>Volume</u>	<u>Page</u>
18	1 Transcript of taped phone conversation		
19	<u>For Identification</u>	3	38
20	2 Excerpt from letter of 4/9/85, Gordon J. MacRae to Keene District Court		
21	<u>For Identification</u>		
22	3 Letter dated 4/9/85, Gordon J. MacRae to Keene District Court		
23	<u>For Identification</u>	6	
	<u>Identification Stricken</u>	6	

1	4	Assignment schedule at St. Bernard's		
2		<u>For Identification</u>	6	
3		<u>Identification stricken</u>	6	
4	5	Diagram of the First Floor of St.		
5		Bernard's Rectory	7	7-26
6	6	Diagram of the Third Floor of St.		
7		Bernard's Rectory	7	7-28
8		<u>Defendant's Exhibits</u>		
9	<u>Number</u>	<u>Description</u>	<u>Volume</u>	<u>Page</u>
10	A	Discharge Agreement		
11	B	Diagram of the First Floor of St.		
12		Bernard's Rectory		
13		<u>For Identification</u>	3	77
14	C-1/ C-6	Photographs	4	100
15	D	Program for the Ordination Mass of		
16		Rev. Gordon MacRae, 6/5/82	6	117
17	E	Seminarian Evaluation		
18		<u>For Identification</u>	6	127
19	F	Diagram of the Second Floor of St.		
20		Bernard's Rectory		
21		<u>For Identification</u>	7	7-29
22		<u>Identification stricken</u>	7	7-29
23	G-1/G-4	Four checks	8	8-17

P-R-O-C-E-E-D-I-N-G-S

CHAMBERS CONFERENCE

1

2

3

THE COURT: Does the defendant want to be here?

4

MR. KOCH: There were several matters that we wanted to be brought to the attention of the Court and I don't know how we want to do that.

5

6

7

MR. REYNOLDS: The first matter I have got involves Ms. Nevins.

8

THE COURT: What about it?

9

10

11

12

13

14

15

16

17

18

MR. REYNOLDS: Well she spoke to the newspaper and in doing so may have violated the rules of professional conduct. She basically got in the newspaper and talked about her client being innocent, that she is going to sit there at counsel table and knows him from wherever. Now I think that would be a violation of the Rules of Professional Conduct in New Hampshire. I am licensed in Massachusetts. We have similar rules down there. I am a little concerned that we have someone, part of the defense team, sitting there talking about the defendant's innocence before the press.

19

THE COURT: Where was this?

20

MR. REYNOLDS: It was in the Sentinel I believe on Friday as the newspaper came out.

21

22

MR. KOCH: This was Saturday's paper?

23

MR. REYNOLDS: Friday's.

1 MR. KOCH: I was at the Chesterfield Inn, your Honor. I'm
2 innocent.

3 THE COURT: Is she a new attorney? Fairly new?

4 MR. KOCH: Brand new.

5 MR. REYNOLDS: I'm not looking for sanctions but she should not
6 be part of this contest.

7 THE COURT: There could be a violation all right.

8 MR. REYNOLDS: My concern is about the appearance of the fairness
9 in the courtroom. The State has made no allegations at all
10 in the press talking about the defendant being guilty. We
11 simply have indictments. That's it. We have made no such
12 comments. We have on the other hand somebody who's aligned
13 with the defendant's team who has come out in no uncertain
14 terms and indicated the innocence of the defendant which is
15 inappropriate and indicated, "I'm going to be there and I
16 am going to be participating." I think it's inappropriate
17 that she be involved.

18 THE COURT: That's too bad. JR, are you going to be here for
19 the day? I'd rather not rule on it. I'd rather think
20 about it.

21 MR. KOCH: | Would it be possible to get a copy of the
22 article?

23 (Article handed to Mr. Koch)

1 MR. KOCH: Your Honor, I apologize. I had no idea that
2 anything like that was being done. I know that Ms. Nevins
3 was upset that she was not introduced and that Mr. Reynolds
4 did not want her as part of the team but I had no idea that
5 she was out making extra judicial comments to the press.
6 Now all of us have judiciously avoided talking to the press
7 and I've had hundreds of calls and I have not returned a
8 one. I tried to keep those issues out.

9 THE COURT: Well, can you do it, JR, for the day?

10 MR. DAVIS: Yes, your Honor.

11 THE COURT: Let's do that. Let's get the moment behind us and
12 I'll think about it tonight and we'll decide what we're
13 going to do. I think she has made a mistake here. On the
14 other hand, the jury shouldn't be tainted by this. They
15 are the ones who have to make the decision.

16 MR. DAVIS: We all know they haven't read the newspaper anyway
17 because of your order.

18 THE COURT: Darn right.

19 MR. KOCH: Do I notice smirks?

20 MR. REYNOLDS: No, but somebody even uninvolved in conversation
21 and a jury could overhear someone else talk being it.

22 THE COURT: I understand that, but I know that she's been
23 working with you and she is going to be a help to the

1 defendant as well.

2 MR. REYNOLDS: I don't have a problem with her being involved
3 behind the scenes, but if she is out in the courtroom I
4 have some real concerns.

5 MR. DAVIS: Just in the courtroom or if she is sitting at the
6 table? What about if she is in the general population?

7 MR. REYNOLDS: I don't have a problem with her in the general
8 population.

9 THE COURT: Is she aware at all of this situation?

10 MR. KOCH: No, your Honor. I had no idea what the State
11 wanted to bring to the attention of the Court.

12 THE COURT: Well it sounds like something that could happen to
13 anybody, including me. How long has she been in the bar?

14 MR. KOCH: I think just a few months.

15 THE COURT: That's too bad.

16 MR. REYNOLDS: These days you have to take a test on Rules of
17 Professional Conduct before admitted to the bar.

18 THE COURT: That's right. Well what else do we have? We've
19 managed to negotiate that one for now.

20 MR. GAINOR: Judge, there was the motion to exclude evidence
21 filed by the defense and the State's various responses.
22 For the opening statement, the Court basically responded
23 there is no violation of the wire tap statute. They're

1 statements made by the defendant. The issue is can the
2 State set the foundation. Number two is the character or
3 not character evidence which still leaves the State in the
4 predicament of not knowing what we can bring up in our
5 opening and out of concern for avoiding a mistrial, I would
6 like some guidance from the Court as to what I can and
7 cannot mention in my opening regarding the admissions made
8 by the defendant.

9 MR. KOCH: Your Honor, if I could give the Court some
10 background, that was another issue I was going to ask the
11 Court about and maybe I can just kind of dovetail all of
12 these. One is that there is some evidence and probably the
13 State would introduce testimony that would indicate that
14 one of the reasons Tom Grover came forward was because he
15 had learned that his brothers, Jon and David had gone to
16 the grand jury to get an indictment against Mr. MacRae and
17 he made some kind of comment to the effect well once that
18 happened I knew he could be convicted. Now to me that's
19 jumping right into the heart of the 404-B issue.

20 The second place that it comes up is back in 1988
21 after Gordon had pled guilty to the misdemeanor involving
22 Jon Plankey. It was for endangering a child and maybe
23 soliciting them for sex. The exact circumstances about

1 that conviction are a little unclear but what happens is
2 that sometime later after Gordon is placed on probation he
3 is out in New Mexico at a treatment center.

4 Evidence is brought to the attention of the probation
5 department and the county attorney's office that Gordon had
6 had some contact with another juvenile, another 404-B
7 witness, named Tony Bonacci, that he had written some
8 letters to Mr. Bonacci, and that he had visited him at a
9 center that he was in. It was alleged that that contact
10 was a violation of the probation order. Mr. MacRae was
11 brought back to New Mexico -- I mean to New Hampshire,
12 excuse me -- and I think he received a couple days in jail
13 was the way that was finally settled and then he was in the
14 treatment center out at the Paracletes. What happens is
15 that at the time of the probation violation there was some
16 considerable discussion between Detective McLaughlin and
17 Gordon MacRae about all kinds of issues. McLaughlin was
18 basically challenging Gordon about whether he was really
19 coming to grips with the problem that he had and so those
20 reports, your Honor, are just filled with all kinds of
21 404-B materials and I am not sure that the Court has had an
22 opportunity to fully review those. In other words, the
23 whole substance of the statement.

1 THE COURT: I've read every single document. Whether I
2 remember it is another question.

3 MR. KOCH: That's going to be a nightmare for this jury
4 because we're still getting a grip on everything. That was
5 one area. There is another area that came up where -- well
6 Gordon -- basically Detective McLaughlin accuses him of
7 being a pedophile. And Gordon allegedly says well, "I
8 prefer not to think of myself in those terms. I prefer to
9 think of myself in terms of what they call a hebephile
10 because a hebephile is someone attracted to adolescents and
11 not to what we would call children." But all of those
12 issues and there are statements allegedly made by Gordon to
13 Detective McLaughlin for what we don't have tape
14 recordings. But McLaughlin is relying on his memory. The
15 confusion comes in where we draw the line as to what we can
16 use as admissions, of course, what I objected to and how
17 much they can go into 404-B. My intent in this trial is
18 not to try all five or six cases. My intent is to try not
19 to open the door to that kind of evidence because I don't
20 want to be here for a month.

