

COPY

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS

SUPERIOR COURT

\* \* \* \* \*  
THE STATE OF NEW HAMPSHIRE  
V.  
GORDON J. MACRAE  
\* \* \* \* \*

#93-S-0218, et al.

TRIAL BY JURY

Volume II

Pages 1 through 80

BEFORE:

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

DATE:

Tuesday, September 13, 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)

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

HEARING OUT OF THE PRESENCE OF THE JURY

1  
2  
3 THE COURT: I apologize to the press. I know that we had made  
4 other arrangements but I discovered that apparently it's a  
5 tradition in this courtroom not to have the press in that  
6 box and another judge complained and I've made a decision  
7 to move the press. Far be it from me to ever do anything  
8 that is not traditional.

9 I guess the first question is the question of whether or  
10 not the door was opened yesterday during the opening  
11 statement by Attorney Koch and I considered that last  
12 night. I had drafted a written decision. It's based on my  
13 knowledge of the case of the testimony that the State has  
14 represented, other evidence the State has represented that  
15 could be used of other bad acts unindicted acts in this  
16 case. So I'm just going to read the decision here now. In  
17 his opening statement for the defendant, Attorney Koch  
18 described the alleged victim, that's Tom Grover, as a big,  
19 strong young man who had some history of violence toward  
20 other people in response to the State's opening which  
21 provided that during a counseling session the defendant  
22 broke the alleged victim down to crying and then unzipped  
23 the victim's pants and performed fellatio on him. Mr. Koch

1        stated "Mr. Grover has made an allegation that almost the  
2        first time he comes in here he walks into Gordon MacRae's  
3        to be counseled. He is upset and Gordon MacRae walks over,  
4        out of the clear blue unzips his pants and fellates him  
5        with no other explanation or description or anything  
6        else." The State has evidence that Gordon MacRae molested  
7        the alleged victim years before on several occasions when  
8        the victim was younger and smaller. If the jury finds the  
9        evidence of the earlier molestation is credible, then it  
10       appears the events of the counseling session that led to  
11       the indictments were not out of the blue. The evidence of  
12       the prior acts was suppressed by the Court because our  
13       system of justice insists, and properly so, that a person  
14       must not be convicted because he may have done bad things  
15       or may be of bad character, but may only be convicted for  
16       committing the acts charged. However, under our Rules of  
17       Evidence, specifically Rule 404-B, evidence of bad acts may  
18       come in under very limited circumstances and with limiting  
19       instructions. I believe that Attorney Koch's clear blue  
20       comments magnified the issue of Gordon MacRae's opportunity  
21       or chance to commit the charged acts to such an extent that  
22       it would be an injustice to prevent the State from  
23       introducing those acts. Credibility and opportunity are at

1       this point the two most important factors in this case,  
2       since opportunity is so important to the State's case and  
3       it would be an injustice to keep the evidence from the jury  
4       and since the State's representations and the anticipated  
5       testimony of the victim, that is from those representations  
6       there's clear proof of the acts that can be cross-examined  
7       and the evidence is relevant for a purpose other than  
8       showing character or disposition, that is the purpose of  
9       showing opportunity and because of the importance of this  
10      evidence to the State, I find that the probative value of  
11      the prior acts outweighs the prejudice to the defendant,  
12      the evidence is of course relevant and may be presented to  
13      the jury. I will give a limiting instruction to the jury  
14      prior to this evidence coming in, and the limiting  
15      instruction will read as follows: You will hear testimony  
16      that the defendant Gordon MacRae, sexually abused Tom  
17      Grover when Grover was younger, prior to the dates in the  
18      indictment. If you find the testimony and evidence of  
19      those prior acts to be credible, then you may use the  
20      evidence of those acts in deciding whether Mr. MacRae had  
21      the opportunity to commit the acts alleged in the  
22      indictments. You may not, however, use the evidence of the  
23      other acts to proof that Mr. MacRae committed the indicted

1 offenses. You may only use it to decide whether Mr. MacRae  
2 had the opportunity to commit them. You may find Mr.  
3 MacRae guilty of the indicted crimes only if the State has  
4 proved beyond a reasonable doubt that he committed them.  
5 Now I will be issuing a more detailed written order with  
6 proper citations for the record on the opening the door  
7 question. Is there anything further from counsel?

8 MR. REYNOLDS: Thank you, your Honor.

9 THE COURT: Thank you. Now we have another issue. The State  
10 has filed a motion for the detention of a material  
11 witness. Attorney Reynolds or Gainor?

12 MR. GAINOR: Since I drafted the motion and Attorney Reynolds  
13 may be a witness, as the Court knows, your Honor, this  
14 witness is a material witness to the State. Tom Grover in  
15 1986 when he was at Derby Lodge made a disclosure of sexual  
16 abuse to a Debbie Collett who was his therapist at the  
17 center. By way of background, the defendant referred Tom  
18 Grover to the centered Derby Lodge. The disclosure was  
19 non-specific in that Tom did not mention the defendant by  
20 name. What he said was I have been sexually abused by I  
21 believe it was someone from the clergy. This got back to  
22 Gordon MacRae after that disclosure and at that time Gordon  
23 MacRae threatened Tom Grover with serious harm for that

1 disclosure to Debbie Collett. He also told Tom that, "No  
2 one would believe you" and this goes directly to the  
3 delayed disclosure which I'm sure the defendant will make  
4 much to do about. It also goes to a prior consistent  
5 statement of a sort -- more accurately a prior disclosure.  
6 The defense's theory is that this is all financially  
7 motivated and that that's Tom Grover's main reason for  
8 coming forward with these allegations. The fact that he  
9 made a disclosure before that motive was apparent,  
10 according to the defense, flies in the face of the  
11 defendant's theory of the case and is highly, highly  
12 relevant. As detailed in the affidavit in the motion,  
13 Debbie Collett when notified by Attorney Reynolds last  
14 night that she would be needed today, said that she had a  
15 job interview and could not make it and would not make it.  
16 Strike that, your Honor. We wanted her to be here  
17 Wednesday and she said she can't do it. She has a job  
18 interview. Then to accommodate her, we said well Tuesday,  
19 she can testify today and we would provide transportation  
20 for her to and from the Court and she said Attorney  
21 Reynolds then asked her for her address for transportation  
22 purposes. She failed to give it. Attorney Reynolds tried  
23 to appease her, tried to accommodate her as much as

1 possible and eventually she hung up on Attorney Reynolds.  
2 It's the State's position that she has given every  
3 indication after being properly subpoenaed that she will  
4 not comply with the subpoena. In the RSA cite authorizes  
5 the Court where there is a material witness where they have  
6 given indication that they will not comply with the  
7 subpoena that the Court has the authority to arrest that  
8 witness and detain that witness until her testimony has  
9 been given in court.

10 THE COURT: Thank you, Attorney Gainor. Anything from the  
11 defense in this matter?

12 MR. KOCH: Your Honor, this was the witness that we had  
13 initially brought to the Court's attention some time ago  
14 and asked for an order and release to be allowed to talk to  
15 her. Instead of getting the release, the State went out  
16 and procured a release from Tom Grover and went and  
17 interviewed and then produced a result of that interview  
18 about four months later. I have had discussions recently  
19 with Ms. Collett. She is very upset with the State's  
20 attorneys and she indicates -- and I think she should be  
21 heard about that -- basically she would be on hold for  
22 three weeks and by God she would come down when they wanted  
23 her to come down. She explained she is unemployed, her



1 house is currently in the process of being foreclosed, she  
2 is trying to get a job and has some job interviews and  
3 needs some advance notice about when and where she is  
4 supposed to appear. Now when I talked to her and the  
5 reason I called was that we had finally gotten our release  
6 and I wanted to talk to her. She was furious with me. She  
7 said, "I am sick of this whole thing. I want nothing to do  
8 with it. I have been so harrassed by the County Attorney  
9 in Cheshire with threats of arrest and other things. I  
10 don't want anything to do with this. Why don't I have any  
11 rights? Why can't I have somebody represent me? Why can't  
12 I call the Judge and talk to him and explain what my  
13 circumstances are?" I tried to tell Ms. Collett -- I said,  
14 "All I am doing, ma'am, is calling to ask you, I have a  
15 release and an order saying that I am permitted to  
16 interview you because the State put you on their witness  
17 list. I would like to do so. I am sure no one is trying  
18 to interfere with your life or harass you. It's kind of  
19 the nature of the system." Now I don't have any reason to  
20 doubt what Attorney Gainor is saying because I wasn't there  
21 and present for the conversation but I think rather than  
22 having her detained or something, that maybe a more prudent  
23 thing would be for your Honor possibly to give her a call

1 to at least have her --

2 THE COURT: I think you're right. I don't want to arrest  
3 someone if there's been some kind of misunderstanding and I  
4 am not saying the State is wrong in this matter either but  
5 it's the last thing I want to do is issue an order for  
6 arrest for a citizen. I think having to do that was -- is  
7 the last thing that I want to do so if there is no  
8 objection what I intend to do is simply give her a call and  
9 then if she wants to be heard, we'll make arrangements for  
10 a time either later today or maybe early tomorrow morning  
11 when we can talk with her here in court on the record and  
12 we can explain from all of our points of view why we think  
13 it's important that she testify.

14 MR. GAINOR: Your Honor, just for the record, I don't want the  
15 Court to view the State as being draconian in its method of  
16 getting Ms. Collett here. We have tried everything we have  
17 as far as diplomacy and propriety and everything has failed  
18 and Attorney Reynolds would gladly take the stand to  
19 testify to all of his proper condoling and methods to get  
20 her here which have failed.

21 THE COURT: No, I understand and I am sure all of us have seen  
22 these occasions before as attorneys and maybe -- she may  
23 not respond to me either but I hope so and maybe we can get

1       it straightened out that way. She is obviously an  
2       important witness. Also I'm not ruling on whether or not  
3       this evidence you have described, the State has described  
4       will be permitted in the court either but we will -- but I  
5       will talk to her today if I can get ahold of her and if  
6       it's absolutely necessary I may have to do something but I  
7       certainly don't want to.

8   MR. DAVIS:     Just so it's clear for the record, she was  
9       subpoenaed to be in attendance when? I realize the State  
10      was willing to have her.

11  THE COURT:     My understanding was Wednesday and the State said  
12      maybe Tuesday would be better for you.

13  MR. DAVIS:     I just want to be clear.

14  MR. KOCH:      I had some other matters I would like to address.  
15       I would like to invoke the sequestration rule. We have  
16       heard openings but not our first witness and I would ask  
17       the Court to also advise to have the county attorney advise  
18       potential witnesses they are not to discuss their testimony  
19       amongst each other either before or after testifying.

