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THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS

SUPERIOR COURT

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THE STATE OF NEW HAMPSHIRE *

V. *

GORDON MACRAE *

* * * * *

#93-S-0218, et al.

TRIAL BY JURY

Volume V

Pages 1 through 140

BEFORE:

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

DATE:

Friday, September 16, 1994

APPEARANCES:

For the State:

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

For the Defendant:

Ron Koch, Esquire
James R. Davis, Esquire

CLERK:

Stillman D. Rogers, Esquire

STENOGRAPHER:

Lorena Werner Patria, CSR
Certificate #41

I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Thomas Grover		5-3	5-120	
Katherine Hall	5-76	5-82	5-92	
VOIR DIRE of T. Grover	5-94/99	5-102		

EXHIBITS

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

1
2 THE COURT: Good morning, ladies and gentlemen. You will be
3 having lunch from noon to 1:30 today; and as I always say,
4 if you run into any problem of any kind, that is if you
5 read or heard anything or had any kind of a problem with
6 anyone approaching you, anything that you think could make
7 a difference in your ability to be fair, then please let
8 the Court know and you can do that through the bailiff.
9 You don't have to do that right here. Attorney Koch?

10 MR. KOCH: Thank you, your Honor.

11 THOMAS GROVER

12 (Resumed)

13 CONTINUED CROSS EXAMINATION: (by Mr. Koch)

14 Q Mr. Grover, we will be done with you sometime today I'm
15 fairly certain. Sir, let me go back to where I think we
16 left off yesterday afternoon. We got into the very first
17 incident in this timeframe on the chart behind you where
18 you made an allegation that Mr. MacRae performed an act of
19 fellatio on you and I think we were at the point where you
20 had said that you were talking a little bit about maybe
21 drinking during that particular session. Are you back with
22 me where we left off, sir?

23 A Yes.

1 Q Now I probably asked you this yesterday but let me just try
2 to get myself re-oriented. You cannot remember any
3 specifics about what was discussed during that particular
4 session?

5 A No.

6 Q Now Mr. Grover, when you went -- how did you get to the
7 rectory that day?

8 A Mr. MacRae. I rode there with Mr. MacRae.

9 Q Was that the first time that he had taken you over to the
10 rectory?

11 A No.

12 Q And your memory today, sir, is that that incident happened
13 in -- at what location in the rectory?

14 A The southeast office -- I mean the southwest office. I
15 don't know what it's marked.

16 Q All right, sir. Would it help you to flip back to the
17 diagram?

18 A Southwest office.

19 Q Mr. Grover, let me ask you this. Did you change your mind,
20 sir, about the location of where that particular incident
21 occurred because you later learned that Gordon MacRae was
22 not in that southeast office when he first came to the
23 rectory in Keene?

1 A No, I did not.

2 Q When did you learn that the office, the southeast office,
3 was occupied by Father Dan Dupuis?

4 A I didn't understand the question.

5 Q When did you first become aware that the southeast office
6 was occupied by Father Dan Dupuis in 1983 during the
7 summer?

8 A Again, I don't know any dates as far as certain days or
9 certain months. I really don't know.

10 Q To your knowledge, sir, based on your memory, was Gordon
11 MacRae ever in the office which would have been up at the
12 left corner of your chart, if you would turn around and
13 look?

14 A Yes, sir. I don't know if he ever used that office.

15 Q Sir, do you remember whether or not Father Gabriel Houle
16 was gone for a period of time during the summer of 1983?

17 A No, I don't recall.

18 Q Now, Mr. Grover, during this session, had you gone to the
19 rectory specifically for the purposes of doing some talking
20 about your problems?

21 A That I can't say because sometimes we would just ride
22 around and end up at the rectory so I wouldn't be fair, I
23 don't think, to say that every time that I ended up there

1 and him counseling me was -- he didn't come to my house
2 and say, "Okay. Let's go to my office and I'll counsel
3 you." Sometimes he would just pick me up. We would ride
4 around, maybe get something to eat, go to a store or two,
5 run errands. We would end up back at the rectory and I
6 always did little things around there and things that he
7 needed to get done and the things that I could do to help
8 him out. He sometimes asked me to run an errand here or do
9 something for him. So not every time was a counseling
10 session.