21 THE COURT: Well the way I see it, my rulings on the 404-B
22 question keep out the evidence that you've just discussed.
23 That is McLaughlin's talk about whether he is a pedophile

1 or hebephile. That's out. It doesn't come in. Now as we
2 all know, the whole ballgame here is credibility. And as
3 you well know, if the door opens, the whole world may come
4 in.

5 MR. KOCH: I understand that.

6 THE COURT: Now the moment the defendant takes the stand his
7 credibility is an issue. I think the -- just to let you
8 know at this point, for instance I think the violation of
9 probation will come in and the whole thing will come in.
10 The whole story on the violation will come in. Whether
11 anything else will, will depend on the terrain and the
12 situation and that we can't know until the defendant takes
13 the stand and if he takes the stand. Of course you know
14 the tremendous risk.

15 MR. KOCH: I know the risk if he does and if he doesn't
16 because I listened to some of those jurors on questioning.

17 THE COURT: But the State's opening -- the State's case is
18 going -- is extremely limited by my rulings on 404-B. But
19 that whole situation certainly can change on the other end
20 of this trial.

21 MR. KOCH: The Court isn't ruling right now that if Gordon
22 takes the stand that automatically we've opened Pandora's
23 box?

1 THE COURT: Now, what I am saying just to put everybody on
2 notice that if he takes the stand, then his credibility is
3 at issue. As far as I'm concerned, credibility at this
4 point from what I know is going to make or break this case
5 for both sides.

6 MR. KOCH: Certainly.

7 THE COURT: So when we get to the analysis, the test as to
8 whether or not I'm going to allow in evidence on the
9 prejudice side, the probative side is going to be very high
10 for the State and I'm going to be tending to consider
11 evidence that I might not under other circumstances if
12 credibility weren't such a great issue in this case. I
13 want you to know that now. But as far as a point by point
14 description of what I'm going to let it in, there is so
15 much evidence that I have read that I can't remember -- I
16 have some idea -- as you work through it you have an idea
17 of what you might do or think of. We'll take that issue by
18 issue.

19 MR. KOCH: I know Attorney Reynolds and Gainor are very
20 accomplished and experienced and I don't want to get in a
21 situation where we have a mistrial.

22 MR. GAINOR: That feeling is mutual.

23 MR. KOCH: The other issue I want clarification on is that

1 Mr. Grover when we interviewed him refused to answer
2 questions regarding his prior convictions. Now we have
3 reason to believe that he does have a felony conviction.
4 We also have reason to believe that he has some juvenile
5 convictions involving dishonesty, forgery, theft.

6 THE COURT: Well, I don't know how old the convictions are.

7 MR. KOCH: Well they are less than ten years but some of the
8 convictions for the forgery and theft are juvenile. I
9 believe -- let's see, he would have been 18 in -- in 1985
10 -- November of 1985 I believe he would have turned 18 and
11 the way it came up in terms of the interview, your Honor,
12 was that Mr. Davis had asked some questions of Mr. Grover
13 and Mr. Reynolds with good due caution basically suggested
14 to him maybe you need to speak with your private counsel.
15 He has brought a lawsuit through Robert Upton and so Tom
16 Grover is not Attorney Reynolds' client but he has sort of
17 cautioned him that maybe you want to speak with your own
18 attorney about asking them. There was a whole series, sir,
19 of questions that he would not answer that until he had the
20 possibility to speak with his attorney so I was kind of
21 requesting some guidance from the Court in terms of how to
22 address those particular issues.

23 THE COURT: Well if he has a felony conviction, it's less --

1 well it's obviously only going to be a few years old. I
2 don't know. Does the State know?

3 MR. REYNOLDS: If it's an adult conviction but otherwise there is
4 a blanket provision against using juvenile convictions
5 because they are not crimes.

6 THE COURT: Well I don't know -- what was the felony
7 conviction?

8 MR. REYNOLDS: I am not aware of any felony convictions.

9 THE COURT: Well whatever it is, it should come in if it's
10 there.

11 MR. KOCH: Well I have received copies of I guess what you
12 would call --

13 MR. DAVIS: -- summons, complaints in the district court. We
14 have one district court record from the Manchester District
15 Court that indicates the matter was remanded to the
16 superior court because an indictment was issued. When we
17 previously contacted --

18 MR. KOCH: Attempted burglary, aiding and abetting.

19 MR. DAVIS: When we contacted the superior court they said
20 there was no record. I assume it's a typical beaurocratic
21 --

22 THE COURT: You think it's a burglary.

23 MR. DAVIS: I will have to look. We gave Bruce copies of the

1 district court. I think it was the burglary that got sent
2 up to the superior court and of course one of the problems
3 without him not answering -- the other thing he wouldn't
4 answer was was he currently charged or under investigation
5 of any offenses. He being Mr. Grover, excuse me.

6 THE COURT: Well you can certainly ask the questions and he is
7 going to have to answer them.

8 MR. KOCH: I am wondering if maybe there is a way --

9 MR. REYNOLDS: I guess there's a problem with the charge. If he
10 has a Fifth Amendment because he is merely charged rather
11 than convicted, the charges don't come in, only
12 convictions.

13 MR. DAVIS: The problem is we can't find out because we have a
14 record from one court that says it went to the other court
15 and the other court told us there's no such records. We
16 don't have the ability to do a records check as easily as
17 the State does.

18 MR. REYNOLDS: The only thing I can do is call the superior
19 court and ask if there was any follow through and if the
20 superior court records show nothing, I'd assume it got
21 dropped somewhere between district and superior court.
22 It's gone.

23 MR. KOCH: Then my question would be if that has happened and

1 it happens to be coincidental with the time these cases
2 arose, was there any agreement or understanding to drop
3 charges against Mr. Grover because of his testimony in the
4 MacRae case?

5 MR. REYNOLDS: No. The only conversation, information, that
6 we have had concerning any possible charges concerning Tom
7 Grover arose in that questioning that JR Davis made in
8 documents he supplied to me. That's it.

9 MR. KOCH: Okay. I will accept that.

10 THE CLERK: The other possibility if it came to the superior
11 court. How old is this?

12 MR. REYNOLDS: I think a 1990 case.

13 THE CLERK: It could be the case of an annulment because the
14 superior court if they called on a case that has been
15 annulled, would say there was no case.

16 THE COURT: It wouldn't happen.

17 MR. KOCH: My sense was he has an adult felony conviction
18 because he refused to answer the question. If he didn't
19 have one --

20 THE COURT: Is it possible he just doesn't know?

21 MR. KOCH: It could be.

22 MR. REYNOLDS: Could be.

23 THE COURT: Well I think the State -- give them a try

1 yourself, give the Court a try and see if it makes -- it
2 shouldn't make any difference, but one day you might get
3 the thing.

4 MR. REYNOLDS: Who did you talk to?

5 MR. DAVIS: We sent a letter to the Court in the normal
6 course.

7 THE COURT: Now these are juvenile convictions that is the
8 forgery and the theft?

9 MR. KOCH: Yes.

10 THE COURT: Okay. The juvenile convictions can't come in.
11 Obviously if we have the felony conviction, that's the end
12 -- we should find out if there is one.

13 MR. KOCH: I would like to be able to argue about their
14 admissibility at the appropriate time because I may be able
15 to place it in context as to why even those juvenile --

16 THE COURT: I'm ready to hear arguments.

17 MR. REYNOLDS: I don't know how he can place in context a blanket
18 prohibition.

19 THE COURT: Well there's always room when justice is involved
20 as far as I'm concerned.

21 MR. KOCH: I think Rule 609 of the New Hampshire Rules of
22 Evidence make it pretty clear under what circumstances
23 adult felony convictions come in. They have a prohibition

1 ten years old although sometimes you can go beyond that,
2 any conviction relating to credibility issues, honesty. I
3 think there are provisions under the rule even where
4 juvenile adjudications come in regardless of what you call
5 them, whether they are expunged or deferred or anything
6 else and I would think that once we begin to develop
7 evidence I would certainly like to be able to argue but I
8 will not mention it in opening.

9 THE COURT: You will be able to argue it. I expect the State
10 to be prepared to argue their side. My inclination is to
11 go with what the State is saying but on the other hand I'm
12 ready to always go back and look at the statute.

13 MR. REYNOLDS: Just so the Court knows, with regard to one of
14 those juvenile contacts, the State is in possession of a
15 redacted copy of a letter. We have the whole letter, a
16 certified copy but basically it's a letter from Gordon
17 MacRae. It's been provided in discovery to the defendant's
18 counsel. It's a letter from Gordon MacRae on St. Bernard's
19 parish stationery to the district court that indicates that
20 he has known Thomas Grover through family and counseling
21 contacts for seven years. The date of the letter is 1985.
22 Between that first introductory statement and Gordon
23 MacRae's signature I have prepared a copy where everything

1 else is omitted so we don't know the purpose of the
2 letter. We only know it's a letter to district court over
3 MacRae's signature, indicating he has had a counseling and
4 family relationship for seven years. My position is that
5 we could argue on that in opening argument and that in and
6 of itself merely the letter to the district court would not
7 open the door with regard to whatever the underlying
8 juvenile issue was. Because it's not being offered to have
9 anything do do with the juvenile issue bits being offered
10 as an admission by MacRae that he engaged in counseling and
11 that's one of the elements we have to prove is that there
12 is a counseling relationship.