20  THE COURT:     That's right. At this point the sequestration  
21       order which I think was in effect before but at least at  
22       this point it certainly is in effect and I expect all  
23       counsel to brief their witnesses as to the limits of this

1           order. Now is there anything further?

2   MR. KOCH:       I have some other motions but not on that issue.

3   MR. REYNOLDS: May we approach on that issue please?

4   THE COURT:     On the sequestration issue?

5   MR. REYNOLDS: Yes.

6   THE COURT:     Record?

7   MR. REYNOLDS: No, your Honor, not for the State.

8                               (Discussion held off the record.)

9   MR. KOCH:       Your Honor, I had one additional issue I would  
10           like to bring to the attention of the Court. I know this  
11           is a rather unusual request and rarely granted if ever but  
12           I would like access to the grand jury testimony of Thomas  
13           Grover. My reason for doing so is for the first time  
14           yesterday I learned the location of where some of the  
15           alleged indictments in this case took place. From day one,  
16           your Honor, the representation to this Court, the  
17           representation throughout all of the discovery in the  
18           deposition or interview of Tom Grover, for a year and a  
19           half we've had a representation that the four acts of  
20           alleged fellatio during counseling took place in that  
21           southeast corner office. If you remember where we went  
22           into the main entry area it was the first office to the  
23           left.

1 THE COURT: Yes, I do remember it.

2 MR. KOCH: Now yesterday in opening argument I heard Attorney  
3 Gainor make reference to alleged incidents that had  
4 occurred in another office. In fact an office next door.  
5 It was the office that I pointed out had been used by Fred  
6 LaFond, the cemetary director. In fact I think his sign,  
7 little name plate, was sitting in there. Now, your Honor,  
8 I filed a motion for bill of particulars quite sometime ago  
9 and I was upset about several things. One, I wanted to  
10 know when did this happen. You've given me a five month  
11 period of time and you can't narrow it down any more than  
12 that just that it happened during four different sessions.  
13 The Court denied that and said because time wasn't an  
14 element of the crime that was sufficient notice. I also  
15 had requested specific notice about where these incidents  
16 took place. Well the basic response was they took place in  
17 that particular office. Now I have my suspicions as to why  
18 there's been that change and I might just note to the Court  
19 that Gordon MacRae wasn't in that office for part of that  
20 summer. He wasn't in there, even in the entire rectory  
21 during the entire time period and there is some other  
22 problems that had occurred. Now for the first time I learn  
23 that Tom Grover has once again done another shift in terms

1 of his evidence and even last Friday, when we did the  
2 interview, that wasn't mentioned. I know that makes  
3 fertile impeachment material but I am concerned now about  
4 the location of where these incidents took place and I  
5 think that the only way I may be able to verify and, is to  
6 be able to review the grand jury and see if there's any  
7 discussion in any form or fashion or in the alternative ask  
8 the Court to review that in camera. I am not trying to  
9 invade the province of the grand jury but I think the  
10 location of an incident and why there's been this change  
11 even in Detective McLaughlin's reports, your Honor, and he  
12 is the case detective investigating, gone out there to the  
13 rectory, etc. I mean he puts in no uncertain term these  
14 incidents took place in this room and that causes me some  
15 concern here when I've got the goal post essentially moved  
16 to another position on the field right when I'm in the  
17 middle of the game. So I would request the Court consider  
18 an in camera review of the grand jury transcript to  
19 ascertain whether or not there's been any discussion about  
20 the location of the alleged acts, the Class A and Class B  
21 felonies, what I call a greater and lesser included  
22 offenses during the counseling sessions.

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

1 MR. REYNOLDS: Thank you, your Honor. The Court would note the  
2 indictments as drafted, for example, this is Indictment No.  
3 0218. This is a Class B Felony, the alternative or lesser  
4 included offense charged and they all read similarly. "Did  
5 purposely engage in sexual penetration with TG, a male who  
6 was then and there 13 years of age or older and under 16  
7 years of age and not MacRae's legal spouse and that while  
8 TG was in a St. Bernard's parish rectory office, MacRae  
9 placed TG's penis into MacRae's mouth thereby performing  
10 fellatio." The State has been as specific as it could be  
11 with the information at that time. It did not specify a  
12 particular office because it was unaware of the particular  
13 offices until just recently. So the defendant has been  
14 charged that it took place in an office. There was no  
15 attempt at the time to attribute ownership or possessory  
16 interest in those -- in that office or offices because the  
17 State was unaware of the information. The State was  
18 unaware of the information as I recollect at the time of  
19 grand jury and there is no record of the grand jury. There  
20 was no transcript or recording of the grand jury made. So  
21 the State believes it's put defendant on notice. It's  
22 testified an office that would limit it to as far as I can  
23 tell one of three rooms that we looked at yesterday,

1 actually one of two rooms we looked at yesterday and I  
2 guess since the rooms involved, as far as we can tell share  
3 a wall -- they have a common wall, the State would be hard  
4 put to understand how the defendant couldn't properly  
5 defend this case, given the proximity of the two offices  
6 involved. I believe the State has given what notice it  
7 could at the time and has considered continued to do so.  
8 Oh, just so your Honor is aware, my understanding about why  
9 Mr. Grover perhaps did not give the information during the  
10 interview done last week is that because he wasn't asked to  
11 by the interviewer, Mr. Davis. And besides, grand jury is  
12 a secret proceeding and I believe this judicial system in  
13 the state has a strong aversion to disclosing grand jury  
14 information even in camera.

15 THE COURT: Well the motion is denied. Obviously there aren't  
16 transcripts of the grand jury proceedings. The place is  
17 not an element of the offense. The question was not asked  
18 during the interview. I don't think it's prejudiced the  
19 defendant. That's my reasoning. Is there anything  
20 further?

21 MR. DAVIS: Your Honor, just if we could on the record, in  
22 light of your order yesterday which I believe was entitled  
23 documents to be sealed dated September 12, 1994, I would



1       just like to note the exception of the State [sic.]. We  
2       believe that the order prevents us from having adequate and  
3       reasonable and necessary discovery to be able to properly  
4       prepare our proofs.

5   THE COURT:   I'll just you correct you. You mean the exception  
6       of the defendant.

7   MR. DAVIS:    Sorry, your Honor.

8   THE COURT:    That's fine. We all do that.

9   MR. DAVIS:    We believe that it fails to give us the  
10       opportunity to have fair investigation and to adequately  
11       prepare for trial as guaranteed by the 14th Amendment to  
12       the Federal Constitution and as guaranteed by Article 15,  
13       Part 1 of our State Constitution. Thank you very much,  
14       your Honor.

15   THE COURT:    Thank you. Anything further before we bring the  
16       jury in?

17   MR. GAINOR:   No, your Honor.

18   THE COURT:    Thank you. We'll recess for five minutes.

19   MR. KOCH:     I'm sorry, your Honor. I note in the order the  
20       Court read about opening the barn doors so the cows can  
21       come out. I would like to register my objection. I know  
22       it hasn't formally been entered.

23   THE COURT:    The Court notes your objection.

1 MR. REYNOLDS: I meant to bring this up yesterday but the parties  
2 have arrived at some stipulations. My understanding in  
3 speaking with Mr. Koch is that they do not contest Tom  
4 Grover's date of birth as November 18, 1967 and also do not  
5 contest that Mr. MacRae and Tom Grover have never been  
6 married.

7 THE COURT: Okay.

8 MR. REYNOLDS: Have I stated it properly?

9 MR. KOCH: The Court may take judicial notice of those two  
10 facts.

11 THE COURT: Okay. Thank you.

12 MR. REYNOLDS: I am not after judicial notice, I'm after a  
13 stipulation.

14 MR. KOCH: That's the stipulation.

15 THE COURT: The Court notes the stipulation and we'll use it  
16 appropriately. Thank you.

17 (Recess)

18 OPEN COURT

19 THE COURT: Before we begin with the State putting its  
20 witnesses on, I just want to ask you whether any of you  
21 have heard or read anything about the case and if you have  
22 I just want you to raise your hand and we'll talk about  
23 it.

1 (No response from the jury)

2 THE COURT: So no one has. That's fine. Just remember the  
3 order and if anybody gives you any trouble, wave that  
4 written order around in front of them. Okay. Attorney  
5 Reynolds?

6 MR. REYNOLDS: May it please the Court, ladies and gentlemen of  
7 the jury, Thomas Grover.

8 THOMAS GROVER

9 who, having been first duly sworn, was called as a witness and  
10 testified under oath as follows:

11 THE COURT: Good morning, Mr. Grover. I want to remind you to  
12 speak up when you give your testimony because all of the  
13 jurors have to be able to hear and this room is not  
14 particularly good as far as carrying sound, okay.

15 THE WITNESS: Yes.

16 DIRECT EXAMINATION: (by Mr. Reynolds)

17 Q Please state your name for the record spelling your last  
18 name?

19 A Thomas A. Grover, G-R-O-V-E-R.

20 Q And Mr. Grover, how old are you?

21 A 26 years old.

22 Q And what's your date of birth please?

23 A 11/18/67.

1 Q And Mr. Grover, do you see a former Roman Catholic priest  
2 in the courthouse today that you recognize?

3 A Yes, sir.

4 Q And what's his name?

5 A Gordon MacRae.

6 Q And will you point him out and describe what he is wearing  
7 please?

8 A He is wearing a blue shirt and gray tie, glasses.

9 Q Am I standing behind him?

10 A Yes, sir.

11 MR. REYNOLDS: Let the record show that the victim has  
12 identified the defendant, Gordon MacRae.

13 THE COURT: The record so shows.

14 Q Mr. Grover, may I call you Tom?

15 A Yes.

16 MR. KOCH: Your Honor, excuse me. I don't -- he keeps  
17 walking and standing right in front of my view of Mr.  
18 Grover and I need to be able to see the witness.

19 THE COURT: Yes, you do. Maybe you should speak from the  
20 podium, Attorney Reynolds.

21 MR. REYNOLDS: I just came over to gather my gear so I could be  
22 able to do that. Thank you, Mr. Koch, for reminding me.