11 Q Let me go back to my question. Maybe I didn't phrase it
12 properly.

13 THE COURT: Excuse me, Attorney Koch. Is the talking outside
14 disturbing anyone?

15 (No response)

16 THE COURT: It's not a problem? Go ahead.

17 Q Mr. Grover, I think what I was trying to understand, this
18 first time that you say this incident occurred in the
19 office there at the rectory, do you have an independent
20 memory today as you sit here today about whether you had
21 gone to the rectory that time with the purpose of having a
22 counseling session?

23 A No, I don't recall if it was -- I was with him and I was

1 driving around with him. We ended up there. What led up
2 to that, we were talking in general in the office area and
3 then it got to be more personal and so we went into that
4 office and shut the door and was talking.

5 Q At this point in time, sir, Gordon MacRae is living in this
6 same building; is that a fair statement?

7 A Yes.

8 Q He has a room there and that's where he lives?

9 A Yeah, I helped him move in when he moved in there.

10 Q I believe you testified, sir, that during this session that
11 had occurred, I think to use your own words, things got to
12 be more personal in terms of the discussion between you and
13 Gordon MacRae?

14 A Yes.

15 Q Do you remember in what sense they became more personal,
16 sir?

17 A Well, if we were to have a conversation -- I don't know, if
18 we were to have a conversation right here in front of all
19 these people and then I started talking to you about
20 something about your personal life, then we just kind of
21 went into the next room to carry on the conversation but
22 not have it be so in -- in such a public way because that
23 was one of the main avenues of the house, that entry

1 office, people just walked in and out and there were people
2 in there at all times of the day so we were just talking in
3 a more personal -- to me, we just kind of went -- walked
4 into the side office and were still carrying on the
5 conversation.

6 Q What was it about the conversation, sir, that made it more
7 personal as opposed to what you're describing was occurring
8 out in, what you've labeled as the entry office?

9 A What personal means to me is anything directly concerning
10 me and I mean anything concerning me, I guess. I would say
11 in general, I would consider a personal conversation. We
12 were sitting there talking about what I did last night or
13 last week. I would consider that a personal conversation,
14 about my personal life. I'm not one to -- I don't allow
15 people to or I don't feel comfortable talking about my
16 personal life in front of anybody and everybody.

17 Q Yes, sir.

18 A So I'm just that type of person, so that's what I would
19 consider --

20 Q Do you remember what it was that was said or discussed that
21 made the conversation become personal?

22 A No, I don't remember what was said.

23 Q Now when you went into the office, sir, if I remember your

1 testimony correctly, you don't really remember how long you
2 were in the office?

3 A Correct.

4 Q But at some point in time I believe you testified that
5 Father MacRae -- Gordon MacRae began to berate you?

6 A Correct.

7 Q Belittle you and insult you, put you down?

8 A Correct.

9 Q That kind of action, sir, was something that was very --
10 you hated that, didn't you, from people?

11 A Yes, I did.

12 Q And it had happened to you, sir, on many occasions in your
13 life, hadn't it where people were criticizing or putting
14 you down even back to the time you were --

15 A No, that wouldn't be a fair statement at all.

16 Q All right. What was he telling you?

17 A Once again, I think I said that I don't remember the
18 conversation, statement by statement or word for word just
19 general.

20 Q Can you remember how he was berating or belittling you in
21 general? I guess what I'm trying to understand, Mr.
22 Grover, is it seems to me that if somebody is hammering at
23 you and putting you down and insulting you, that --

1 MR. REYNOLDS: Your Honor, I guess we're having a speech here
2 again instead of a question.

3 THE COURT: Sustained.

4 Q As you sit here today, you cannot tell this jury one thing
5 that Gordon MacRae said to you that was belittling or a put
6 down?

7 A Not from that very -- I can sit here today and say from
8 that very day I can't consciously say that I remember a
9 single statement. I know statements that he made over time
10 but I'm not going to say that I knew exactly what he said
11 on that very day.

12 Q All right, sir. Whatever Gordon MacRae said to you was so
13 painfully emotional that you broke down sobbing, crying,?

14 A Correct.

15 Q Is that a fair statement?

16 A Yes, that is.

17 Q Now, sir, did you tell Detective Jim McLaughlin when he
18 first interviewed you that Gordon MacRae was berating you?