13 MR. KOCH: My concern is I am not sure one can introduce part
14 of the contents of the writing without allowing for it to
15 be placed in context and the entire writing to be
16 introduced.

17 THE COURT: It can be if the defense requests that it be
18 done.

19 MR. KOCH: I don't know when that will come up but I think
20 it's to prove obviously that Gordon MacRae counseled Tom
21 Grover which is elements of one of the indictments or some
22 of the indictments in the case.

23 MR. GAINOR: This is the letter.

1 MR. REYNOLDS: It's simply the stationary, the first sentence and
2 the signature that the State would be seeking to
3 introduce.

4 THE COURT: Well I think I would allow the reference, not
5 reference to the letter at this point, in your opening
6 statement. I mean you can say that they had the
7 relationship and that sort of thing. You have a redacted
8 copy?

9 MR. REYNOLDS: Yes, it eliminates all but the first sentence and
10 I mean we have the heading and to whom it's addressed, the
11 first sentence and then Mr. MacRae's signature. Everything
12 else between those is blocked out or omitted.

13 THE COURT: Have you seen it?

14 MR. KOCH: I have not seen the redacted version.

15 MR. REYNOLDS: Take out everything except the first sentence in
16 the body of the letter itself.

17 THE COURT: It's an admission.

18 MR. REYNOLDS: The State would argue when the time comes that
19 they may choose to get into his alcohol or drug counseling
20 as well and the letter does talk about those issues but
21 there is no reason to talk about the underlying criminal
22 aspect. I mean if counseling is the issue and the drug
23 problem is the issue and they find some way to open the

1 door, that doesn't necessarily mean you have to get into
2 the juvenile justice system area so in terms of the context
3 of the admission, I think it's more counseling oriented
4 than it is juvenile justice oriented.

5 THE COURT: I would agree.

6 MR. KOCH: I'm a little unclear. I mean it does not address
7 specifically a juvenile problem. It mentions the court and
8 does call him a juvenile but doesn't put it in any kind of
9 context as though he has been charged with something or he
10 is facing sentencing.

11 THE COURT: Well the way I look at it, it doesn't -- maybe I
12 am wrong on this. Hasn't Mr. MacRae denied he did any kind
13 of counseling on Grover?

14 MR. REYNOLDS: Yes, under oath.

15 THE COURT: And he minimized his contact if I remember
16 correctly. I would think that this admission certainly
17 contradicts that.

18 MR. GAINOR: And even in the case in chief in fact it is an
19 element that we have to prove, that there was a counseling
20 context and this written in '85 reaches back seven years
21 which covers the indictment time period.

22 THE COURT: It's going to come in.

23 MR. GAINOR: Thank you, your Honor.

1 THE COURT: And you may use it.

2 MR. REYNOLDS: Thank you.

3 MR. DAVIS: I think the issue becomes partly, your Honor, I
4 don't think the State should at this point be forced to
5 agree that it will be in a redacted version. We should be
6 able to argue that.

7 THE COURT: Yes.

8 MR. DAVIS: We believe the context is genuinely important.

9 THE COURT: You're right. As far as I'm concerned, any time
10 we run into a situation like that, we get a document that
11 you're thinking about redacting, of course, the defense has
12 the right to put it in context.

13 MR. GAINOR: Well that brings up one more issue I wanted to
14 address. You may have touched possibly on it earlier but
15 there were letters between Jon Grover and the defendant and
16 I brought this up in pleadings where the defendant in his
17 last correspondence to whom he thought was Jon Grover says,
18 "I now know you're not Jon Grover. I believe you're
19 someone else for whom I've been waiting to hear from and if
20 you are, write back." It was Jon Grover doing the
21 correspondence. Actually Detective McLaughlin through the
22 appearance of Jon Grover was doing that.

23 MR. REYNOLDS: The defendant also indicated, "There is only one

1 person I have to make amends to. If you're that person --"

2 THE COURT: I remember that.

3 MR. GAINOR: And then Mr. MacRae provided to the State work
4 product. It was a paragraph by paragraph response to the
5 State's voluminous discovery and in that he states flat
6 out, "I believed several months after the Jon Grover
7 defendant correspondence that I was actually speaking with
8 Tom Grover." There's a lot of admissions in those letters.
9 Albeit non-specific, but he says, "I am sorry if I created
10 any confusion. I am sorry for the things I did. I was not
11 the same individual I am today, I am better." And I
12 believe the State can set the foundation. Now obviously
13 this will require some redacting and we are willing to do
14 that but we should at least be able to make the effort
15 because that is frankly as you say the case of credibility,
16 that is our only other evidence.

17 THE COURT: That will come in. I mean I will give you your
18 argument but based on your argument now it will come in.

19 MR. KOCH: What that is, your Honor, is that Detective
20 McLaughlin, what he has done throughout, he sort of has
21 bordered on what I consider the edge of things. He sits
22 down and he writes some letters pretending he is Jon
23 Grover, one of the 404-B witnesses to MacRae.

1 THE COURT: So Grover never wrote these letters?

2 MR. KOCH: Grover never wrote them. Gordon responded. And
3 then he sends more letters and some of the letters he
4 finally gets to the point where he is accusing Gordon of
5 saying about the sexual abuse and of course Gordon writes
6 back and basically denies all that. But what happens a few
7 months later is he gets this call from Tom Grover from
8 Robert Upton's office. There were a couple from Robert
9 Upton's office, no connection made and then finally from
10 Detective McLaughlin. Well Gordon all this time thought
11 the person writing him, because Tom Grover calls him, was
12 Tom Grover, pretending to be somebody else and I mean
13 that's an issue I would ask the Court to really reserve
14 ruling on so I can place it in proper context.

15 THE COURT: I will reserve. You have my inclination but I
16 will reserve. Do you have pre-view statements? Are you
17 all set on your pre-view statements.

18 MR. GAINOR: Yes, your Honor.

19 THE COURT: Do you know what the pre-view statement is that
20 you give prior to going out on the view?

21 MR. KOCH: No, your Honor. Oh, you mean for the view of the
22 rectory?

23 THE COURT: Yes.

1 MR. KOCH: Yes. I'm just asking. I thought you meant
2 pre-view, sort of like a mini opening before the opening.

3 THE COURT: Okay.

4 THE CLERK: So the procedure will be the pre-views and then go
5 down and do the views and then come back and do the
6 openings.

7 THE COURT: The press will not be going into the building.

8 MR. DAVIS: Your Honor will be doing the mini charge before we
9 do the pre-view statements?

10 THE COURT: Yes. I just give basically what I give is that
11 reasonable doubt instruction for the jury to think about.

12 MR. KOCH: Before we start, can I get a copy of that
13 article?

14 THE COURT: In fact, do we have another?

15 MR. REYNOLDS: I don't.

16 THE CLERK: I will take it down and copy it.

17 MR. DAVIS: In addition I assume your Honor will be explaining
18 to the jurors that when we take the view that the attorneys
19 will not be able to --

20 THE COURT: I have something that I usually give.

21 MR. REYNOLDS: Not be able to what?

22 MR. DAVIS: Answer questions unless it's approved by the Court
23 and they should just observe the things pointed out to them

1 and keep a mental picture in their mind.

2 THE COURT: It covers all that.

3 MR. GAINOR: One more issue, your Honor. I begged and pleaded
4 to be here and fortunately I was granted permission but
5 under a limited duration. Carleton Eldridge gave me a week
6 to be here. This could conceivably be a one week trial if
7 the doors are not opened, or a three week trial. I will
8 leave this to the Court's discretion. I would hate to
9 leave a jury with the impression that the case is not
10 important to the State if I have to leave Friday and not
11 come back. Maybe there could be some statement to the jury
12 that one of the assistants may have to leave the trial
13 early, something to that -- I am not sure if that would
14 highlight it more.

15 THE COURT: Well, maybe what we could do is kind of do that
16 and that way cover your situation too with JR and Ms.
17 Nevins.

18 MR. DAVIS: Perhaps, your Honor.

19 THE COURT: Something like just saying lead counsel in the
20 case are Attorney Reynolds and Attorney Koch and the
21 assistants to both of those counsel may be here sometimes
22 and may not be here at other times depending on what's
23 going on.

1 MR. KOCH: I just want to know, your Honor --

2 THE COURT: Is that acceptable?

3 MR. GAINOR: That would be fine.

4 MR. KOCH: If Mr. Albrecht is not successful in the election,
5 will Mr. Reynolds be back Wednesday morning?

6 THE COURT: He will be taking the New Mexico bar!

7 MR. REYNOLDS: Mr. Reynolds believes himself to be a
8 professional.

9 THE COURT: Well, I do too.

10 MR. REYNOLDS: Thank you.

11 THE COURT: For me I'm a new judge and everything you have
12 said has worked out and I appreciate it. I enjoy working
13 with people like all of you.

14 MR. DAVIS: Could we go off the record.

15 THE COURT: Sure.

16 (Discussion off the record)

17 (Break)

18 (Pre-View Statements and View recorded, not transcribed)

19 (Luncheon Recess)

20 HEARING OUT OF THE PRESENCE OF THE JURY

21 THE COURT: Okay. We have the issue of a possible witness and
22 some documents that we talked about and decided we would
23 here it at this time. Attorney Koch?