23 MR. KOCH: Thank you, Mr. Reynolds.

- 1 Q Tom, where did you grow up?
- 2 A I grew up in Marlborough, New Hampshire.
- 3 Q And what are your parents' names?
- 4 A Patricia Grover and Elmer Grover.
- 5 Q And where did you live in Marlborough when you were growing  
6 up?
- 7 A The corner of Frost and School Street.
- 8 Q And did you have any brothers and sisters?
- 9 A Yes, I did.
- 10 Q How many brothers and sisters?
- 11 A I had seven siblings.
- 12 Q And I'm going to ask you if you would please in terms of  
13 your brothers, can you name them in terms of the order of  
14 their age, oldest to youngest and where you fit in that  
15 scheme?
- 16 A I have three older brothers, Chris, Jay and David and then  
17 I have a sister, Suzanne, and then myself and then I have a  
18 sister, Jennifer, a brother, Jon, and a brother, James.
- 19 Q And is that pretty much the order of their ages?
- 20 A That's exact order.
- 21 Q Oldest to least oldest?
- 22 A Yes.
- 23 Q Tom, when you grew up in Marlborough, did you have any

1       particular sports or things that you liked to do in the  
2       family?

3   A     Yes, played baseball.

4   Q     And did your brothers also play baseball with you?

5   A     Yes, they did.

6   Q     Did you have any sports or things that you do today?

7   A     Not really.

8   Q     You seem a bit nervous to me today. Are you?

9   A     Yes, I am.

10   Q     So you're not your usual self as you're testifying today?

11   A     Correct.

12   Q     Let me ask you now you've identified Gordon MacRae here  
13       today. Do you recall when he first came in contact with  
14       your family, what the circumstances were?

15   A     He was a seminary student on an internship type of deal at  
16       Sacred Heart Church in Marlborough.

17   Q     And was your family a member of that church?

18   A     Yes, it was.

19   Q     And had you performed any function in that church prior to  
20       or during the time Mr. MacRae was there?

21   A     I was a member of that church. I also served as an alter  
22       boy.

23   Q     Do you recall how old you were when you first came into

1 contact with Gordon MacRae?

2 A No, not the exact age.

3 Q If it's summer of 1979, is it fair to say you would have  
4 been 11 years old?

5 MR. KOCH: Your Honor, I object to the leading nature of the  
6 question.

7 THE COURT: Sustained.

8 Q How old were you in the summer of 1979?

9 A 11 years old.

10 Q Thank you. Now what part did the Catholic church play in  
11 your life growing up, up to 1979, say?

12 A Up to that point as far as I can remember I was always  
13 brought up a Catholic. Very rarely did not go to church on  
14 Sundays, maybe because of sickness but outside of that  
15 always attended church. Had my first communion and just  
16 really -- you mean my family's function also or just  
17 mine?

18 Q Sure, your family's, too.

19 A My mother had something to do with Catholic schools. I'm  
20 not sure exactly what that was but she used to go to  
21 meetings with Pastor Horan that was also the head Pastor  
22 when MacRae was at his internship.

23 Q Is it fair, and correct me if I'm wrong, that the family

1        had a strong connection with the church while you were  
2        growing up?

3        A     Very.

4        Q     Was going -- was not going to Catholic church when you  
5        were growing up an option for you?

6        A     No, it wasn't.

7        Q     I recall you told me of an incident concerning the Bishop  
8        of Manchester coming over for I guess Sunday Christmas  
9        mass?

10       A     Yes, sir.

11       Q     Tell the jury about that if you would please?

12       A     I'm not sure of the exact year. It was Christmas morning.  
13       My family was having the usual Christmas morning  
14       celebration of opening presents and things like that. The  
15       Bishop was saying mass at Sacred Heart Church in  
16       Marlborough and I wanted to say mass with him. I thought  
17       that was a real privilege to do so. I got up that morning  
18       and got all dressed up and walked over to the church by  
19       myself and said mass with the Bishop that morning.

20       Q     And is that sort of experience that you just related to us  
21       typical of your devotion to the church when you were a  
22       young kid?

23       A     Yes, sir.



1 Q How were you taught as you were growing up to feel about  
2 Catholic priests?

3 A My mother always raised us to be -- to look at them as the  
4 head of the church but also that they were the voice of  
5 God, that we learned things through them about our moral  
6 values and about the way our lives should be.

7 Q Were priests considered by you -- you just described them  
8 as spiritual leaders. Were you trained that they were to  
9 be considered by you as leaders in every day life as well?

10 A Yes.

11 Q You mentioned Father Horan, I believe, who was stationed at  
12 that church at one time?

13 A Yes.

14 Q And was Father Horan ever back before Mr. MacRae came onto  
15 the scene? Did Father Horan ever come over to the house  
16 for dinner or something like that?

17 A No. He used to come -- the only occasions I recall him  
18 coming to the house were to pick my mother up for school  
19 meetings, Bingo. My mother volunteered a lot of her time  
20 for the church. A few occasions where we had gone skiing  
21 and done church functions but I don't ever recall him  
22 coming over for a meal or just to spend his free time  
23 there.



1 Q Now you've indicated I believe that Mr. MacRae came on the  
2 scene while he was an intern at the local church while he  
3 was in the seminary studying for the priesthood?

4 A Correct.

5 Q I have to warn you that's Keene water. Let me rephrase  
6 that and ask you a different question. Up to the time that  
7 Father MacRae or Mr. MacRae, as he was then known, came  
8 onto the scene, what was it like growing up in a large  
9 family?

10 A Well, it was fun but difficult because you only had two  
11 parents and everybody was not the same personality --  
12 personalities weren't the same and it was really difficult  
13 to be able to kind of -- like to have the full attention of  
14 either one of my parents.

15 Q Just too many kids to spread the attention around on?

16 A Right.

17 Q What was your relationship with your mother again prior to  
18 MacRae coming on the scene?

19 A It was always -- I was always closest to my mother than I  
20 was with my father. I did a lot of things with my father  
21 but I was more in touch with my mother.

22 Q Was your father as engaged with the family, especially the  
23 sons as your mother was?

1 A Well, my father coached a lot of sporting teams and we -- I  
2 guess that was more or less our interaction with him was  
3 through various teams that he had coached was pretty much  
4 the time we had got to spend with him. Again an occasional  
5 fishing outing of something like that but my mother was  
6 really a more steady every day kind of --

7 Q I see. So what I seem to have a picture here is your  
8 father when he is engaged in the athletic teams and that  
9 sort of thing, it's not individually engaged with the male  
10 members of the family?

11 A Right.

12 Q Do you recall how Gordon MacRae first came to be involved  
13 with your family?

14 A Yes. My brother -- actually all my brothers had always  
15 been paperboys and at the time my brother, David, had a  
16 paper route and it was customary that because these routes  
17 were so big that other members in the -- other male members  
18 in the family -- the other boys helped each other out with  
19 parts of the route, parts of the paper route and so on that  
20 particular route the rectory was one of those customers.

21 Q So would you or your brothers deliver papers to the rectory  
22 on a regular basis?

23 A Right. So we had met MacRae first and before he had met --

1       really met with my mother. My father really didn't --  
2       wasn't a steady member of the church as opposed to  
3       everybody else in the family.

4   Q   When you delivered papers to the rectory, did you see the  
5       intern, Gordon MacRae, there on a regular basis?

6   A   Yes, I did.

7   Q   And this would be the first summer that you had met him?

8   A   Yes, it is.

9   Q   I'm going to ask you to describe for me please, Tom, or  
10       describe for the jury actually if anything happened when  
11       you were on your paper route over at the rectory in  
12       Marlborough to give you some concerns about Mr. MacRae that  
13       summer?

14  MR. KOCH:       Your Honor, I previously registered a 404-B --

15  THE COURT:       That's right and I will give a limiting  
16       instruction at this time for the jury. Ladies and  
17       gentlemen of the jury, you will hear testimony that the  
18       defendant, Gordon MacRae, sexually abused Tom Grover when  
19       Grover was younger prior to the dates in these  
20       indictments. If you find the testimony and evidence of  
21       those prior acts to be credible, then you may use the  
22       evidence of those acts in deciding whether Mr. MacRae had  
23       the opportunity to commit the acts alleged in the

1        indictments. You may not, however, use the evidence of the  
2        other acts to prove that Mr. MacRae committed the indicted  
3        offenses. You may only use it to decide whether Mr. MacRae  
4        had the opportunity to commit them. You may find Mr.  
5        MacRae guilty of the indicted crimes only if the State has  
6        proved beyond a reasonable doubt that he committed them.  
7        You may continue, Attorney Reynolds.

8        MR. REYNOLDS:     Thank you, your Honor.

9        Q     Let me ask you, Tom, was it on your paper route at the  
10        rectory that something first happened that caused you some  
11        real concerns about Mr. MacRae?

12        A     Yes, there was.

13        Q     Can you tell the jury please, relate to them how you  
14        happened to be over there in the rectory that summer in  
15        1979 and take them through what happened please?

16        A     Well first of all, uhm, it was not unusual for me to  
17        deliver the paper and go inside for a donut or something to  
18        drink with Father Horan and on one morning delivering the  
19        paper, uhm, MacRae asked if I wanted to come inside and  
20        have a donut and coffee so I went inside and had, uhm, a  
21        donut and something to drink and went into the other front  
22        room of the rectory and we had conversation and, uhm, I  
23        don't recall what that was and upon leaving, uhm, I went

1 to, uhm -- the way the rectory is set up is there is a  
2 kitchen and then a dining room where the dining room table  
3 and then there is the front room that has a seating area  
4 with some book shelves and stuff and then all those rooms  
5 lead off into a hallway that runs in the middle of the  
6 rectory and also in that hallway there are stairs going  
7 upstairs and the hallway leads to the hall -- leads to the  
8 entryway to the -- into the rectory and there is a door  
9 there and on that occasion, we were walking out -- I was  
10 walking, getting ready to leave out the door and, uhm, as  
11 we were walking down the hallway, MacRae was behind me at  
12 first and came and slowly pushed me towards -- not pushed  
13 me but moved his body so I went towards the wall and just  
14 before we got to the door he put -- pushed me up against  
15 the wall. I had my paper bag in front of me and he pushed  
16 his weight up against me and put his arm up under my  
17 throat. He grabbed -- took his hand and grabbed my crotch  
18 area and was grinding his body up against my side. I tried  
19 to move away but because of the way we were, the door that  
20 was only approximately -- probably three feet away was  
21 ajar a little bit but the door opened towards us so even if  
22 I was able to make a quick move to get out, the door would  
23 have been -- if I had opened it up, I would have been

1        caught behind the door. I tried to move away and he pushed  
2        his weight up against me and was grinding his lower half  
3        against my body.

4    Q    Did you have anything with you at the time?

5    A    Yeah, I had my paper bag which was in front of me the way a  
6        paper bag hangs over your shoulder and down in the front so  
7        it's like a big purse but it has papers in it.