19 A The first conversation I had with Detective McLaughlin was
20 just a basic outline of what information I had and over --
21 he took notes or whatever and then over -- over the other
22 times that we met he would ask me to try to remember
23 specific things surrounding this and I would go into more

1 detail about certain things but in the first couple
2 conversations, it was just general -- an outline of what
3 happened. There wasn't really any detail, I mean really
4 -- he just wanted me when I went in there just to feel
5 comfortable and let it come out a little bit at a time, a
6 little bit at a time. It was really tough to be there and
7 talk to him about it. It wasn't something that I felt
8 really comfortable in doing, so he made it as easy as
9 possible to just let me go where I wanted to go with it and
10 then after that we became more concentrated on specific
11 things, things like he would try to pick my memory for as
12 much detail as I could remember about certain statements
13 that I had made; and so it was kind of a build up type of
14 thing, but it was just really, really difficult to get
15 through the first time I talked with him.

16 Q Okay. Mr. Grover, to go back and ask you if you can answer
17 my question, let me repeat it for you. When you talked to
18 Detective McLaughlin on whatever occasion you talked to
19 him, did you tell him that Gordon MacRae berated you and
20 was putting you down before that incident occurred?

21 A I don't recall using berate, the word berate. I recall
22 telling him that he would emotionally break me down before
23 each time that it happened, but I don't recall ever using

1 the word berate.

2 Q Okay. Did you ever tell Detective McLaughlin that Gordon
3 MacRae was insulting you or belittling you or putting you
4 down or anything of that nature?

5 A I don't recall because Detective McLaughlin wasn't the only
6 one I had spoken to. I had spoken to Bruce Reynolds at the
7 time and before the -- before we met to go in front of the
8 grand jury, me and Mr. Reynolds had talked and I am sure I
9 had brought that up at that time too.

10 Q Okay. Now, sir, you were emotionally upset and crying?

11 A Correct.

12 Q Is that correct? Would it be fair to say, Mr. Grover, that
13 the last thing on your mind at that point in time would
14 have been some type of sexual interlude?

15 A I don't know what -- yeah, from my mind, because I don't
16 know -- I can't tell what anybody else is thinking but
17 from myself, he was just there and he -- no, I didn't know
18 what was coming down the road.

19 Q And, sir, would it be fair to say that -- how did you feel
20 about Gordon MacRae at that moment when he was belittling
21 and insulting and berating you?

22 A I think I explained that when that began I was so
23 emotionally overcome that I really just -- my mind was

1 going haywire because the reason why these counseling
2 sessions were going on was because I was such a mess and to
3 have that happen on top of it, it just -- I don't know.

4 Q Were they trying to get you into a treatment center at that
5 point in time, sir, for your alcohol abuse?

6 A No, it wasn't -- it was just sporadic drinking. Like at
7 that age I would go out with my brothers or with older
8 people and drink and so it wasn't like in later years an
9 every day occurrence or an every day -- or a more -- slowly
10 and slowly the times between when I was drinking became
11 closer and closer. Like it started out maybe I drank -- I
12 would have a drink once every two months and then a drink a
13 month and then it became a drink every other week and then
14 more drinking and more drinking and more drinking; so when
15 this was in the beginning of the stages of that, so it
16 wasn't a thing --

17 Q Mr. Grover, to answer my question, let me ask it again. I
18 asked you simply was there an effort to try to get you into
19 a treatment center at this point in time. I'm talking
20 about here in 1983 when these incidents are alleged to have
21 taken place.

22 A And I answered no, and then I went on to explain.

23 Q All right. Thank you. Now, Mr. Grover, I think you

1 explained that Gordon MacRae came over to you and he, as
2 you were sitting down, unzipped your pants, and then
3 fellated you. Is that a fair statement, is that what
4 happened?

5 A Yes, it is what happened.

6 Q And, Mr. Grover, did you -- I believe you testified, sir,
7 that you were able to obtain an erection?

8 A I don't think I said that.

9 Q Sir, did you tell Detective McLaughlin and let me read to
10 you. "For about 15 minutes, Tom stated he achieved an
11 erection during this act." Do you remember, sir, whether
12 or not you told Detective McLaughlin that you had achieved
13 an erection?

14 A There were so many incidents that I can't recall what was
15 said at any one point when I talked to Detective
16 McLaughlin. That was almost a year ago. A year ago we had
17 those conversations.

18 Q Sir, wasn't it your impression that Detective McLaughlin
19 was trying to find out what had happened from you?

20 A Yes.

21 Q And that in so doing, he would ask a series of questions to
22 try to get the complete picture, the complete story about
23 what had happened?