1 MR. KOCH: Thank you, your Honor. Your Honor, Mr. Grover
2 recently had gone to see a counselor by the name of Pauline
3 Goupil. It's our understanding that he went to Ms. Goupil
4 and then subsequently to a Dr. Yaditi as a result of a
5 civil suit that he brought against Gordon MacRae claiming
6 monetary damages for the alleged actions from 1983 to 1987,
7 i.e., the sexual abuse. We only learned about the
8 existence of Ms. Goupil and Dr. Yaditi at a deposition of
9 Tom Grover last Friday. And I mean the Friday preceeding
10 the week we began jury selection. At that point in time we
11 asked Mr. Grover if he would sign releases for us as he had
12 been previously ordered by this Court to do with respect to
13 some treatment facilities; however, we didn't know about
14 these at the time we argued to the Court and on the advice
15 of Mr. Reynolds, he decided he needed to speak with his
16 lawyer, Robert Upton. Mr. Upton represents Mr. Grover in
17 the civil suit that was brought by Mr. Grover against Mr.
18 MacRae. Due to the circumstances, what we decided to do,
19 your Honor, was go ahead and subpoena Ms. Goupil and she
20 has appeared here in court today and I'm assuming that she
21 brought records with her although we have not asked her any
22 direct questions without permission of the Court to so do.
23 My understanding, your Honor, and this is I guess double

1 hearsay. I spoke to JR Davis who spoke to Attorney Upton.
2 Attorney Upton said he did not need to be present to
3 address this issue and would waive his presence, however,
4 he wanted to register an objection based on the fact that I
5 believe these entries are really post indictment and other
6 than that would allow us to argue the issue. Now what I am
7 asking the Court to do is two things. One, order Ms.
8 Goupil to talk to us. Two, produce her file here in court
9 for the Court to conduct an in camera inspection of those
10 documents. I think this is a procedure that the Court has
11 employed in the past with respect to the release of any
12 records. To ascertain one, whether there may be any
13 exculpatory information contained therein, two, I think
14 there may be either consistent or inconsistent statements
15 previously given by Mr. Grover in this case to various
16 treatment centers as to what Ms. Goupil may have and
17 therefore it may be important in terms of impeachment.
18 Three, it may provide a basis for some corroboration or
19 lack of corroboration and that's the -- I think this
20 argument, your Honor, that well it's post indictment is
21 really a red herring. He has made that a central issue in
22 terms of this litigation in going to the issue of his
23 credibility, his motivation, interest and bias which in

1 part is a financial one; and that he is then using the
2 services of Ms. Goupil and Mr. Yaditi in an effort to
3 bolster his claim for psychological injury and damages, and
4 as the Court knows, part of the allegation here is that
5 these events occurred while in counseling, that Mr. Grover
6 was in a particularly vulnerable position because of his
7 life circumstances and that Gordon MacRae, in his role as a
8 priest, somehow took advantage of that and then abused Mr.
9 Grover when he was a teen-ager. So these are the two
10 requests that I have, your Honor. An in camera review of
11 the documents to ascertain whether or not they should be
12 produced to the defendant and then whether or not Ms.
13 Goupil should be required to answer questions posed to her
14 by the defense. I'm not asking the Court at this juncture
15 to rule on whether or not that was ultimately admissible
16 but whether or not we're entitled to receive it in the
17 discovery process.

18 THE COURT: Thank you, Attorney Koch. Attorney Reynolds?

19 MR. REYNOLDS: The State doesn't see what possible bearing post
20 indictment counseling or communications with the
21 psychologist could have on the issues before the Court. It
22 makes little or no difference it seems to me that whatever
23 the victim's motives were for engaging in a suit or to be

1 able to respond to a suit is wholly separate from this
2 matter and those were not things that developed until after
3 criminal charges had been brought until after the victim
4 had already, I believe several times, spoken to the
5 authorities and gone on record concerning allegations. If
6 the Court is inclined to grant the defendant's motion, then
7 I would ask the Court to review in camera any of those
8 records before to determine whether or not they are
9 potentially exculpatory and if they are not, to keep them
10 out as well as perhaps even interview the psychologist in
11 camera to determine whether or not there is anything there
12 sufficient that the defendant should be apprised of those
13 materials but I don't see that subsequent counseling has
14 anything to do with these matters since the disclosures
15 upon which the defendant is being tried or those
16 disclosures which well pre-dated the victim getting into
17 counseling in this matter now.

18 THE COURT: Thank you. Well it concerns me that we come up
19 with this witness so late in the game anyway. Course I
20 realize that's because the defense's interview with the
21 alleged victim was only I guess the Friday before last,
22 however, that could have been done many, many months ago.
23 I think in camera review is appropriate and I will also do

1 an in camera interview with Pauline Goupil and then render
2 a decision as to whether or not it's appropriate to grant
3 the defense's motion. Is there anything further?

4 MR. REYNOLDS: Thank you, your Honor.

5 MR. KOCH: Your Honor, I might just state that we have
6 received records from Dr. Yaditi which I have not reviewed
7 on agreement with Mr. Reynolds. It might be important for
8 the Court to go ahead and review those in camera also.

9 THE COURT: Do I have those documents?

10 MR. KOCH: I'm not sure that the Court does.

11 MR. DAVIS: Not that I know of.

12 THE COURT: I'd like them. In fact, I would like -- if I
13 could have the records now, I would like to begin reviewing
14 them in camera and what I'm thinking is what might be well
15 in this case, we've got the jury coming back at 2, perhaps
16 you could make your opening statements, I could interview
17 Ms. Goupil and give my decision to counsel before the day
18 is out and we won't put any witnesses on the stand today.

19 MR. KOCH: That's fine, your Honor.

20 THE COURT: There may be a couple more issues that arise as we
21 progress here. I believe there will be, in fact.

22 MR. KOCH: If I might approach, I will just give the Court a
23 copy of --

1 MR. KOCH: As an officer of the Court, neither Mr. Reynolds
2 nor myself knows what is contained in these documents by
3 agreement.

4 THE COURT: Okay. Is Ms. Goupil here? Do you have those
5 records with you?

6 MS. GOUPIL: They are in my car.

7 THE COURT: What we'll do is recess. Could you then give them
8 to the court clerk at the counter and the clerk will give
9 them to me and I will review them and then I'm ordering you
10 to meet with me in my chambers after opening statements and
11 there I will talk with you and we'll discuss whether or not
12 this evidence is appropriate to come in to this case.
13 Thank you. Does counsel have something?

14 MR. REYNOLDS: Your Honor, depending on how late you can go, if
15 your review is only going to be very brief of these
16 materials and interview Ms. Goupil, I would like the Court
17 to know the State does offer to begin the direct
18 examination of Mr. Grover today. I would hate if there is
19 at least some substantial time remaining not to be able to
20 use it unless of course your Honor assumes there are going
21 to be some other issues that will be precluded.

22 MR. KOCH: My concern is if Mr. Grover is in fact the first
23 witness of the State is to have a bifurcated proceeding

1 where they cannot see -- I anticipate his examination may
2 be rather lengthy both on the part of the State and defense
3 and it's very awkward when you just hear one portion of the
4 story and then are left to sit on it. If that is indeed
5 their lead witness, then I would like to start him first
6 thing in the morning, your Honor.

7 THE COURT: Well, I'll tell you, I'm kind of slow. We'll get
8 the arguments in, I'll interview the witness in this case.
9 There are a couple other issues I know I am going to have
10 to address today and I think the best thing to do would be
11 able to start out tomorrow morning at 9:00. We'll just put
12 the witness on the stand and go to work. Anything
13 further?

14 MR. REYNOLDS: May we approach for a moment?

15 THE COURT: Sure.

16 MR. DAVIS: Just so it's clear for the benefit of Ms. Goupil,
17 the clerk's office is on the first floor to hand the
18 documents in.

19 THE COURT: Yes.

20 (Discussion held off the record.)

21 (Recess)

22 OPEN COURT

23 THE COURT: Attorney Reynolds?

1 MR. GAINOR: Actually Attorney Gainor, your Honor.

2 THE COURT: Okay.

3 OPENING STATEMENT OF MR. GAINOR

4 MR. GAINOR: Good afternoon. This case, the evidence will
5 show, is about a breach of trust, about a breach of
6 confidence of the worst kind. It's about this man, Gordon
7 MacRae, a priest, using his position of authority, using
8 his position of trust towards a then boy, Tom Grover.
9 Using that position to sexually exploit Tom Grover. You
10 are going to hear that this sexual exploitation, this
11 molestation of Tom Grover, occurred when this man was in
12 essence a counselor to Tom. This case is two-fold. It's
13 also about this man, Gordon MacRae, choosing a perfect
14 victim, choosing Tom Grover because Tom Grover was an ideal
15 victim.

16 The evidence will be that Tom came from a large
17 family. He was adopted. They didn't have much financial
18 ability and that Tom had a lot of problems and he spotted
19 that, the evidence will show, and he used it for his own
20 sexual gratification. Tom Grover is an American Indian.
21 He was born in Arizona. He is now 26 years old. He was
22 born in 1967. He came from a very large family in Arizona
23 but his parents, his natural parents, had problems and Tom

1 was adopted. He was adopted at the age of one by a
2 Patricia Grover and she and her husband -- then husband,
3 Elmer Grover legally adopted Tom when he was one year old.
4 They also adopted seven other children, all of mixed ethnic
5 origins. Tom has a brother who's also an American Indian
6 and Tom ranked fifth in age order. So in a large adopted
7 family, eight children, Tom lived in Marlborough, New
8 Hampshire.