8    Q    Did the defendant say anything to you while he was fondling  
9        your genitals?

10   A    He didn't say anything.

11   Q    I know it's hard to estimate time in this sort of thing.  
12        Can you give us any idea as you look back on how long this  
13        went on for?

14   A    I can't say. I don't recall if it was a minute or longer.  
15        I really have no -- It was brief and scary and just don't  
16        -- it was so long ago I just can't remember exactly.

17   Q    Prior to this happening, had you ever been taught what to  
18        do if something like this happened from a member of your  
19        church or somebody who was planning for the priesthood?

20   A    How do I respond? No. I -- no.

21   Q    Were you able to offer any kind of physical resistance?

22   A    No. He was a lot bigger than I was at the time. So it was  
23        easy for him to put his weight and pin me and the way he



1        had his arm against my -- across my throat area, I moved  
2        -- I couldn't move backwards and I couldn't move -- he  
3        was on my left-hand side. I couldn't move away from the  
4        door area and I slid on the wall a little bit when it first  
5        happened because he pushed -- pushed me to the side like  
6        that and I turned like this and he came up and I slid on  
7        the wall a little bit and before he fully caught his arm  
8        against my throat area.

9        Q     Do you recall how this stopped? What made him stop?

10      A     I really don't recall right now.

11      Q     Did you tell anybody after you left the rectory, after you  
12      got away from him, did you tell anybody about this?

13      A     No, I was too scared. I didn't say anything to anybody. I  
14      just left and went to do the rest of the paper route.

15      Q     Tell me please how Gordon MacRae was involved in your  
16      family that summer. Was he ever over at the house?

17      A     After that incident he came to my house often. Like almost  
18      daily to visit and I think after the first mass or that we  
19      -- my mother had met him. They became very close and he  
20      became close with our family and we only lived about a ten  
21      minute walk from the church rectory so he was able just to  
22      walk over there if he wanted to which he did on several  
23      occasions but he spent a lot of time at my house.

1 Q Was that a big thing for the family? Having somebody who  
2 was planning for the priesthood to be over at the house on  
3 a regular basis?

4 A Yes, it was. It was -- it made our family more I don't  
5 know -- made my mother anyway, made it seem more special  
6 to us that he was spending a lot of time with just our  
7 family and not really a whole lot of other people.

8 Q Did he ever in that summer or subsequently did he ever buy  
9 you or other members of your family gifts or take you  
10 places, things like that?

11 A Yes, he did. He would buy food items, pizzas. He would  
12 take people out for ice cream, bought ice cream. And he  
13 sent but just after -- well, yeah he would just buy a lot  
14 of food items and things like that at first and not just  
15 after he left. He had sent me and my brother gifts and he  
16 had bought my brothers gifts but I don't recall what they  
17 were.

18 Q Do you recall if he sent you any gifts?

19 A When he went back to Baltimore he sent my brother and I  
20 programs from the World Series along with the ticket stubs  
21 and other things like I think he sent a t-shirt and the  
22 program from the World Series to us.

23 Q Now this is after he had gone back to I guess Baltimore

1       where they had the World Series that year?

2   A     Right.

3   Q     And he is still in seminary?

4   A     Right and he is still in contact with our family after  
5       that. After he had left the parish in Marlborough he still  
6       continued to keep in contact with our family.

7   Q     After he pinned you up against that wall, Tom, during the  
8       rest of that summer, what kind of relationship did you  
9       specifically have with him as compared to the other members  
10      of the family with him?

11  A     I stayed away from him as much as I could unless there were  
12      other people around but he was taking my brothers to do  
13      different things and treating them a lot better than he did  
14      me which later became a problem.

15  Q     In terms of I guess you had some jealousy because he was  
16      spending so much time with your brothers and not with you?

17  A     Correct.

18  Q     And is that because I guess of the special relationship  
19      between members of the clergy and your family that you  
20      talked about in part?

21  A     I don't understand the question.

22  Q     I think you were taught to revere priests or people coming  
23      up to be priests?

1 A I still don't understand the question.

2 Q I will withdraw it then. If you don't understand it I  
3 probably didn't understand it. At some time after this  
4 first summer and he continued to have contact with your  
5 family and I guess with you to some extent, were you  
6 jealous of the attention he was paying to your brothers?

7 A Yeah, to a certain -- it was noticeable and it made me  
8 feel uncomfortable that yeah, jealous that he would do  
9 things I thought purposely against me. Well, he would  
10 exclude me from doing things with them for unknown  
11 reasons. I think it was noticeable enough that my mother  
12 had spoken to him about that. About that very thing, why  
13 he was excluding me from the attention that he was giving  
14 two of my brothers.

15 Q And we're talking about here I guess just some brother to  
16 brother rivalry or jealousy that probably any kid in the  
17 big family would have?

18 A Correct.

19 Q Now let me take you back I think to I want to say the  
20 summer of 1981 and ask if you recall a time when your older  
21 brother, Chris, was getting a ride to the airport, I think  
22 either to join the Air Force or perhaps having completed  
23 his basic training, was going -- was flying out from the

1       airport to join his unit or something like that. Do you  
2       remember that time?

3   A     Yes.

4   Q     What was supposed to happen that day in terms of Chris  
5       going to the airport?

6   A     My older brother was getting ready to go into the Air Force  
7       and me and my younger brother, Jon, were supposed to go  
8       ride with them to take my brother and something happened  
9       where my brother didn't show up and so --

10  Q     Your brother, Jon?

11  A     My brother, Jon, didn't show up and me and Gordon and Chris  
12       went to the airport and dropped him off and uhm --

13  Q     Let me stop you there. Do you remember which airport it  
14       was that you were going to?

15  A     I don't recall. I thought it was Boston but it might have  
16       been Manchester but I was pretty sure it was in Boston.

17  Q     So I take it you went down to whatever airport and you  
18       dropped Chris off?

19  A     Yes.

20  Q     And then who was then in the car with Gordon MacRae riding  
21       back?

22  A     It was just me and MacRae in the car.

23  Q     And did you stop and visit any of his relatives?

- 1 A On two -- on that occasion we had stopped in at his  
2 sister's house and watched part of a movie and I met his  
3 sister and the kids were up in bed and her husband was a  
4 fireman and he was staying at the fire station and it was  
5 just me, him, and his sister and that was it.
- 6 Q And so you spent what an hour or two hours there, something  
7 like that?
- 8 A I think we just watched the last half of a movie and it was  
9 getting late and his sister was going to go to bed and we  
10 left. We left the house and started to come back to New  
11 Hampshire.
- 12 Q Let me ask you, so Gordon is driving I take it because  
13 you're only about 13 or so?
- 14 A Yes.
- 15 Q Where were you sitting in the car?
- 16 A I was sitting in the passenger side of the car and he was  
17 driving.
- 18 Q Were you in the front seat?
- 19 A Yes, I was.
- 20 Q And during the course of your trip back to Marlborough with  
21 the defendant driving, did you fall asleep?
- 22 A Yes, I did.
- 23 Q Can you tell us please what you were experiencing when you

1           woke up from that sleep or nap?

2   MR. KOCH:       Your Honor, we previously made a 404 on this. Any  
3           objection?

4   MR. REYNOLDS: Your Honor, I object to defendant's counsel  
5           objecting on a regular basis. I believe we have covered  
6           this all preliminarily. The Court has given its  
7           instruction and it's distracting to the witness to  
8           interrupt.

9   THE COURT:     I don't think there's been a constant interruption  
10           but I will let Attorney Koch know I will note your running  
11           objection for the 404-B issue. You may continue.

12   Q     Thank you. Tom, tell me please what you were experiencing  
13           when you were waking up from that nap in the front seat of  
14           the car?

15   A     It was night time and late and I fell asleep in the front  
16           of the car and when I woke up, uhm, Gordon MacRae had his  
17           hand on my pants and was fondling me.

18   Q     Did he actually have his hand on your penis?

19   A     Yes.

20   Q     Did he say anything to you if you recall?

21   A     No. I don't really remember, I just woke up real quick and  
22           pulled back as close to the door as I could.

23   Q     Did you pretty much stay like that until you got back to

1 Marlborough?

2 A I stayed awake the rest of the way and didn't say anything  
3 to him.

4 Q When you got back to Marlborough did you tell anybody about  
5 what had happened?

6 A No, I didn't.

7 Q And how come?

8 A I didn't know. I thought -- I just didn't know. I was  
9 too young to know what to say.

10 Q Can you tell me please why you went with the defendant on  
11 this trip alone when you look back at the instant in 1979?

12 A All those years had gone by. He still had contact with my  
13 family and he seemed to be all right. My brothers had gone  
14 places with him and I just thought it was safe to be able  
15 to go and I wanted to be with my brother before he left.

16 Q And you thought at least going into it that you would be  
17 with Jon, too, on the way back?

18 A Yes, until the very last minute, we waited and we waited  
19 and he didn't show up and we had to leave or we would have  
20 been late.

21 Q Let me take you please to the first half of 1982, I guess  
22 about a year after this incident that you had described  
23 when you were 14 years of age and ask if you recall being



1 in the car again with Gordon MacRae?

2 A Yes. Gordon was was at another parish. I'm not sure if he  
3 was in Hampton at that time but he still was in constant  
4 contact with my family coming over on more than a couple of  
5 occasions, making long trips just to come over and see us  
6 and he, uhm, came to visit us one time and I went with him  
7 to get some food in Keene and on the way there he again  
8 pinned me -- he fondled me through my pants and, uhm, he  
9 just made -- had a joking attitude about it like he was  
10 just kidding around.

11 Q Do you remember where you were -- where the car was when  
12 this incident happened when he fondled you in the car?

13 A We were going west leaving Marlborough on 101 coming to the  
14 Marlborough -- between the Marlborough town line and the  
15 Rocky Brook Motel and there is a stretch of area right  
16 there and that's when he did it in that stretch of road  
17 right there.

18 Q Can you describe to the jury to the best of your  
19 recollection exactly how he touched you or grabbed you that  
20 time?

21 A I don't know. We were kidding around and he just took his  
22 arm and pushed like that and then grabbed at my crotch area  
23 with his hand and was feeling through my pants and was

1 making a joke of it.

2 Q So unlike the time in the car you described previously  
3 where he actually had unzipped your fly and gone into your  
4 pants, this was over your pants?

5 A Yes. [Witness sobbing].

6 Q Do you need to take a break, Tom?

7 A Yeah.

8 THE COURT: That's fine. We'll recess for ten minutes. Thank  
9 you.

10 (Recess)

11 THE COURT: Mr. Grover, I just want to remind you to talk into  
12 the microphone as often as you can. I know it's difficult  
13 because you are unaccustomed to this but it's very  
14 important for the jurors to hear.