1 A That's correct, but when I spoke to Detective McLaughlin,
2 none of this was put in any kind of sequence. It was just
3 as I remembered things -- incidents, and it wasn't until
4 after that -- where we tried to sit down and put them in
5 any kind of a timeline say so when I spoke to him in the
6 first few conversations, it was just things that I could
7 remember, everything -- everything was very -- I had a
8 hard time talking about it and the more I talked about it,
9 the more came up and it wasn't really -- it was just -- I
10 couldn't -- I just had to talk and let it come out in bits
11 and pieces. I just couldn't sit down and couldn't sit down
12 when I talked to him and say okay, this happened in this
13 day or month or this happened, this -- it was just the
14 incidents that were the freshest in my mind.

15 Q Now Mr. Grover, it sort of is the same process that we have
16 been doing here in court, wouldn't you agree, with Mr.
17 Reynolds and myself by asking questions to try to fill in
18 some details, the process that Detective McLaughlin used to
19 try to fill them in as we are doing here?

20 A That's correct.

21 Q And, sir, you wouldn't have any reason to think that
22 Detective McLaughlin wouldn't be very professional in terms
23 of his approach in investigating and trying to get the

1 complete version of events from your perspective?

2 A I think you're going to have to ask me the question again.

3 Q Did you feel that Detective McLaughlin handled his approach
4 with you in a very professional manner?

5 A Yes, he did and that he just let me I think in the first
6 couple times I just was really ashamed and guilty of
7 everything and he just let me go about doing saying -- he
8 just let me keep talking and talking and then he did the
9 follow up. So I think he did the handling the way I needed
10 to be. I think he did a professional investigation.

11 Q Now, Mr. Grover, Detective McLaughlin writes, based upon
12 his interview with you about that first incident, "Father
13 MacRae responded by approaching him. Tom was seated at the
14 time. Father MacRae unbuttoned his pants, took Tom's penis
15 out, performed fellatio on Tom for about 15 minutes. Tom
16 stated he achieved an erection during this act but did not
17 ejaculate." Now, as you sit here today, sir, are those
18 statements and representations made by Detective McLaughlin
19 correct?

20 A Like I said, no. Then like I said they were just -- when I
21 first talked about it we -- it happened so many times that
22 way, I just talked about it and talked about it. I don't
23 know what he wrote down. I didn't read anything that he

1 had written down. I didn't look at anything that he had
2 written down. He had just written it down and just would
3 ask me general -- when I left his office during the
4 conversations I was emotional and just don't recall what
5 -- all I did was told him what had happened in my own
6 words. I never -- he never said anything about what he
7 wrote down or anything so I can't say.

8 Q Mr. Grover, do you ever remember Detective McLaughlin
9 asking you to write down some specifics about the four
10 incidents that you described that occurred in the offices
11 at St. Bernard's rectory?

12 A I don't really recall that.

13 Q I'm referring to this -- would have been December 7 of
14 1993. "I spoke with Thomas Grover and asked that he write
15 down some specifics about the four incidents of counseling
16 which resulted in MacRae performing fellatio on him." Does
17 that ring a bell at all to you as you sit here today, sir?

18 A No, it doesn't.

19 Q Did you ever write down any questions or any response for
20 Detective McLaughlin?

21 A Not that I recall and to also state that there were a lot
22 -- there is -- I don't know -- I don't know. There has
23 been a lot of conversation, a lot of emotional time in

1 between now and when that was. I can't remember everything
2 that was said or surrounding every conversation. I was
3 just all jarred really I think and --

4 Q Sir, let's go back to the rectory for a minute. Your
5 testimony was that Gordon MacRae performed fellatio on you
6 and then during this incident there was no conversation.
7 When I am talking about the incidents, I am going from the
8 moment of time when Gordon MacRae walked over to you,
9 unzipped your pants, performed fellatio on you until the
10 end of that event. Any conversation between you and Gordon
11 MacRae, sir?

12 A Which incident are you talking about? There was the
13 incident in Marlborough that was in the rectory. I
14 couldn't understand what you were talking about.

15 Q Excuse me. I don't want to confuse you. I've been
16 talking, sir, about the incident of fellatio, the first one
17 that you said occurred in the southwest office at St.
18 Bernard's rectory in the summer of 1983?