9 You're going to hear that he was brought up in an
10 extremely Catholic household. His mother, Pat Grover,
11 extremely religious, very involved with the church and she
12 brought up all of her children -- adopted children -- in an
13 extremely religious environment. In fact Tom was an alter
14 boy both in Marlborough and then in Keene when they moved
15 to Keene. It was a family that obviously because of the
16 number of children did not have things that easily. As I
17 mentioned the evidence will show money was tight, treats
18 were rare, but they made do.

19 Now in 1979, this man, Gordon MacRae, who was studying
20 to be a priest in Baltimore, Maryland came to New
21 Hampshire. And he did this as an internship. Priests, or
22 rather candidates for the priesthood, studying to be
23 priests, they do internships and his first was in 1979 in

1 Marlborough, where the Grovers lived, at the church where
2 the Grovers practiced their religion. Almost immediately,
3 this man, Gordon MacRae became good friends with Pat Grover
4 and he would go over to the house on frequent occasions.
5 They became very close friends. In fact, Pat Grover, who
6 will testify in this case, will tell you that in many ways,
7 she felt that she was almost in a motherly position to
8 Gordon MacRae, the defendant. He had come over to the
9 house and when he had come over he would bring treats, he
10 would bring things for the kids, he would bring pizza and
11 even at one time it culminated with him buying a large
12 color TV for the family. Tom Grover was very impressed
13 with all this. Now after 1979, that internship, the
14 defendant went back to Maryland to take up with his
15 studies. And from 1979 until 1983, he maintained contact
16 with the Grover family. And he maintained contact with Tom
17 Grover. And in fact I want to get back to something.

18 In 1979, Tom Grover had a paper route that took him by
19 the seminary or -- strike that -- the rectory in
20 Marlborough where the defendant was living for that summer
21 and he delivered papers and one time he even went into the
22 defendant's apartment at the rectory. They ate donuts
23 together. They spent time together. So moving forward

1 between '79 and '83 they maintained contact. Pat Grover
2 and the defendant and at one time even the defendant and
3 Tom Grover drove to the defendant's family's house in Lynn,
4 Massachusetts. Another time they went for a ride to the
5 airport. They had periodic contact. Now in 1982, the
6 defendant was ordained as a priest. His first assignment
7 was in Hampton, New Hampshire. And that lasted for about a
8 year and again during that time periodic contact with the
9 Grover family -- he and Pat Grover wrote a lot and he gets
10 transferred to Keene around June, 1983 he comes to Keene
11 and he comes to St. Bernard's. And at that time he
12 immediately gets very involved with the Grover family. Now
13 I want to tell you a bit about what the evidence will be
14 about Tom at this time in 1983. Tom at this time is having
15 some problems. His family -- his father had recently moved
16 out. His parents were separated. And again Tom had no
17 father figure in his life and the one figure, male figure
18 had moved out and Tom will tell you how he felt responsible
19 actually for the break-up of his parents. He felt guilty
20 about that and you're going to hear that Tom at this time
21 had a substance abuse problem in the summer of 1983. His
22 family's breaking up, things aren't going well for Tom and
23 he has a concerned mother, Pat Grover.

1 Now, Pat, seeing that the defendant is back in Keene
2 as a priest, the church that she belongs to -- they now
3 live in Keene and they belong to this church --- St.
4 Bernard's in Keene. She asked Gordon MacRae, the
5 defendant, to help out Tom, to act as a counselor to try
6 and help Tom work through his problems, to be a friend to
7 Tom, to be that male figure that Tom no longer has. And
8 the defendant does that. He and Tom start spending time
9 together again, June, thereabouts, 1983 and they start
10 doing things together. The defendant takes Tom out for
11 dinners and they start doing things together. At the
12 rectory where we went earlier today, one of the times they
13 spent together was in the southwest office. This is the
14 smaller office that we all went to earlier today. And the
15 defendant took Tom in there and through Pat Grover, the
16 defendant knows all about the problems that Tom is having.
17 Again things aren't easy for Tom. He takes Tom into that
18 office and he starts asking Tom about his problems. He
19 starts asking him about the things that are troubling him,
20 the substance abuse, but it wasn't a constructive
21 counseling you will hear. It was more negative. It was
22 more berating. It was more belittling. And you will hear
23 that that defendant, Gordon MacRae, got Tom to such a level

1 where he broke down crying. He broke him down, being again
2 not constructive in pointing out Tom's problems to him but
3 belittling. And when Tom is crying, when he is broken down
4 in that office he goes over to Tom to console him or to
5 make the appearance that he is consoling him and to this
6 broken down young man, who's now 15 years old, he reaches
7 down and this is what the evidence is going to be, he
8 unzips his pants, he takes Tom's penis out, and then this
9 defendant, it is called, fellated Tom. He sucked Tom's
10 penis. And I'm sorry I have to use such graphic language
11 but that's what the evidence will be. And this lasted some
12 time. And you're going to hear that no words were
13 exchanged. There was another time in that same office,
14 similar type situation. This counseling, if we can call it
15 that because that's what the pretext was, the evidence will
16 show was about Tom's girlfriend that he was having some
17 trouble with and Tom's consumption of alcohol and again he
18 broke Tom down to the point where he eventually re-fellated
19 Tom again where he sucked Tom's penis again.

20 Now you're going to hear that Tom in reaction to this
21 -- now remember what the evidence will be. Tom was an
22 alter boy. Tom was brought up Catholic. Tom was brought
23 up to respect priests. Tom was brought up in the Catholic

1 church. This is someone, the evidence will show, a priest,
2 someone he was brought up to put them on a pedestal.
3 Someone who could do no wrong and in Tom's predicament,
4 this being done to him, he will tell you that his reaction
5 was rigidity. He will tell you it was almost an out of
6 body experience. It was like a movie looking at himself.
7 He didn't know what to do. A 15 year old boy and his
8 priest. Unfortunately the evidence will be that this was
9 not the last time.

10 The other office that we all went to, the one in the
11 southeast corner, the bigger office, another meeting
12 between the defendant and Tom in that office. They were
13 playing chess. The defendant got up, he went and closed
14 the door and he did the same thing again. He fellated Tom
15 in that office. And it happened one more time in that
16 southwest office another time and on one of these occasions
17 Tom actually -- the evidence will be he ejaculated on one
18 occasion and again he will talk to you about the confusion,
19 the rigidity, the fear, the mixed feelings of these
20 terrible incidents.

21 There was one more time, the third floor where the
22 defendant resided in an apartment. Tom Grover spent a
23 night there one time and he woke up. The defendant was

1 over him. The defendant pulled down the sheets, pulled
2 down his underwear. Tom was only wearing underwear and he
3 did the same thing again. He fellated Tom. He sucked
4 Tom's penis.

5 Now, I want to talk about the indictments. There are
6 nine indictments read to you by the clerk earlier. Four of
7 those pertain to the incidents that occurred in the
8 offices. Actually, strike that. Eight of those do. I
9 want to explain to you briefly what they represent. Four
10 of those charges allege that the defendant used his
11 position as a counselor to get Tom to submit to the
12 fellatio. And then there are four alternative charges that
13 just deal with the act of fellatio. So there is in essence
14 two charges pertaining to each act in the offices. And
15 then there is the one charge for the apartment. Again,
16 1984, these events occurred near to the time where the
17 defendant came to St. Bernard's. One of the elements the
18 State must prove is that Tom Grover was under 16 years of
19 age when these acts happened and Tom will tell you in order
20 to prove that, that he remembers these incidents happening
21 shortly after the defendant arrived at St. Bernard's and
22 again that was June, 1983. Tom turned 16 in November of
23 1984 I believe. Going on from 1983, the defendant still

1 was involved in Tom's life. He still had contact with
2 Tom. He still provided counseling to Tom. In fact, in
3 1985, when Tom was in some trouble, emotional trouble, he
4 was having a rough time. The defendant referred Tom to a
5 program called Beech Hill to deal with his substance abuse
6 problem and in fact he wrote a letter in support of Tom
7 where he stated, "I've known Tom as a friend and counselor,
8 a friend and counselor for seven years." So this letter is
9 written in 1985. So reaching back seven years, that covers
10 1983, from his mouth or rather from his pen. In a letter
11 in support of Tom, he says, "I have known him for seven
12 years as a friend and counselor." In 1986, the defendant
13 refers Tom to a program called Derby Lodge. Again for his
14 substance abuse problem and you're going to hear by way of
15 evidence that all of these problems that Tom is having to
16 this degree are after what he did, after what he did.

17 [Counsel pointing to Defendant]

18 But yet he is still working the dual role. The dual role
19 the evidence will show where he is at one -- on one hand
20 causing the problems and on the other hand trying to remedy
21 the problems.

22 Now, in 1986 at Derby Lodge what happens is Tom is
23 talking to a counselor by the name of Debbie Collett and

1 Tom for the first time in his life mentions what a priest
2 has done to him. For the first time in his life he
3 mentions what someone of the clergy from his church did to
4 him. Not an easy thing to do but he did it. He said to
5 this counselor, Debbie Collett, that "A priest had sexually
6 molested me." No names mentioned. Now remember who
7 referred him to Debbie Collett. He did.