15 Q Tom, let me ask you. This defendant coming over to your  
16 family with food, pizza, treats, things like that, was that  
17 sort of thing unusual for your family to be able to have  
18 somebody coming over bringing those sorts of things?

19 A Yes, it was unusual. Not many people did that.

20 Q And were those the sorts of things that your parents were  
21 able to provide you?

22 A Excuse me?

23 Q Were your parents able to provide you on a regular basis

1 the kind of treats and things MacRae would bring you and  
2 the other kids?

3 A Yeah, they provided us with the necessary things. The  
4 things he had brought were things that were just extras,  
5 like to order ten -- eight or ten pizzas or something like  
6 that like he would do wasn't -- we did -- weren't always  
7 able to do that having that many kids in the family.

8 Q I've spoken with you of course before you came on the stand  
9 today, isn't that right?

10 A Yes.

11 Q And we've met a time or two?

12 A Yes.

13 Q Is this your normal speaking voice that you've got here or  
14 are you having some problems today?

15 A Yes, I have a hard time breathing. A lot of anxiety  
16 attacks and it's just a hard thing to talk about in front  
17 of people.

18 Q Is that one of the reasons you've had so much trouble  
19 coming forward to talk about this at all?

20 A I couldn't hear you.

21 Q Is the reason that this is difficult to talk about in front  
22 of people one of the reasons you had trouble coming  
23 forward?

1 A Yes, it is.

2 Q If you need -- if you start to hyperventilate again or  
3 something like that, let us know immediately and we'll ask  
4 the Court to take a break.

5 Q Going back a bit, Tom, to this last incident in the car in  
6 1982, you've already testified as to the two prior  
7 incidents, one in the rectory, one in the car. What led  
8 you to go with the defendant this time for this short hop  
9 to Keene from Marlborough for food or pizza or whatever it  
10 was?

11 A Just because he was still in my family's life and I just  
12 always thought that because my brothers were alone with him  
13 that it was okay if I was and so I didn't really even think  
14 twice. I would just be excited that I would be able to go  
15 and do whatever that was -- that they were doing.  
16 Sometimes I felt I don't know, just like, uhm, kids do,  
17 just like, "All right, I can go and you can't" type of  
18 thing.

19 Q And just kind of hope for the best?

20 A I never -- I thought those were just -- I didn't think it  
21 was going to happen again the way it was years, sometimes  
22 months, and I had seen him and it wasn't happening every  
23 time I saw him or he came to my house or anything like

1       that. So some time would go by and I think it was all  
2       right to be around him.

3   Q   Is it fair to say that he did a lot of nice things for your  
4       family?

5   A   Yes, he did do some things for my family that were all  
6       right at the time.

7   Q   And did some nice things for you too or at least tried to?

8   A   Correct.

9   Q   Did he ever buy your family a television set?

10  A   Yes, he did. I'm not exactly sure what year that was but  
11       he bought a big floor model television set. I don't know.  
12       I think it was 31 inches or with two big stereo speakers on  
13       the side and it had a remote and it was in a big wooden  
14       finished wood case and it sat on the floor. It was  
15       something that my parents didn't have money to spend on so  
16       he went and bought it. And he also bought other things  
17       like Walkman's and weights and gifts like that for other  
18       people in the family.

19  Q   And did he occasionally come over for holidays and things  
20       like that during the time that your family knew him?

21  A   Yes, he did. He would come over for birthdays and  
22       Thanksgiving. He came and spent Thanksgiving I think on a  
23       couple of occasions and he would come over for Christmas

1       celebrations and things like that.

2       Q     Is it fair to say that given the time Gordon MacRae spent  
3             with your family from 1979 on, when he had access to the  
4             family, he really became part of it?

5       A     Yes.

6       Q     When Gordon MacRae was ordained in 1982, were you there?

7       A     Yes, I was.

8       Q     How did you happen to be at his ordination which I think  
9             took place in Hudson, was it?

10      A     Yes.

11      Q     How did you happen to be there?

12      A     Still all that time in between he was still very close to  
13             our family and, uhm, had given us invitation to be part of  
14             his ordination in his first mass and so we went over there  
15             to be part of that.

16      Q     And was that a big day for you and for the family?

17      A     Yes. Yeah, my family sat up close to where -- to the front  
18             of the church when he was doing that and he made sure that  
19             we were able to see everything and just really was close to  
20             where my mother, talked to my mother a lot that day and at  
21             the reception and things like that.

22      Q     Was your -- where your family was seated in church, did  
23             you understand that to be a position of honor for your

1 family?

2 A Yeah. Well, I -- as far as I recall, the first -- there  
3 were tags on the seat I think and I guess someone chose who  
4 was going to sit where in the -- like in the first ten  
5 pews, there were assigned seats.

6 Q And is that the sort of thing that your family was used to  
7 in a regular mass?

8 A What's that?

9 Q Having assigned seats or being down in front?

10 A No. When you normally go to mass, you just sit wherever  
11 you feel comfortable. There's not really any assigned area  
12 to where you have to sit.

13 Q So this was a special kind of thing for you and your  
14 family?

15 A Yes.

16 Q Had you ever been to any other ordinations of any other  
17 priests prior to that?

18 A Yes, but I don't recall whose those were.

19 Q You were a bit younger then I take it?

20 A Yes.

21 Q Tom, I can't help but noticing that when you're talking  
22 you're talking to me sort of like this. [Attorney  
23 demonstrating by pausing after every couple words] Is that

1        your normal speaking voice?

2        A     No, it isn't. I'm having a hard time catching my breath.  
3        I haven't really talked in front of anybody except a  
4        handful of people and I just don't feel comfortable doing  
5        it.

6        Q     Are you able to go forward now or do you need to take  
7        another break?

8        A     No, I'm fine.

9        Q     Let me -- my understanding was in 1982 your father, Elmer,  
10       left the family. He and your mother separated?

11       A     Correct.

12       Q     And he was gone for well -- well he was gone from then on  
13       and ultimately your father and mother, Elmer and Pat, got a  
14       divorce?

15       A     Correct.

16       Q     You and your mom, the rest of the kids continued -- I guess  
17       those who were still at home continued to live in  
18       Marlborough for awhile?

19       A     Yes.

20       Q     And how did it make you feel when your father left the  
21       family?

22       A     It hurt. It hurt us all. It hurt me a lot.

23       Q     Can you tell us please why did it hurt you particularly?



1       What led up to that?

2    A    Well for a long time I thought it was my fault because my  
3       father had picked me up from something and we were coming  
4       home and a receipt had dropped on the ground and I picked  
5       it up and I put it in my pocket and went inside and forgot  
6       about it and later on I had given it to my mother and  
7       that's how she found out that my father had been buying  
8       gifts for his girlfriend and when she found that out, the  
9       people in my family were hurt and blamed me because if I  
10      hadn't given her that receipt, then they thought the family  
11      would still be together.

12   Q    Of course you were just a kid and you didn't know the  
13       significance of that?

14   A    Correct.

15   Q    And so did that make you feel and even if you were unfairly  
16       blamed about that, did that make you feel isolated from  
17       your other brothers and sisters?

18   A    Yep, it did.

19   Q    Did somebody come into the family to try to help out as  
20       much as possible in terms of giving you and the other boys  
21       attention after your father left?

22   A    Yes.

23   Q    Who was that?

1 A That was, uhm, MacRae. He came and just tried to move in  
2 to be some kind of male figure in our family and he was not  
3 in the area but he would still make many, many trips from  
4 Hampton and come see us and stay overnight at our house and  
5 really just try to counsel everybody including me.

6 Q And that's because of the pain the divorce caused on the  
7 whole family, the isolation from your father, that sort of  
8 thing?

9 A Correct, and he just really -- not just the kids, but also  
10 my mother.

11 Q So he became an important figure for your mother to have  
12 around as well?

13 MR. KOCH: Your Honor, I object to the constant leading. I  
14 don't want to continually interrupt, but Mr. Reynolds knows  
15 how to ask questions.

16 THE COURT: The objection is sustained.

17 Q Tell us please as much as you can what the relationship  
18 was, what it meant to your mother as far as you can tell  
19 from the circumstances to have Gordon MacRae in the family  
20 once your family had exited?

21 A I know now that she thought it was important to have a male  
22 figure in the lives of our family because there were five  
23 boys -- no six boys and he was a priest and she looked up

1 to him and she thought that it was a good idea that he  
2 could give us good advice about how we were feeling at the  
3 time and he was also a friend of our family at the time.

4 Q Did your mother appear to you at the time to encourage  
5 Gordon MacRae to involve himself with you and your  
6 brothers?

7 A Yes. She knew how I felt about the incident surrounding my  
8 parents' separation and she encouraged me to have  
9 counseling sessions with MacRae surrounding that.

10 Q Now let me take you to June of 1983 which I guess is the  
11 time that MacRae was transferred to St. Bernard's Parish in  
12 Keene. Do you recollect that summer of 1983?

13 A Yeah. Yes, I do.

14 Q Do you recollect Father MacRae now coming to Keene?

15 A Yes, I knew he had been coming, well not just coming from  
16 Hampton but -- I don't know.

17 Q Let me ask you this. Let me ask you this. Unless you have  
18 --

19 A I have an answer but I don't know if --

20 Q Let me withdraw that question and I'll go on to something  
21 else please. When Father MacRae came to the Keene rectory  
22 to move in, were you or your family involved in that?

23 A Yes, we were. I helped -- I had helped him move into the

1       Keene rectory when he was ready to move in when he first  
2       came to Keene.

3   Q   And later on my understanding is that he switched places in  
4       the rectory at sometime. Do you have any knowledge of  
5       that?

6   A   Yes. He originally was on the third floor and I think it  
7       was just because the fact that the other rooms were already  
8       taken and he switched from the third floor to the second  
9       floor because I'm not sure who it was who left and the room  
10      was opened for him to take so he moved and I also helped  
11      him move from the top floor down to the second floor.

12   Q   How long after he had come to the rectory that first time  
13       and moved in do you recollect that he made the second move  
14       inside the rectory?

15   A   I can't -- I don't know that.

16   Q   Sometime that summer?

17   A   No, I think it might have been a little -- I really -- I  
18       don't know.

19   Q   After Gordon MacRae had moved into the rectory and  
20       established himself as a priest here in this community, did  
21       your family's and your relationship with Mr. MacRae  
22       continue?