19 A And I repeatedly have said that yes, it was conversation;
20 but no, I don't remember specific statements that were made
21 but there was conversation and there was him treating me
22 the way he did and broke the way -- broke me down.

23 Q Was there conversation, sir, at the time that Mr. MacRae

1 began this sexual activity? In other words, when he was
2 unzipping your pants, when he was supposedly removing your
3 penis? I mean. Was Gordon MacRae saying anything to you
4 or were you saying anything to him at that point in time,
5 sir?

6 A No, I don't believe there was --

7 Q All right. Now it would be fair -- did you make any kind
8 of explanations -- excuse me. Exclamations. Did you make
9 any kind of a statement at that point in time?

10 A I said -- I stated that I was crying and he was -- it was
11 -- he made me -- I was crying and I was just crying and
12 crying and hurting inside. [witness sobbing].

13 Q Sir, my question was did you make any exclamation? Did you
14 say anything?

15 A No.

16 Q I didn't didn't ask you if you were crying or what you were
17 doing. I asked you if you said anything?

18 A I said in my statement, no, he didn't say anything. He
19 just was in front of me and got down on his knees and I was
20 crying. I felt like I was froze up. I was scared. I was
21 hurting inside. I didn't say anything. I froze. I didn't
22 -- I didn't do anything. I just sat there. I was just
23 crying.

1 Q Do you have any idea, sir, how you were able to become
2 erect during that process of events?

3 A No. I said that I didn't -- wasn't aware except in the
4 other office at the time that it was, uhm, kind of a
5 pleasurable feeling but what I was outside of that, I don't
6 recall -- I can't say how I got erect or I don't know why
7 that would happen. I don't understand -- I was just
8 hurting. I was just crying. I don't know anything,
9 anything for an answer like that.

10 Q Yes, sir, but let me go back for a minute. Mr. Grover,
11 isn't a sexual act, no matter at what level it's at, in
12 some sense a combination of mind and body? In other words,
13 if you don't want to obtain an erection --

14 MR. REYNOLDS: Your Honor, may we approach please?

15 THE COURT: Yes.

16 BENCH CONFERENCE

17 MR. REYNOLDS: Your Honor, my objection is basically this is
18 asked and answered. Mr. Grover has testified to the direct
19 question that he doesn't know how he was able to become
20 erect. He doesn't understand that process. It's a mystery
21 to him, as I am sure it is to most 15 year old males,
22 feeling testosterone in their body for a few years. Now,
23 Mr. Koch is asking him more specifics about how that could

1 possibly happen and I guess unless he is prepared to
2 qualify Tom Grover as an expert in biology, I think he has
3 got to take the answer he's already gotten because it has
4 in fact been asked and answered. This is just to the point
5 of badgering the witness now and re-asking the same
6 question time and time again. I've been letting this go
7 for sometime. Mr. Koch is very big on -- in spite of the
8 fact he has got the information, he continues to ask and
9 re-ask the questions that elicit the same information and I
10 just think this has gone too far. We have had a very
11 specific answer from Mr. Grover here and he says he is
12 ignorant of how this sort of thing happens.

13 MR. KOCH: Your Honor, he walks into this courtroom on four
14 occasions. He basically says, Here's what happened. Mr.
15 MacRae starts talking to me about counseling. He then
16 begins to belittle me to the point that I am completely
17 broken down. I am so hysterical and emotionally upset I am
18 just not even there. He then comes over, unzips my pants.
19 He fellates me and at this point in time I have this out of
20 body experience. So I am not really understanding. There
21 are some sort of pleasurable feelings going on. Judge, I
22 don't think that's in the realm of common human
23 understanding. I have a right to ask him about details,

1 whether he wants to talk about them or not. This young man
2 has come on and in incredible detail relates every event
3 that's ever happened to him in his life even without being
4 asked. I mean down to the detail where he is sitting in
5 the car, how he is doing, or how an arm was moved on every
6 other incident except for the ones sitting right here. Now
7 I'm trying to find out what was going on at that moment in
8 time with Tom Grover when he is claiming these acts of
9 fellatio occurred. I mean was there conversation? What
10 exactly did Mr. MacRae do? It is unbelievable to me that a
11 person in that kind of circumstances could get an erection,
12 maintain an erection; and as he later says, ejaculate.
13 Plus he says depending on when you listen to him, he said
14 it did happen that way or didn't happen that way.