8 [Counsel pointing to the Defendant].

9 And so word gets back to the defendant that Tom has made a
10 disclosure. So what does he do? That's not a good thing.
11 He goes up to Tom and he goes, "If you ever tell anyone
12 again what I did, I will hurt you." And another thing, you
13 know what else he said? "No one is going to believe you."
14 1986. He wants that silenced out. Tom leaves Keene in
15 1987. He goes to Dover, New Hampshire, he goes to
16 Portland, Maine, he goes to San Diego, California, he
17 bounces around a lot. Tom will tell you his life hasn't
18 been an easy one. He has had trouble maintaining a job in
19 any one place for a long time. He has had trouble with
20 relationships. He's had a substance abuse problem. He is
21 bouncing around and he comes back to New Hampshire in
22 1990.

23 Tom had a run-in with the law in 1990 and he will tell

1 you about that. Again, all these things after the abuse.
2 Tom finally breaks the silence -- officially breaks the
3 silence. He comes forward to the police finally and his
4 silence that he wanted to impose is broken. About ten
5 years after the abuse, he comes forward.

6 The State is going to have a witness that's going to
7 tell you about delayed disclosure. This witness is going
8 to tell you that it is the rule, rather than the exception
9 for a victim, a class of victims of sexual abuse to delay
10 sometimes considerably in disclosing the abuse. And this
11 witness will tell you because of shame, because of
12 confusion, because of sometimes fear of not being believed,
13 the witness is going to tell you some other reasons why
14 victims, again a class of victims as a rule rather than the
15 exception, delay coming forward.

16 Now, Tom, as of very recently, filed suit against this
17 man, Gordon MacRae. And the defense I anticipate is going
18 to make much to do about that. Much to do about that.
19 Tom, on the witness stand, is going to tell you why he made
20 the decision to come forward and why he made the decision
21 to file a civil suit. Tom will tell you that since this
22 happened by a priest, by a counselor, after being brought
23 up Catholic, after being an alter boy, he will tell you

1 what this has done to his life, these incidents of abuse
2 and he will tell you why he finally decided to do these two
3 things, to come forward and to sue the defendant for what
4 he did. He will tell you that it's the only way that he
5 has to be made whole or -- actually that's a misstatement
6 of what Tom will say. It's the only way that he can nearly
7 become whole and that's why he has come forward and that's
8 why he has sued the defendant. Another issue is he is in
9 counseling and counseling bills have to be paid.

10 Tom has broken the silence, the one that he imposed,
11 [indicating the defendant], and he is going to tell his
12 story to each and every one of you. Not an easy thing to
13 do. And at the close of the evidence, after you've heard
14 his story, Attorney Reynolds is going to come up at the
15 close of the case and ask you to return findings of guilty
16 on these charges that this man sexually molested Tom Grover
17 and that he did it as a counselor, as a priest. Thank
18 you.

19 THE COURT: Thank you, Attorney Gainor.

20 Attorney Koch?

21 OPENING STATEMENT OF MR. KOCH

22 MR. KOCH: If I may, your Honor, if it please the Court,
23 Attorney Gainor, Attorney Reynolds, Mr. Davis, Mr. MacRae,

1 ladies and gentlemen. This portion of our talking with you
2 is called an opening statement. It's not designed to be an
3 argument as you just heard from Mr. Gainor. It's designed
4 to try to talk with you about what we believe the evidence
5 will show in this case and I am obviously going to ask at
6 the close of all of the evidence, the close of the jury
7 instructions that you return a verdict of not guilty.

8 Now, ladies and gentlemen, there have been cases in
9 recent history and they have been all over the news of
10 alleged abuse by priests against young men. You can't open
11 the paper today almost without reading about some of those
12 and some of those allegations are true, some of those
13 allegations are false and some of those are partially
14 true. You're going to have to judge the motivation and
15 credibility of Tom Grover in this case based upon what he
16 says from that witness stand and I'm going to talk with you
17 about that for a minute. About the victimization of Gordon
18 MacRae about the easy prey that he has become as a target
19 to obtain financial remuneration from a church and from an
20 individual priest. Ladies and gentlemen, I want to talk
21 for a minute since most of you don't know, I'm assuming
22 about just the basic structure of catholicism, a little bit
23 about that and how it was set up here in particular in St.

1 Bernard's rectory.

2 Gordon MacRae graduated from a college called St.
3 Anselm. At the time he was in something called the
4 Capuchins. It's sort of an order of the Franciscans. For
5 lack of a better way to say it, Friar Tuck in Robin Hood
6 was a Franciscan. The ones who wear the cloaks and robes
7 of that time. Priests can go one of two ways in
8 catholicism. They can come and go to the religious which
9 is the Capuchins, Franciscans, any of the Benedictines or
10 they can go to become what's called a Diocesan priest. A
11 Diocesan priest is the type of priest that is here in the
12 rectory at St. Bernard's or at Marlborough or at Groveton.
13 It's the type of priest that one most commonly thinks of
14 when they think of a priest in a church setting, in a
15 school setting, in those types of situations.

16 Now, ladies and gentlemen, when Gordon MacRae finished
17 his studies, he began seminary at St. Mary's in Baltimore
18 and it's a college just like any other college that may
19 exist. They generally go to school during the main portion
20 of the year and then during the summers you are off either
21 working or maybe having an assignment as a result of the
22 schooling that you are doing and that's essentially the
23 practice that Gordon MacRae entered into and began when he

1 undertook his studies as a priest. Now after the first
2 summer of school which was 1979, Gordon MacRae was sent to
3 Sacred Heart Parish in Marlborough. And he served sort of
4 an apprenticeship or a summer internship under Father
5 Dennis Horan. He then returned to school. It was during
6 1979 during that summer that he first met the Grovers. He
7 first met Pat Grover and the remaining Grover family, Elmer
8 Grover and the Grover brothers and sisters. It was his
9 first contact with him and as Mr. Gainor said, Pat Grover
10 was fairly active in the study and practice of her religion
11 and catholicism. She was active on various parish boards
12 and church activities and she and Gordon MacRae became
13 pretty good friends.

14 Gordon MacRae, during the time that he was at
15 Marlborough, spent time talking with Pat Grover and with
16 some of the Grover kids as he would with many people
17 throughout any parish that he was associated with. Any
18 time he could be of assistance or have involvement in a
19 parish activity or in a person's life, he would do that and
20 that's a practice he began to start in 1979 at Sacred Heart
21 parish. He then went back to school basically starting his
22 second year of school and following that summer, he comes
23 back to Keene but he is not in St. Bernard's. He is in

1 another parish here, St. Margaret Mary Parish, and he
2 serves again for lack of a better word, sort of a summer
3 internship there. During this time he is meeting lots of
4 people and he -- and I am not sure I pronounced his name
5 correctly but it's Father Desireaux. It's french, but I am
6 not real positive on how to pronounce that name; and after
7 he completes that summer, he goes back again to Baltimore
8 to St. Mary's to continue his studies. During that
9 particular summer, he doesn't really have much contact with
10 the Grovers because they're over in Marlborough and he is
11 stationed here in Keene. He goes back to complete what I
12 want to call his junior year and that following summer,
13 that would be the summer between basically his junior and
14 senior year, he gets sent up to Groveton in the northern
15 part of the State, about a three hour drive north of
16 Keene. He is sent to St. Francis Xavier and he is working
17 under Father Rocheford. Gordon graduates in December of
18 1981. Now prior to December of 1981, he had some contact
19 with the Grovers but not a lot of contact. Primarily just
20 during that one summer that he was stationed here sort of
21 on a student internship. Now the way they do it in the
22 Catholic church is if a person still at that point in time
23 once they have completed their studies, if they are still

1 interested in going on to become a priest, there is sort of
2 an intermediary step and it's called becoming a Deacon. So
3 by this time Gordon MacRae has completed virtually all of
4 his studies that would be required for him to become an
5 ordained priest in the Catholic religion. And he decides
6 that he wants to go ahead and continue on in this
7 profession and they make him a Deacon at that point in
8 time. Again it's sort of an intermediary step. And when
9 Gordon becomes a Deacon, remember he has been sent to
10 Groveton and then becomes an ordained priest. Now Gordon
11 is then sent to a rectory in Hampton where he remained for
12 about a year. It was under Father Boucher and Father
13 Robichaud. He stayed in Hampton for approximately a year
14 when he was given a permanent assignment here in Keene.