23   A   Yes, it became even more close. He was always coming from

1       Keene and it was easier for him now to come over and than  
2       it was when he was in Hampton at the time he -- I think he  
3       really wanted to come over more from when he was in  
4       Hampton. He made a lot of phone calls to my house and it  
5       was easy because he really was able to have conversations  
6       with my mother and he felt comfortable with her and now he  
7       was just down the street and he was able to come over any  
8       time he wanted. He wouldn't even call the majority of the  
9       time. He would just come over and that became normal -- a  
10      normal pattern.

11   Q    So just like a member of the family again?

12   A    Right.

13   Q    Do you remember when you've had some substance abuse  
14       problems?

15   A    Correct.

16   Q    Do you remember approximately when you started to have some  
17       alcohol problems?

18   A    I think the first time I drank was in the sixth grade and I  
19       drank after that with my older brothers and from -- with  
20       other people and just every opportunity would just go out  
21       with them and drink and it caused my mother to be concerned  
22       that I was drinking at such a young age at that time.

23   Q    Did your mother continue to have those concerns after

1           Gordon MacRae got assigned to the St. Bernard's Parish?

2   A       Yes, she did and I know they they discussed the problems  
3           that I was having at the time and a lot of it was was  
4           around the separation. And it got worse when the  
5           separation was going on and I really started drinking.

6   Q       And was there any kind of agreement as to what would happen  
7           involving Father MacRae after he had arrived here in Keene  
8           and the alcohol was a problem for you?

9   A       My mother had encouraged me to have counseling with MacRae  
10          because -- and he told me that he had a drinking problem  
11          and that he was an alcoholic and that he could talk to me  
12          and advise me on that matter.

13   Q       And was this counseling, was this to be formal sessions  
14          like you get together at two p.m. every Thursday, that kind  
15          of thing?

16   A       No, it was more an open type of thing. He would come to my  
17          house sometimes and sometimes would just take me aside and  
18          talk to me. Other times we would go for rides and talk and  
19          we would go to the -- I mean to the rectory in Keene.  
20          That was after he got there and I spent a lot of time at  
21          the rectory when he first got there.

22   Q       Let me ask you this. When he first got to the rectory in  
23          June of '83, did you ever go into any of the offices there

1 with him?

2 A Yeah. There was base -- I mean when we went to the  
3 rectory there was no -- not really any areas that we  
4 weren't supposed to go in. It was just like being at our  
5 house. I mean we would walk around downstairs and go up to  
6 his room, watch TV or go in the kitchen and get something  
7 to drink if we wanted to and he had an office down on the  
8 first floor and we would go in there and talk sometimes.

9 Q Let me ask you about that. Now we all went, the jury, the  
10 lawyers, all went to the rectory yesterday and we had a  
11 look around from top to bottom, cellar to ceiling. I  
12 invited everybody to go into the attic but nobody wanted to  
13 go with me and I guess I can understand that. When you  
14 went to the rectory, what was the standard way when you  
15 went there with Gordon MacRae, how would you typically go  
16 into the rectory?

17 A Sometimes depending on the amount of time we were going to  
18 be there like if we just were going to be there for a  
19 little while or something, we parked his car out in front  
20 of the garage doors and walked in the doors or if we were  
21 going to be there for some time, he would open the garage  
22 door with his garage door opener and he would park his car  
23 and so it depended on what we were doing and if we were

1       inside he would park his car and we would go through the  
2       garage and up the stairwell into the -- I'm not sure if  
3       they call it an office area but where the secretary usually  
4       sat in the first room you walked in if you came in the  
5       stairwell.

6   THE COURT:     Now would that be the stairwell at the back of the  
7       building.

8   THE WITNESS:   Yes.

9   Q     So farthest away from the street?

10  A     Yes.

11  Q     And that's where the garage is located, that sort of thing?

12  A     Yes.

13  Q     Now describe for us if you will after MacRae first got  
14       there, you come up those stairs into that I guess secretary  
15       or receptionist office, whatever you do, was that office  
16       itself in the back of the building right next to the  
17       stairwell?

18  A     Yeah, that was the first room you would walk into if you  
19       came up the stairs and then the stairs went up and then  
20       they went up another landing and then there is a door,  
21       steel door there and the area there they have a desk where  
22       usually the secretary sat and that was the first room you  
23       walked into and off that room there were doors going to



1 different and other areas in the house.

2 Q Was there an office or do you recall whether or not --

3 A No.

4 Q I'm sorry. Had you finished your response?

5 A No. I need to breathe.

6 MR. REYNOLDS: Can we take a break?

7 THE COURT: Okay. I think what we could do here is break  
8 for lunch. So why don't we do that. Let's be back here at  
9 1:00.

10 (Lunch break)

11 CHAMBERS CONFERENCE

12 THE COURT: What we're going to do -- did Tim explain what the  
13 situation is? It sounds to me just from what Tim has said  
14 he talked with Ms. Collett and that we've got a question of  
15 competence here. It seems that we're going to have to have  
16 a competency hearing. Now where are we as far as both  
17 sides are concerned with this witness? Do you think she is  
18 a necessary witness?

19 MR. GAINOR: Absolutely from the State's perspective.

20 THE COURT: If she is going to be destructive from both sides,  
21 she won't assist the trier of fact.

22 MR. REYNOLDS: There is no competency issue here. I was telling  
23 Ron I got a call from her after she got -- first we got

1 word back through the system, Irwin Ward, Lieutenant Deputy  
2 Sheriff, downstairs called her up and served her a subpoena  
3 over the phone which is legal and valid under the statutes  
4 in New Hampshire. The response he got from her which he  
5 reported back to us is she refused to accept telephone  
6 service. I said fine. Serve her in hand. So Ashland P.D.  
7 is the jurisdiction where she lives, served her in hand.  
8 Then after that was done I got a phone call from her I  
9 believe on Thursday last and she was all up in arms about  
10 the fact that the subpoena listed a three week period. I  
11 attempted to indicate, "No, no, we'll get you here for a  
12 short time because you are from out of town. If you can't  
13 we'll even try to schedule you for a half day, probably an  
14 afternoon for you so you can make it here." "Well, I can't  
15 do it Wednesday. I have a job interview on Wednesday. My  
16 house is being foreclosed on. I have emotional problems.  
17 This is all very difficult." I said, "I understand that  
18 but you're not on trial. We'll work around your Wednesday  
19 appointment. We'll do it." She said, "I don't have any  
20 transportation. I don't have any money or  
21 transportation." "No matter." I said, "We'll send someone  
22 to fetch you and take you back and if need be, we'll put  
23 you up overnight in a motel, get you three squares and take

1       you back." "I can't stay away from my support system. I  
2       have to be back in the same day." "Okay. We'll arrange to  
3       keep you -- to fetch you and take you back all in the same  
4       day but you have got to call me Monday afternoon because we  
5       won't need you on Monday so that I can make arrangements to  
6       see if we're going to need you Tuesday, Thursday,  
7       whenever." "Well I don't have any money." "Call collect.  
8       Not a problem. Person to person collect." "Well no, I  
9       literally don't have any money. I don't have any money to  
10      put in the pay phone." I said, "I will federal express you  
11      some cash so that you can make the phone call. Not to  
12      worry." "Oh, no, you don't have to do that." "No, no, if  
13      you're short of funds and that's a hardship I will send you  
14      a couple bucks so you will have telephone change." "No,  
15      no, no, you don't have to do that." Well we left it that  
16      she would try to call Monday afternoon. Low and behold  
17      very close to 5:00 she calls me and gets through. I don't  
18      think it was a collect call because my secretary didn't  
19      notify it was a collect call; but in any event, she  
20      called. I said, "Hi. We would really like to get you here  
21      on Wednesday if possible." "I can't do it on Wednesday, I  
22      have this job interview." I said, "Well what time during  
23      the day is your interview? Maybe we can work around it."

1 "No, no, no." "All right. We'll do it Tuesday. We'll do  
2 it Tuesday. As I recollect our conversation in the past,  
3 we had to go down, fetch you and take you back on the same  
4 day. We'll try to get you in late Tuesday afternoon. Now  
5 give me directions, your address and where you live so that  
6 we can make arrangements to do that." "Well I'm not going  
7 to." She gave me her street address and I couldn't remember  
8 what town she lived in because I didn't have that section  
9 of the file with me. "Well what town is that?" "Well I  
10 have talked to a lawyer and he tells me you're trying to  
11 manipulate me by getting me there." I assured her that  
12 wasn't the issue. "Well I want to talk to my doctor before  
13 we make these arrangements." I said, "Fine. Is your  
14 doctor there?" "Well, no, she is not at home." "Well I  
15 didn't know where you were calling from." And then I said,  
16 "Well, at least give me this because we've got to take  
17 care of this this afternoon. If I'm going to pick you up  
18 tomorrow I have to know about it" and that's basically when  
19 she hung up on me. She is more than capable of going at it  
20 with me or Mr. Koch but for whatever reason doesn't want to  
21 testify and it's not a competency issue.

22 MR. GAINOR: More to the issue of competency probably within the  
23 past two months, I believe within the past two months

1 Detective Brian Clark did an extensive interview with her  
2 which was recorded and her responsiveness was very, very  
3 detailed and responsive to the questions. She had very  
4 good recollection and there was no issue at that time of  
5 her being uncooperative or giving any indication of being  
6 uncooperative. In fact she was quite cooperative as  
7 evidenced from the transcript and what Brian Clark had to  
8 relay when he learned of the situation we're in now.

9 MR. REYNOLDS: Just a proviso. She did have, I think she  
10 articulated to Clark, some concern at the time about the  
11 release not being as complete as it should have been for  
12 some of the information she was providing so she did have  
13 an issue there about saying well she seemed a little  
14 hesitant into some areas I guess which is what I have heard  
15 back because she felt there were some problems with the  
16 release.

17 THE COURT: What I would like to do now, apparently this Debra  
18 Warner is her psychiatrist?

19 THE CLERK: Yeah, or her physician. I think she is a  
20 psychiatrist.

21 THE COURT: I would like to have Tim call her and tell her  
22 we're all here, get her on the speaker phone and ask  
23 questions. I want to just get a feeling.

1 MR. KOCH: Well, your Honor, when I talked to her she was  
2 extremely distraught and upset and was upset with the world  
3 and about her rights not being protected and that she was  
4 losing everything and that some of the same concerns that  
5 Mr. Reynolds voiced that she had said. I thought she was  
6 completely irrational and I was trying to do everything I  
7 could to keep from alienating her because she was furious  
8 with Mr. Reynolds for whatever happened and by the time I  
9 got ahold of her I sort of got the brunt of it so I don't  
10 know what's going on with her mentally or emotionally but I  
11 think for this one I probably should have Mr. MacRae  
12 present.