15 THE COURT: I think the difficulty here is this is the first
16 State's objection along this line. I agree with the
17 State. The question was asked and answered. What you have
18 described to me is different than the way the question was
19 presented. The question is a physiological question that
20 none of us here are qualified to answer and he isn't
21 either, so for that reason the State's objection is
22 sustained.

23 OPEN COURT

1 Q Mr. Grover, as you think back today, were you able -- did
2 you have an erection? I'm talking about incident number
3 one in the St. Bernard's rectory in the summer of 1983?

4 A No, I don't recall.

5 Q Now you left the office at some point in time after this
6 incident?

7 A Correct.

8 Q Thinking back, sir, if I go to the time when let's assume
9 that Mr. MacRae has completed the act that you have
10 described as being fellatio. Did you all talk at that
11 point in time?

12 A Again, I don't understand what you're asking me.

13 Q Well, maybe I should say it this way. Was there anything
14 said?

15 A When? I don't understand what you're asking.

16 Q Okay. What I'm trying to ask, Mr. Grover, is that you
17 described that Gordon MacRae unzipped your pants, performed
18 fellatio on you, and then I'm assuming at some point in
19 time that act that you described stopped. Is that
20 assumption correct?

21 A Correct.

22 Q Okay. At that moment when the act had been completed or
23 stopped, was anything said by you?

1 A I think I stated that when I became conscious or aware of
2 my surroundings, he was in front of me and I don't recall
3 events or what had happened after that had happened. I
4 just remember him standing up and I don't remember what
5 took place or what we did afterwards. I was always just
6 out of control -- I was just --

7 Q I think you described to this jury, sir, that when this
8 event took place, you almost kind of described it like you
9 were having an out-of-body experience, I think. Were those
10 some words that you used, sir?

11 A Correct, in describing the -- one of the other incidents,
12 not specifically this one. I said also that I felt like I
13 had blacked out or just don't remember anything at that
14 time. From the time he got down in front of me to the time
15 he stood up, I said -- at some point in between there, I
16 must have blacked out and I don't remember how long I -- I
17 don't remember, but on other occasions I felt like I was
18 looking on but not -- it was happening -- but it was
19 happening but it didn't feel like me. I was just all upset
20 and I just was just -- I was just -- had no control over
21 myself. I was just numb all over and just like -- felt
22 like it wasn't me. I was just sitting there. I just
23 couldn't move. I was -- I couldn't move. I was just

1 sitting there.

2 Q Mr. Grover, would it be fair to say that when that act
3 began to occur, that you just kind of lost all sense of
4 anything? In other words, you just almost weren't even
5 there?

6 A No, I remember when he -- before when he took my penis out
7 of my pants and put it in his mouth I remember that but I
8 remember it happening and then I would just be not there or
9 just settle down enough and he would be standing in front
10 of me and that would be it. I would still be crying -- at
11 times would come around me and just --

12 Q All right. Mr. Grover, let me ask you if you remember
13 telling Detective McLaughlin this. That on that first
14 session when Gordon MacRae performed this act of fellatio,
15 that the door was closed and that you could hear others on
16 the floor and that may be why Mr. MacRae stopped the sex.
17 Do you remember telling Detective McLaughlin that about
18 this first incident, sir?

19 A No, I said that at one point at one of those times he
20 jumped up because he was startled because of something --
21 some noise perhaps but he just jumped up and just got --
22 stepped away from me and that's what I had said.

23 Q Sir, I seem to remember your testimony on direct

1 examination or maybe it was cross where there was quite a
2 discussion about the way wooden boards or floor boards may
3 creak, and in fact what kind of sound one could hear about
4 between doors. Do you remember some discussion about that?

5 A Yes, by the front office?

6 Q Yes, sir. And in fact I -- in fact I think I asked you a
7 question about audibility or noise level and you
8 immediately looked over to this door that says "No
9 Admittance" and made some kind of comment, if I remember
10 correctly, about what you could hear or couldn't hear.
11 Isn't that -- am I remembering that correctly, sir?

12 A Yes, you are.

13 Q You told Detective McLaughlin on that first occasion that
14 you could hear people outside the door? In other words,
15 movement and people in that entry office, isn't that true,
16 sir.

17 A I said that there were people there at the time. That's
18 why when it became personal conversation, we went into that
19 side office and he shut the door and there were other
20 people in that office at the time. That's the door we
21 moved over there and we went inside and shut the door.