15 Now ladies and gentlemen, evidence will show that Gordon
16 MacRae came and started his duties in Keene about June 15
17 of 1983. The indictments in this case charge that the
18 activities which occurred, the activities which were
19 alleged to have been illegal occurred from beginning June 1
20 of 1983 through November 17 of 1983. The reason for those
21 dates are is that November 17 of '83 is a birth date change
22 for Tom Grover. So what we're talking about is incidents
23 that occurred sometime -- alleged to have occurred in June,

1 July, August, September, October, and November. Almost a
2 six month period although the indictments starting June 1,
3 evidence will show that Gordon MacRae didn't come to begin
4 his duties here until middle of June of 1983. Now when
5 Gordon MacRae came back to his assignment here, his
6 immediate supervisor for lack of a better word was Reverend
7 Houle and I think you saw his offices there at the rectory
8 back during that time. There were priests living in the
9 rectory at the time. There were people that were employed
10 by the this rectory, serving in clerical and other
11 administrative functions. In fact, Reverend Houle's mother
12 basically lived there in the rectory back down that one
13 hall that you saw and she took care of functions when they
14 first went to the church such as taking care of offerings,
15 money, those kind of things. Now when Gordon came to this
16 rectory to begin his duties on June 15 of 1983, he
17 obviously became immersed in all kinds of activities
18 relating to the church. All kind of families. Some of
19 those people were the Grovers. He had known the Grovers,
20 he had had some contact with them and renewed some
21 association with them. When Gordon came back in 1983 to
22 begin his duties at St. Bernard's, he discovered a young
23 man, Tom Grover who he previously had known that had some

1 incredible problems.

2 Tom Grover, as was indicated by Attorney Gainor, was
3 an American indian. His parents died when he was very
4 young in a car crash in which alcohol was involved. Tom
5 began drinking at a very early age. Records from the
6 various treatment centers that Tom has been in indicate
7 that Tom began drinking as early as 11 years old, prior to
8 a time that he had known or had any association with Gordon
9 MacRae. Tom had a severe alcohol problem. Tom not only
10 had a severe alcohol problem, ladies and gentlemen, he had
11 a severe drug problem. I'm talking marijuana, cocaine,
12 amphetamines, crack cocaine, hashish, and other
13 hallucinogenics. These are all borne out by his treatment
14 records that we'll get to talking about in a period of
15 time. Tom was out of control in his life, even as a young
16 man. His alcohol problem and his drug abuse problem was so
17 severe that his family could hardly tolerate him, even as a
18 young man. Now you will see Tom Grover and Tom Grover is a
19 rather large individual. He is big like me, overweight,
20 strong young man and Tom had a chip on his shoulder when he
21 was a young man that when he used the alcohol and the drugs
22 he had a tendency to become aggressive, violent and
23 hostile. In other words, he is no shrinking violet. Tom

1 was abusive physically and verbally, even from the time he
2 was a very young man to the point that his family couldn't
3 deal with him. They were afraid of him. They were afraid
4 of what his reactions would be. Now with Tom, if you take
5 the combination of the drugs and alcohol, you add to that
6 the aggression and violence and we add an additional factor
7 crop in and that was that Tom is a thief. From the time
8 Tom was small, he stole. He stole to the point that he had
9 to be put into counseling.

10 MR. GAINOR: Your Honor, may we approach please?

11 THE COURT: Yes, you may.

12 MR. GAINOR: I am going to want a record on this.

13 BENCH CONFERENCE

14 MR. GAINOR: The basis of my objection, your Honor, certainly a
15 felony conviction within the confines of 609 is admissible
16 but now we're talking about character evidence of
17 unsubstantiated, at this point, thefts. Does not fall
18 under the ambit of 609. At this point it's a character
19 assassination without any foundation and that's the basis of
20 the objection.

21 MR. KOCH: Your Honor, this is all going to come into play in
22 terms of Gordon's contact with Tom Grover and what there
23 was discussed in terms of these counseling sessions what

1 problems we're having. The State's been allowed to portray
2 that Gordon took these very problems that he had and
3 somehow used them to fellate him. I mean if I jump right
4 to the quick of what they are talking about and what Gordon
5 did instead and where we're going to go with all this is he
6 attempted to try to get him into programs to deal with
7 these various issues. I have medical records from a Dr.
8 Rasha involving his counseling long before he met Gordon
9 MacRae involving his thievery. There is evidence in the
10 record where Mr. Grover stole from Gordon MacRae. It's
11 even admitted in his answer by his attorney that was filed
12 in the civil suit. And it was all pattern of problems that
13 we had that Gordon MacRae confronted when he was dealing
14 with Tom Grover. It's not introduced to assassinate
15 character. It's introduced to show what the nature of the
16 relationship was and what problems they were dealing with.

17 THE COURT: At this point there will be no further statement
18 concerning the question of any thievery or that sort of
19 thing. I'm not going to issue a corrective instruction at
20 this time but I do note the State's objection. And the
21 objection is sustained.

22 MR. KOCH: All right. Two other things I would like to state
23 for the record. He he has the conviction for the attempted

1 burglary. He also has the juvenile conviction for
2 shoplifting and forgery. And I think those are issues that
3 are going to be appropriate in terms of introduction of a
4 New Hampshire case and I would like to argue those.

5 THE COURT: You can argue the felony conviction but you cannot
6 argue the juvenile convictions.

7 MR. KOCH: Okay.

8 MR. REYNOLDS: So that we understand here, my understanding of
9 the burglary conviction I have given a copy to Mr. Koch is
10 that it's an accomplice to burglary. He evidently drove a
11 burglar to the site that was burgled so there is no
12 indication that Tom committed any theft. He is an
13 accomplice to a burglary because he was the wheel man going
14 to. There is no allegation he participated further than
15 that.

16 THE COURT: Well you can use that in your arguments I suppose,
17 but it can't come in.

18 MR. REYNOLDS: I want to avoid a mischaracterization of the
19 indictment in terms of the opening statement.

20 THE COURT: Okay.

21 OPEN COURT

22 MR. KOCH: Ladies and gentlemen, Tom Grover has a felony
23 conviction and his felony conviction is that he essentially

1 aided or abetted or was an accomplice to a burglary by
2 David Newman. Mr. Grover was driving a vehicle while Mr.
3 Newman entered at building at 99 Restaurants, 698 South
4 Willow Street in Manchester with the attempt to commit a
5 theft.

6 Ladies and gentlemen, this is the situation that Tom
7 Grover was in when Gordon MacRae returns to Keene, New
8 Hampshire really almost four years after their last contact
9 going from 1979 in Marlborough back to June of 1983 in
10 Keene. Now ladies and gentlemen, there were times when
11 Gordon MacRae talked with Tom Grover about some of the
12 problems that he was encountering in his life. In fact,
13 Gordon MacRae became so concerned about Tom Grover and his
14 particular situation that he went out of his way to try to
15 get Tom Grover into several different treatment
16 facilities. Expensive treatment facilities. The first of
17 which is a place called Beech Hill. Tom was taken into
18 Beech Hill and Gordon, along with another individual whom
19 you will hear about, named Jim Meehan, tried to arrange and
20 did in fact arrange for Tom Grover to be admitted into
21 Beech Hill Hospital for an in-patient residential stay.
22 During that time, Tom Grover discussed a lot of things. I
23 won't go into all of them now but we will present some

1 evidence regarding those later on in this trial. Tom left
2 Beech Hill early. He didn't complete the program
3 satisfactorily. And it was after the entry into Beech Hill
4 that then Gordon MacRae tried to help him and did in fact
5 help him get into a place called Derby Lodge. Once again,
6 a residential treatment facility primarily dealing with
7 issues of alcohol and substance abuse to try to help Tom
8 Grover deal with these problems. Now ladies and gentlemen,
9 the admissions into Beech Hill and to Derby Lodge and the
10 other treatment facilities you will hear about occurred at
11 a time after the allegations of abuse in this case. The
12 allegations of abuse were in 1983, from June to November
13 like we've previously mentioned. The entries into Beech
14 Hill Hospital and Derby Lodge occurred after those dates.
15 Now ladies and gentlemen, these treatment facilities are
16 designed to do a lot of exploring, exploration and sort of
17 some in depth analysis and counseling of an individual. In
18 other words, when you get into the programs they talk with
19 you. What's going on in your life? They give you
20 diagnostic tests. They ask you a lot of questions. They
21 have you do a lot of introspection.

22 Now, when Tom Grover went into these facilities, he
23 wanted information concerning him and his treatment and how

1 he was doing essentially to be given to Gordon MacRae.
2 Gordon MacRae arranged one time when Tom was at one of
3 these facilities for Pat Grover and one of his brothers to
4 go visit him. In other words, kind of going the extra mile
5 in terms of trying to treat him. Now, Tom was in these
6 facilities for sometimes up to days and periods as long as
7 90 days, every day counseling sessions, every day detail,
8 examination of issues that were going on with Tom Grover.

9 Now, ladies and gentlemen, Tom Grover came forward
10 partly in connection with a civil attorney. A civil
11 attorney here in Keene by the name of William Cleary. Tom
12 Grover had spoken with Mr. Cleary about the possibility of
13 bringing a suit for damages against the Diocese of
14 Manchester who has some funds and also against Gordon
15 MacRae. Mr. Cleary referred Tom Grover to an attorney
16 named Upton up in Concord about the possibility of bringing
17 a civil cause of action against the Diocese of Manchester
18 and against Gordon MacRae. That has happened. There's
19 been a suit brought for monetary damages against the church
20 and Gordon MacRae. Now ladies and gentlemen, there's been
21 a counter suit brought, a counter suit brought by Gordon
22 MacRae against Tom Grover and also against his counsel as a
23 result of bringing the civil action.