13 THE CLERK: I got what was left of that.

14 THE COURT: Why don't you go ahead and get him and explain --  
15 take a moment. What we're going to do.

16 (Mr. Koch left to retrieve the defendant and brought  
17 him into chambers)

18 THE CLERK: She is going to be gone at 1:30.

19 THE COURT: Give her a call then.

20 MR. GAINOR: Attorney Koch may or may not be agreeable to  
21 stipulating but I will broach to the transcript of the  
22 conversation.

23 MR. KOCH: Your Honor, I explained to Mr. MacRae what the

1           purpose of this is.

2   THE COURT:     I'm not sure she is going to talk with us.  I  
3           don't know what will happen with this doctor.

4   THE CLERK:     She would talk with the judge but I don't know if  
5           she knows you people are here.  So I will tell her that you  
6           people are here and ask if she is willing to talk with the  
7           judge in your presence.

8   THE COURT:     Well they can ask questions.

9   MR. GAINOR:     And to possibly do away with this phone call, just  
10           an issue, would you be agreeable to introducing her  
11           transcribed interview with Detective Clark in lieu of her  
12           testifying in court.  The State would be agreeable to  
13           introducing that.

14   MR. KOCH:       No, I can't because I haven't had an opportunity  
15           to question her in detail.

16   MR. REYNOLDS:  Did Mr. Clark have an opportunity to question  
17           her?

18   MR. KOCH:       He did.

19   MR. REYNOLDS:  What information did she provide?

20   MR. KOCH:       She provided some additional information

21           (At this point Dr. Warner became available via telephone)

22   THE CLERK:     Dr. Warner?

23   DR. WARNER:     Yes.

1 THE COURT: Dr. Warner, this is Judge Brennan. I appreciate  
2 your willingness here to speak with us. We're in my  
3 chambers now and here I have Attorney Bruce Reynolds for  
4 the State of New Hampshire and Robert Gainor for the State  
5 as well, Attorney Ron Koch and Attorney JR Davis for the  
6 defendant, Mr. MacRae. Mr. MacRae is here as well. And  
7 this is going to be the -- just a kind of a hearing in  
8 which the attorneys will ask you a few questions to  
9 determine your opinion whether or not Ms. Collett should  
10 testify in this case.

11 DR. WARNER: All right.

12 THE COURT: Ms. Collett, my understanding, is downstairs?

13 THE CLERK: Yes, she is. Ms. Collett is in the building but  
14 she is not present at this hearing.

15 THE COURT: Now, Tim, would you swear the doctor in?

16 DEBORAH WARNER

17 who, having been first duly sworn, testified under oath as  
18 follows via telephone:

19 THE CLERK: Would you state your name and spell it for the  
20 record.

21 DR. WARNER: Yes. My name is Dr. Deborah, D-E-B-O-R-A-H,  
22 Warner, W-A-R-N-E-R. I have a Ph.D. in clinical  
23 psychology.



1 THE COURT: Now this is Judge Brennan. I'll ask you a few  
2 questions first. Have you been treating Ms. Collett?

3 DR. WARNER: Yes, I have.

4 THE COURT: How long have you been treating her?

5 DR. WARNER: Since early summer or actually I believe it was  
6 late spring.

7 THE COURT: Do you think there is any reason why she should  
8 not testify in this case?

9 DR. WARNER: Well considering the timing, I believe that that  
10 is the consideration here clinically for Ms. Collett. She  
11 has been unemployed and suffered a number of health  
12 problems and with the stress of testifying, she has had a  
13 clinical setback and resurgence of Post Traumatic Stress  
14 Disorder symptoms which had abated for pretty much the last  
15 ten years according to the history that I've gathered.  
16 When I was treating her earlier this year she was not in  
17 such bad clinical shape, yet now she is and I'm quite  
18 concerned about her health and her mental health at this  
19 point. She has had depressive symptoms and nightmares,  
20 flashbacks and poor sleep. So she is presenting an acute  
21 clinical picture at this point in time.

22 THE COURT: Do you think that she would be able to narrate or  
23 articulate if she were put in the courtroom in a reasonable

1 fashion, under questioning.

2 DR. WARNER: I don't believe she would be able to stand up to  
3 the pressure of being in an open courtroom with the press  
4 there and subject to a rapid cross-examination and the  
5 pressures involved in a regular courtroom proceeding  
6 whereas normally she is a very competent professional and  
7 could maintain high standards of performance under those  
8 conditions. Currently I do not believe she is capable.

9 THE COURT: When was the last time you talked with her?

10 DR. WARNER: I have talked to her several times this week at  
11 length. She has not been able to get in to see me in my  
12 office this week but I have spoken with her on the phone  
13 several hours this week.

14 THE COURT: Okay. Thank you. Attorney Reynolds or Attorney  
15 Gainor?

16 CROSS EXAMINATION: (by Mr. Reynolds)

17 Q Dr. Warner, does she presently suffer from any diagnostic  
18 psychosis?

19 A No psychosis.

20 Q Mania?

21 A Mania do you say?

22 Q Yes.

23 A No, that is not my diagnosis.

1 Q Is she mentally ill?

2 A Her mental illness is diagnosed as Post Traumatic Stress  
3 Disorder.

4 Q My understanding from the DSM-IV is that while that may be  
5 a disorder, that is not in itself a mental illness, am I  
6 wrong?

7 A Well it depends on the thresholds that you are placing for  
8 mental illness and I believe we're talking about the  
9 utility of her being able to testify in a professional  
10 manner and in that sense I would consider her too ill to  
11 testify.

12 Q Well, professional manner. She is not being called, do you  
13 understand, to offer any professional opinions?

14 A All right.

15 Q Do you understand that?

16 A Okay. I understand that now.

17 Q She is being called to ask to relate some conversations she  
18 had some time ago on tape for which a transcript is  
19 available in order to serve as a basis to refresh her  
20 memory or recollection. Do you understand that?

21 A Could you review that again with me? You have a tape of  
22 her?

23 Q We have a tape recording of her giving an interview and we

1        have a transcript of that tape recording in that interview,  
2        question and answer, both of which will be available to her  
3        to help refresh her recollection as to the information?

4        A     Okay.

5        Q     Do you foresee a difficulty with her being able to go over  
6        those documents and perhaps listen to the tape of her own  
7        conversation?

8        A     It depends on where this would take place. As I said, I  
9        don't think she would be able to concentrate and perform in  
10       an appropriate way in the courtroom. It may be that she  
11       could be deposed in private chambers or some less public  
12       way. She may be able to review these things for you and  
13       sustain near her attention for an hour or two perhaps. I  
14       haven't evaluated the full attention span but it seems as  
15       though she could do an hour, perhaps then a rest and then  
16       maybe go back to review those things again.

17       Q     Would you be surprised if I told you that any questioning  
18       of her on the part of the State would probably take no more  
19       than five minutes?

20       A     That sounds just fine.

21       Q     And perhaps cross-examination I suppose might go double  
22       that?

23       MR. KOCH:        Maybe. I don't know.

1 A Yeah. Well that's great and if that can be, then you will  
2 have a good time I would imagine with her being able to  
3 stay focused and such, however I -- it does seem from  
4 talking to her that the pressure of being in the courtroom  
5 and having such a public display would make her not able to  
6 concentrate at all and even for those five minutes. If you  
7 can manage this in some sort of private situation I think  
8 you might do well.

9 Q Do you understand she is not being asked to take sides but  
10 simply to relate some information she possesses?

11 A Sure. I have a very scant knowledge of what the case is  
12 here that you're dealing with but the case that I'm dealing  
13 with is my patient and her symptoms and what sorts of  
14 things will trigger her symptoms to worsen and being on  
15 display in the courtroom would make her worse and it might  
16 make it that she cannot concentrate on the questions you're  
17 asking her and she might break down crying and not be able  
18 to complete her testimony and she is letting you know that  
19 ahead of time and I do believe that is correct.

20 THE COURT: Dr. Warner, this is Judge Brennan. If I find her  
21 competent to testify, and I will tell you at this point it  
22 seems to me that she is, especially under the conditions  
23 that the State has just represented as to the time it would

1       take for her to testify, how -- what is the best way for  
2       me to handle this situation? I don't want to threaten her  
3       in any way. She is a necessary witness in this case. Is  
4       there a way we can do this through you or is there a way,  
5       some way to reduce the impact on her of the Court's  
6       decision to have her testify? I think she will have to  
7       testify in court and unless the counsel can agree to some  
8       other arrangement which I doubt they will be able to do,  
9       that's the way it has to be. The jury really has to be  
10      able to see her and to hear her testify before them in  
11      order to make a determination as to whether or not they  
12      agree or disagree with the particular points that she may  
13      testify about.

14   DR. WARNER:    I see.

15   THE COURT:     Can you think of a way that we can do this that  
16                    would be the best for her and still get the job that I  
17                    think we have to do done.

18   DR. WARNER:     She seemed to be quite sensitive to the press  
19                    being there and that amount of public vulnerability.

20   THE COURT:     I can remove the press.

21   DR. WARNER:     I'm sure that would make an important effect and  
22                    I'm sure she understands that the jury needs to hear her  
23                    and she wants to do a good job here.

1 THE COURT: Do you think it would be intimidating for her for  
2 me to meet with her? It would just be me, my stenographer  
3 and her and just talk about what's going to happen? The  
4 reason the stenographer is to be there is we have to have a  
5 record.

6 DR. WARNER: Yes. I would think that would be a suitable way  
7 to break any kind of news to her of whatever your finding  
8 is.

9 THE COURT: Okay. Do you think you should talk to her first  
10 before I talk to her, I mean if she called you now?

11 DR. WARNER: I'll be glad to talk to her whenever it's  
12 convenient for you.

13 THE COURT: Let's give that a try. Are you going to be there  
14 a few more minutes?

15 DR. WARNER: I will.

16 THE COURT: Okay. I'll tell you, I deeply appreciate this.  
17 Are there any questions from any other counsel?

18 MR. KOCH: This is Attorney Koch.

19 CROSS EXAMINATION: (by Mr. Koch)

20 Q Doctor, let me ask you this. How would you think she would  
21 hold up under cross-examination?

22 A As I said, I don't think that she is going to do very  
23 well. She may break down crying and not be able to

1       answer. This is going to be very, very difficult for her  
2       regardless of how short a duration it is even if it's 5 to  
3       15 minutes, she can have quite a few flashbacks within 5 to  
4       15 minutes and the stress of this might trigger her into a  
5       breakdown at that point.