22 Q So if I understand your testimony correctly, sir, at the
23 time this -- and I call it the first incident in the

1 rectory -- there were people in that entry office?

2 A Yes, there were.

3 Q Who was there?

4 A I don't recall who was there at the exact time. There were
5 people always coming in and out and it was the most
6 populated place in the rectory that was like the center
7 point of the rectory, that entry office so -- and it was
8 just people coming in and out; whoever might have been
9 there, the priests were there and we just went into there
10 for more privacy to talk, more personal conversation.

11 Q Mr. Grover, the office that you described as being the
12 southwest office was an office that many people used during
13 that time?

14 A No, I said Fred LaFond did at times and Mr. MacRae used
15 that more or less as his personal office but that was just
16 an office and he used it when Freddy was -- Fred LaFond
17 wasn't always there. He worked at the St. Joe's Cemetery
18 and did other things for the church and it was the most
19 available office in the rectory at the time and I don't
20 think there was -- it was assigned to anybody. I don't
21 know if any of the offices were really assigned or how they
22 came about who was where. I don't know about that type of
23 inside information.

1 Q As you think back today, do you remember how many people
2 were outside even though you don't remember who they were?

3 A Like I said, they -- I don't think anybody was sitting
4 there or standing right there. People were just coming in
5 and out of or walking in through and out on -- I don't
6 know if anybody was standing there. I think it was just we
7 were getting interrupted and he wanted to talk more
8 personal so he went and I followed him into that office
9 there.

10 Q Now, Mr. Grover, I think you also described kind of a
11 situation when we were talking about the floor boards. You
12 went into some kind of discussion about how the boards may
13 run from one room under another and how somebody may be
14 right up against the door and that may be kind of why you
15 hear creaking. Do you remember some discussion about that,
16 sir?

17 A Yes, about one of the incidents in the southeast office.
18 They had wooden floors in there and the -- this office
19 here had I believe tile -- were just tiles on the floors
20 and the same as the entry office had tiles on the floor and
21 I think it might have ended over here somewhere and then to
22 over the wooden floors in the hallways and by the stairs.

23 Q Mr. Grover, Fred LaFond runs the cemetary operations for

1 the rectory here, does he not?

2 A Yes, among other things.

3 Q And sir, in fact, he is responsible in part for plant
4 maintenance?

5 A I don't know what his specific roles are. I just know that
6 he does serve a lot of different functions at the rectory
7 for the church.

8 Q If there were some item that needed to be fixed or replaced
9 or something, do you know whether or not that would fall
10 within his scope of duties?

11 A Yes, but -- yes, it would probably; but it didn't always
12 work that way just like a lot of different things don't --
13 I mean just because my duty might be something, doesn't
14 mean that I wouldn't -- somebody else wouldn't do that for
15 me from time to time. I did little things to earn money,
16 like always go down to the rectory and do things -- jobs,
17 and I work for the rectory from time to time.

18 Q Yes, sir. I believe you told the ladies and gentlemen of
19 the jury that on one of these occasions that Gordon MacRae
20 locked the door. Do you remember that testimony correctly?

21 A Yes.

22 Q And was that in the southeast office?

23 A Yes -- no, it was -- yeah, it was in the southeast office.

1 Q And on the other three occasions that occurred in the
2 rectory in the summer of 1983, those being when the acts of
3 fellatio were alleged to have taken place, did he lock the
4 door on any of those three occasions, please?

5 A I couldn't recall. Detective McLaughlin asked me the same
6 questions and I said I don't recall if that was happening
7 and he went to close the door. He was standing in front of
8 it so I wouldn't be able to see except for that one time
9 when I was sitting by the bookshelves and I was on an angle
10 where he really didn't try to block my view and I don't
11 know if he was trying to but when he went to close the
12 door, the door was in front of him. I said I didn't know
13 if they locked them on other occasions or not. That only
14 one time that I could see that happening.

15 Q Mr. Grover, isn't it true that those locks are not operable
16 and were not operable at that point in time in history?

17 A I don't know. In 1983 I wasn't really looking to see if
18 the door -- I just know that he went over and like he was
19 locking the door.

20 Q Mr. Grover, I assume, going back to incident number one in
21 the rectory again, as you describe in the southwest office,
22 at some point in time after this black out or however you
23 would describe it, I would assume, sir, that you came to.