1 Now, coincidentally at the time that Tom Grover brings
2 the cause of action, he is talking to authorities here in
3 Keene at the police department. And as he begins to unveil
4 his version of events, he is talked to on many different
5 occasions by many different people. He spends hours with
6 Attorney Reynolds. He spends hours with James McLaughlin,
7 a Detective here, with Brian Clark, another officer in the
8 Keene Police Department. He spends a considerable amount
9 of time speaking with his, as he will call it, his private
10 lawyer, Mr. Upton, and as he is speaking to them and giving
11 statements at different points in time in the scenario of
12 events, there are changes that take place in the version of
13 events. Now ladies and gentlemen, Mr. Grover has made an
14 allegation that almost the first time he comes in here he
15 walks into Gordon MacRae's office to be counseled. He is
16 upset and Gordon MacRae walks over, out of the clear blue,
17 unzips his pants and fellates him. With no other
18 explanation or description or anything else.

19 Ladies and gentlemen, the evidence in this case is
20 going to come from that witness stand. It's not what Mr.
21 Gainor said or what I'm saying. It's your assessment and
22 evaluation of what these people are going to say and what
23 the judge tells you is the law. When this case is done, I

1 think you're going to have a clear picture of what happened
2 here, what the motivations are, and I'm confident that you
3 will return a verdict of not guilty in good conscious.

4 Thank you.

5 THE COURT: Thank you, Attorney Koch.

6 Ladies and gentlemen, those were the opening statements
7 and the State will be putting its first witness on the
8 stand but that won't be until tomorrow morning at 9:00. So
9 I want you to be here at 9:00. I want to remind you not to
10 discuss anything about this case with anyone, not among
11 yourselves or with anyone else. And as my order says as
12 you know from your written orders that you have, you are
13 not to watch anything about this on television or listen to
14 it on the radio or certainly not read it in the newspaper
15 and if anyone does approach you, just tell them, "Look, I
16 am on the jury. I cannot talk about that. I am ordered
17 not to talk about this case." We want to thank you very
18 much for your patience and your service today and we'll
19 start tomorrow at 9. Bailiff, you can take charge of the
20 jury.

21 THE COURT: I would like to have counsel approach for a moment
22 over here.

23 (Jury Dismissed)

1 (Discussion held off the record)

2 HEARING OUT OF THE PRESENCE OF THE JURY

3 THE COURT: It's my understanding that counsel may have some
4 objections.

5 MR. GAINOR: Yes, your Honor.

6 MR. GAINOR: Pertaining to Attorney Koch's opening statement,
7 one of the major issues under the theory of opening the
8 door to previously inadmissible evidence and I am sure this
9 is going to be a reoccurring theme throughout the trial.
10 Addressing the first time that this has come up, Attorney
11 Koch ended his opening statement by saying look at the
12 inconsistencies or more appropriately said the
13 improbability of Tom Grover's story and he said that all of
14 a sudden they are in the rectory and out of the clear blue
15 the defendant goes and unzips Tom's pants and fellates
16 Tom. Well in reality, that's not the situation. Obviously
17 in much of this case we're operating within a fix for lack
18 of a better word. Back in 1979 the defendant actually
19 molested Tom Grover in the rectory of Marlborough when he
20 was there for the summer internship. There was also
21 another occasion when the defendant was driving Tom Grover
22 to an airport to drop one of Tom's brothers off and during
23 that ride the defendant reached over and as I understand

1 the allegation fondled the defendant over the clothing --
2 I'm sorry -- fondled the victim over the clothing and I
3 believe there was one other incident involving driving in a
4 car and driving off of the road and similar type of
5 fondling of Tom's genital area. The State did not attempt
6 to 404-B in this evidence during that hearing but now I
7 believe that that 404-B exclusion to these acts no longer
8 applies because under Fecteau and progeny under the theory
9 of opening the door, a defendant has a misleading advantage
10 in a nutshell. They have a misleading advantage by making
11 that representation to the Court that it came out of the
12 blue because in reality and this is a search for the truth,
13 in reality there was prior contact between Mr. MacRae and
14 Tom Grover.

15 THE COURT: Thank you, Attorney Gainor. Attorney Koch?

16 MR. KOCH: If I might respond. First of all, I understood
17 opening arguments were to indicate what evidence was
18 supposed to show but when I listened to Attorney Gainor it
19 sounded like a closing argument the entire time. I did not
20 object out of politeness and that's exactly what these
21 are. These are not evidence. They are not anything the
22 jury should consider other than the fact to give them some
23 direction or guideline. The evidence will come from the

1 witness stand as I pointed out to listen to what the
2 witnesses say in terms of trying to ascertain. What he
3 does say is that that's exactly what happened, that he sort
4 of broke down and Gordon MacRae walked over and unzipped
5 his pants. Even Attorney Gainor said that and I commented
6 on it. That's exactly what he said during his opening that
7 he walked over, unzipped his pants, and fellated him and it
8 was really a recitation of what I heard from Attorney
9 Gainor.

10 MR. GAINOR: Your Honor, in very brief rebuttal it was the
11 characterization of the indicted incident occurring out of
12 nowhere with no prior contact and how to a jury that would
13 seem unreasonable or unbelievable. And the State wishes to
14 put the truth before the jury on that issue. Attorney
15 Reynolds has one other issue dealing with the opening.

16 THE COURT: Let me be clear. I didn't get the second date.
17 You said there was -- the 1979 incident.

18 MR. GAINOR: In Marlborough, correct, your Honor.

19 THE COURT: What was the other one?

20 MR. REYNOLDS: I believe there were two other incidents of
21 fondling that took place between 1979 and the 1983
22 allegations that are actually charged. Those involved
23 trips in the car in an automobile with the defendant, your

1 Honor.

2 MR. GAINOR: And last, your Honor, the Fecteau case -- I don't
3 know the cite offhand, deals precisely with an attorney's
4 opening statement and that opening statement leading to the
5 introduction of previously suppressed I believe it was
6 another burglary that was previously suppressed that came
7 in because of the attorneys opening statement.

8 THE COURT: Obviously I am not going to rule on this --

9 MR. DAVIS: One thing I would like to point out. The
10 difference between this and the Fecteau case is that it was
11 the State in its opening that said there was this
12 counseling session and all they -- they didn't use the term
13 out of the blue. They said Mr. MacRae closed the door,
14 locked the door, came over, went over to Mr. Grover,
15 unzipped his pants and fellated him with there being
16 nothing said and at most, opposing counsel merely commented
17 upon the statement the State created and to argue that
18 somehow opens the door on prior bad acts evidence which all
19 has to do with the character of the defendant is although
20 creative, somewhat disingenuous, your Honor.

21 MR. REYNOLDS: Well, no, your Honor. We've all known and this
22 has been briefed by both parties with great labor prior to
23 coming in here today. We know what the issue is. The

1 allegations are that this individual has sexually assaulted
2 Thomas Grover numerous times. Some of those assaults
3 because of the nature of the offense are beyond the statute
4 of limitations. It doesn't mean this didn't happen, it
5 doesn't mean they aren't factual and it doesn't mean the
6 defendant didn't do them, we can't get into them for 404-B
7 purposes unless the door is opened but to say as Mr. Koch
8 did that out of the clear blue sky significantly indicates
9 that there had been no untoward contact before that date of
10 that first charged assault. That is not the case and the
11 State has the evidence to refute that allegation. The jury
12 has now left for the day. They have heard the allegation
13 that this is the first assault that ever occurred on Tom
14 Grover. They have heard that information from the lips of
15 the defendant's counsel. Under Fecteau the door is solidly
16 firmly swung open and the State ought to be allowed to give
17 a history of the circumstances between these people so that
18 the jury does understand that this thing did not arise out
19 of the blue. It was part of well established behavior on
20 the part of the defendant insofar as this particular victim
21 is concerned.

22 THE COURT: Thank you. I'm not going to rule on that from the
23 bench. I want to take a look at the cases and think about

1 your two opening statements and come up with a decision. I
2 will probably have the decision -- I am thinking maybe we
3 can get together tomorrow morning at 8:30 or quarter of 9.

4 MR. REYNOLDS: Your Honor, I have already made scheduled meeting
5 times with witnesses for witnesses, assuming that we do not
6 start before 9:00. It's very disruptive in terms of all
7 the witnesses we potentially have in the case if I have to
8 shift those times around.

9 THE COURT: In that case, we'll get it out of the way around
10 9:00. Is there anything further?

11 MR. DAVIS: Just on the timing issues. I understand your
12 Honor is going to potentially conduct an in camera
13 examination of Ms. Goupil?

14 THE COURT: Yes.

15 MR. DAVIS: Can we expect your Honor will issue an order this
16 afternoon?

17 THE COURT: Yes.

18 MR. DAVIS: The reason being just to whether or not we have
19 the opportunity to talk to Ms. Goupill and whether she will
20 be released under the subpoena.

21 THE COURT: You can expect an order in half an hour.

22 MR. DAVIS: Thank you very much.

23 THE COURT: Anything further?

1 MR. REYNOLDS: No.

2 (End of Day 1 of Jury Trial)

3
4
5
6 CERTIFICATE

7
8 I, Lorena Werner Patria, Certified Court Reporter for
9 the State of New Hampshire and Official Court Reporter in
10 the above-captioned matter, do hereby certify and affirm
11 that the foregoing transcript, pages 1 through 67,
12 represents a true and accurate transcription, to the best
13 of my skill and ability, of my stenotype notes taken in the
14 above-captioned matter.

15
16 Date

3-16-95


Lorena Werner Patria, CSR
Certificate #47

17
18
19
20
21
22
23