6   THE COURT:    To minimize, there is a few ways that I can  
7       minimize this situation. We can have the press removed  
8       from the courtroom. I can also have the jury not there  
9       when she takes the stand, just so that she can get familiar  
10      with what the courtroom is like and then I would bring in  
11      the jury after she is on there so she doesn't have to come  
12      down and get on the witness stand and that sort of thing.  
13      I don't know. There are a few things like that I can do.

14   DR. WARNER:   I would think it would be appropriate to offer  
15      that as a choice to her. An important factor in her  
16      dealing with her illness at this point is that she can have  
17      some choice. Having been a victim herself, she needs to be  
18      able to exercise some control under the pressures and  
19      difficulties that she is having at the moment and if that  
20      is offered as a choice she might enjoy gaining a little bit  
21      of confidence that she is able to make a decision like  
22      that.

23   THE COURT:    Okay. Well what I'm going to do now is we'll



1           finish here with you and then we'll give her a phone here  
2           and she will be calling you.

3   MR. KOCH:       Your Honor, may I ask one more question?

4   Q     This is Attorney Koch again, Doctor. The PTSD that she is  
5           experiencing, is it a result of her having been a victim of  
6           abuse?

7   A     Did I just let out something that you didn't already know?

8   Q     Yes, but when you were talking about PTSD, we usually  
9           assume it's from a traumatic event of some sort?

10   A     It's from a traumatic event which she has suffered.

11   Q     Thank you.

12   THE COURT:     Judge Brennan again. Apparently she has a friend  
13           here in the courtroom. Do you think it would help if the  
14           friend could come into chambers with her.

15   DR. WARNER:    Yes, that would help.

16   THE COURT:     Okay. Thank you very much. We'll find her and  
17           she should be calling you within a few minutes.

18   DR. WARNER:    Okay.

19   THE COURT:     Good-bye. Thank you.

20                   (Telephone conference with Dr. Warner concluded at  
21                   this time)

22   THE COURT:     Why don't we have her -- do we have a room she can  
23           call from other than here? Let her know her friend can be

1       with her. Have her call her doctor and then we'll meet up  
2       here and we'll put it on the record and I will determine --  
3       I mean I think she is competent. I'm going to make that  
4       decision based on what her doctor said. If we -- I think  
5       what we will do is take the press out, bring the jury in  
6       after she is on the stand. Part of the reason I don't want  
7       the jury there is because we may determine at that point  
8       that there is a problem as well. Do you want to talk to  
9       her in advance? When do you expect to want her?

10      Tomorrow?

11   MR. GAINOR:    Do you want to take her out of order?

12   MR. REYNOLDS:  I have no problem taking her out of order.

13   MR. GAINOR:    She is here. I think now is as good a time as  
14       any.

15   THE COURT:     Okay. Let's give it a try.

16   MR. KOCH:       Your Honor, I have some problems with that until I  
17       have had a chance to cross-examine Tom. I don't want to  
18       inconvenience Ms. Collett.

19   MR. REYNOLDS:  I am not finished with direct anyway.

20   MR. KOCH:       I know that but --

21   THE COURT:     You have problems with the order of witnesses?

22   MR. KOCH:       Yes, I do and I think I don't want to have -- I  
23       will not agree. If the Court orders it that's another

1           thing.

2   THE COURT:     Let's see how it goes with me in here.   Maybe it  
3           will be okay.

4                   CHAMBERS CONFERENCE WITH DEBORAH COLLETT

5                   NO ATTORNEYS PRESENT

6   THE COURT:     Hi. I'm Art Brennan.

7   MS. COLLETT:   This is my friend, Vicki.

8   VICKI:           Nice to meet you.

9   THE COURT:     Sorry to meet you under these circumstances. I  
10           talked with Dr. Warner and she explained to me some things  
11           that I could do that might help you out in the case. I  
12           know that you're under a lot of pressure not only because  
13           of this but because of other things in your life.

14   MS. COLLETT:   My whole life.

15   THE COURT:     But what I'm going to do, I'm working on an order  
16           now. I can't find that you're not competent to testify.  
17           The evidence is necessary. Counsel has represented to me  
18           that you won't be on the stand for very long, I guess they  
19           have a few direct questions and some cross-examination.  
20           I'm not going to say it will be easy.

21   MS. COLLETT:   If you can cause the prosecuting attorney to  
22           behave himself. This man has threatened me and intimidated  
23           me since his first contact. Last night I sat in my own

1       home, every time the door slammed I thought the police were  
2       coming to get me because he threatened to have me  
3       arrested. I want that here. He knew.

4   THE COURT:     I'm not saying that. I'm saying I'm sorry but I  
5       can't do anything about that now. I can tell you you're  
6       not going to be arrested and I can tell you nobody will  
7       abuse you in my courtroom and I can tell you the press is  
8       not going to be there and I am not going to have the public  
9       there.

10   MS. COLLETT: I'm not usually like this. I'm a very competent  
11       professional normally.

12   THE COURT:     Believe me. We all have, as Willie Nelson says,  
13       our own snake to kill and there are moments in our lives  
14       that seem will never pass but you know from your own  
15       experience and I do as well that you'll get through this.

16   MS. COLLETT: This wouldn't have been an issue if that man had  
17       been a reasonable human being. I pay his salary and I get  
18       treated like this. Someone ought to put a leash on him.  
19       And I want to know everything I can do to cause that to  
20       happen.

21   THE COURT:     Well I can't do anything about it as a judge  
22       here. I mean that's something you would have to talk with  
23       a lawyer about. What I'm wondering is if we set a specific

1           time for tomorrow.

2   MS. COLLETT: No, it needs to be today. I can't do this any  
3           more. My blood pressure was up to 180/100 last night on  
4           medication. I can't. I can't keep going through this  
5           stress day after day after day.

6   THE COURT:     Okay.

7   MS. COLLETT: He can call me again and threaten me.

8   THE COURT:     No, he won't be calling you again.

9   MS. COLLETT: This man told me that he could force me to be here  
10           every single day until the 30th. When I leave here, I want  
11           something in writing that says that I'm finished. I'm  
12           serious. I don't want to have to sit in my house and think  
13           somebody is going to arrest me.

14   THE COURT:     It won't happen again. You won't have to come  
15           back and testify. Let's see, it's 2:00 now. It will take  
16           me about ten minutes out there to hear their objections.  
17           They are not going to want you to testify now. We'll take  
18           care of that. I'm going to rule that you should and we'll  
19           do it, we'll get it over with. We'll get through it and  
20           you will be able to go home and I tell you I appreciate  
21           your courage in doing what you're about to do.

22   MS. COLLETT: I tried to come down here because I couldn't  
23           reason with him. I figured it had to be somebody I could

1 reason with.

2 THE COURT: Well, I should -- I hope I'm the one.

3 MS. COLLETT: Well it wasn't even to have accessibility but I  
4 called down here and you can't talk to a judge over the  
5 phone.

6 THE COURT: No, I know. The whole system is built too  
7 difficult.

8 MS. COLLETT: And it worked for me too.

9 THE COURT: That's right.

10 MS. COLLETT: I called every Legal Aid place in the world. You  
11 know nobody can even help somebody in my position. Legal  
12 Aid said it's a criminal thing. I'm not a criminal.

13 THE COURT: No, you're only a person caught in a situation.  
14 Well let's do it, okay. Thank you.

15 MS. COLLETT: That was the last thing that Gary Gilmore said!

16 THE COURT: It's nice to meet you, Deborah. We'll go ahead  
17 and get it done.

18 OPEN COURT WITHOUT THE PRESENCE OF THE JURY

19 THE COURT: I've issued an order clearing the courtroom of the  
20 public. The order says, Having discussed the witness  
21 Debbie Collett's medical condition with her physician, the  
22 Court finds the presence of the press and public while she  
23 testifies would create a clear and present danger to her

1 health. The Court is aware of the fundamental First and  
2 Sixth Amendment Rights involved and finds there is no  
3 reasonable less restrictive alternative to closure of the  
4 courtroom during the testimony of this witness. A  
5 transcript of the hearing will be made available to the  
6 public as soon as possible after hearing. I note the  
7 defense's objection. You may want to elaborate on your  
8 objection to this witness appearing out of order but having  
9 met with the witness in my own chambers, and there is a  
10 record of that proceeding of course, I determined that I  
11 think the most satisfactory way to handle her testimony  
12 would be to have her come in here and not spend another  
13 night deeply worried about whether or not she has to  
14 testify in this case. I will tell you that she is volatile  
15 and that she holds -- she is going to be difficult for any  
16 lawyer asking questions of the witness. I told her that  
17 she could come in first. She has a friend who will come in  
18 with her and just sit in the back of the courtroom. So you  
19 can go ahead and get her. So we'll bring her in and just  
20 give her a moment, swear her in.

21 MR. KOCH: Your Honor, I think I previously made my objection  
22 to at least taking her out of order.

23 THE COURT: Yes.

1 MR. KOCH: Your Honor, I also wasn't sure if the Court was  
2 going to allow her to testify substantively.

3 THE COURT: Yes. She was articulate and certainly capable of  
4 expressing her opinion. I mean I'm trying to give you a  
5 feel of the ground before we --

6 MR. KOCH: Your Honor, for clarification I am not sure when  
7 the mandatory reporting act went into effect.

8 THE COURT: I don't know what it is.

9 MR. GAINOR: Actually, your Honor, I think that's a non-issue  
10 because I believe Tom Grover was over 18. 18 or over at  
11 the time and the reporting obligation was for minors so I  
12 believe it's a non-issue.

13 MR. KOCH: Which was her explanation.

14 THE COURT: Okay. I understand now what you're talking  
15 about. Okay. We'll bring the jury up.

16 HEARING IN FRONT OF THE JURY

17 THE COURT: All right, ladies and gentlemen, we have a witness  
18 here who will be testifying out of order. The reason for  
19 this is because of the witness' availability at this  
20 particular time. So if counsel wants, you may begin.

21 MR. GAINOR: Thank you, your Honor.

22 (Testimony of Thomas Grover suspended to allow  
23 testimony of Deborah Collett)



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(Testimony of Deborah Collett previously transcribed  
and submitted)

CERTIFICATE

I, Lorena Werner Patria, Certified Court Reporter for  
the State of New Hampshire and Official Court Reporter in  
the above-captioned matter, do hereby certify and affirm  
that the foregoing transcript, pages 1 through 80,  
represents a true and accurate transcription, to the best  
of my skill and ability, of my stenotype notes taken in the  
above-captioned matter.

Date

2/28/95



Lorena Werner Patria, CSR  
Certificate #41