1 In other words, you got back to the point where you had
2 sort of presence of mind. Would that be a fair statement?

3 A Yes. I became aware enough to know what was going on
4 around me, that where I was, and I came back to that state
5 after crying and crying for what was a long time. And
6 after that happened, I was crying and slowly, gradually
7 just became aware of the things around me.

8 Q Yes, sir. Now when you were in this state of I want to
9 call it just hysterics, you mean you were sobbing and
10 crying? Gordon MacRae had no control over how you were
11 sobbing or how you were crying? In other words, the manner
12 in which you did that. Do you understand what I'm asking?

13 A He didn't have control. He had control over making me cry
14 but not that I -- that the amount of emotion I was
15 feeling. He brought it on by doing the -- what he did to
16 build me up to that point and he would just continually
17 throw in comments to make me more and more and more
18 emotional and that was what he did.

19 Q Yes, sir. Now so if I understand your testimony correctly,
20 it wasn't just enough to belittle and berate you to where
21 he got you crying; but once you started crying, he kept
22 heaping it on and making you more and more upset?

23 A Yes. He seemed to get some kind of satisfaction or -- or

1 -- or control -- like he was able to control me by doing
2 this over and over. He just looked like -- I don't know,
3 like he kept doing it and doing it and I would be crying
4 and then he would say something else and/or make a comment
5 and he would just keep doing it. He wouldn't stop and he
6 -- I could feel myself getting more and more upset and he
7 would just keep doing it.

8 Q Now, Mr. Grover, that happened each time for these four
9 instances that you have described that occurred in the
10 summer of 1983 and the southeast and southwest offices of
11 the rectory?

12 A Correct.

13 Q And this sobbing and crying, sir, that you were describing
14 occurred, did it not, while there were people in this entry
15 office?

16 A Correct. Well, I said people were passing through the
17 entry office. I don't recall if anybody was continuously
18 in where nobody was continuously present while we were
19 talking. It was more people were just walking in and out
20 or going to the kitchen or upstairs or downstairs or that
21 was the main way into the building from the church and for
22 the other priests to get to the garage so people were just
23 walking in and out. I wasn't crying at the time until

1 after we had gone into the office.

2 Q Yes, sir. But would you agree with me, sir, that neither
3 you nor Mr. MacRae had any control of any sort as to who
4 would be coming in and out of the rectory or who would be
5 present in the rectory at any given point in time?

6 A That's correct.

7 Q Now, did Gordon MacRae, on that day that we've been just
8 going through, then take you back to your home in
9 Marlborough?

10 A I said I don't remember, I don't recall what exactly
11 happened. I -- I at some point rushed to my house but I
12 don't recall when I had gone from the time I was stopped
13 crying to when we -- I don't know if early -- I don't
14 recall anything or where we went or what we did, just at
15 some point I returned to my home in Marlborough or in
16 Keene.

17 Q Would that be, sir, the next thing that you remember? Let
18 me go back to my timeline kind of. After Mr. MacRae had
19 finished performing the act of fellatio and you had blacked
20 out, is it your testimony that the next thing you remember
21 was being at your house in Marlborough?

22 A No, I said that I regained consciousness or mental
23 awareness and I would see him standing in front of me and

1 became -- and knew where I was and I just don't remember
2 what went on after that.

3 Q Okay. Until the point that it -- at some point I'm
4 assuming you remember being at your home in Marlborough?

5 A No, I eventually ended up there. I just ended up there.

6 Q Mr. Grover, do you have any memory of whether or not that
7 was the same day that you ended up back at your home in
8 Marlborough?

9 A Yeah, chances were it would be the same day but I just
10 don't recall. I don't know if it was the same day. It
11 could have been a week later. I just don't know. I just
12 ended up back at my house.

13 Q Sir, that was absolutely one of the most horrible days of
14 your entire life, wasn't it?

15 A Yes.

16 Q Now, if I remember from your testimony yesterday afternoon,
17 another similar incident would have occurred sometime
18 within that same month?

19 A Yes, that's what I said yesterday.

20 Q And the manner in which that second incident occurred was
21 almost, in many respects, was almost identical to the first
22 one?

23 A The only two things that are -- that I remember about

1 these incidents that were really the same was the fact that
2 he made me break down and he did what he did to me. I
3 don't know if I would say they were all the same.

4 Q Okay. I guess when I say the same, Mr. Grover, what I'm
5 getting at is that you went to the rectory and you began
6 some conversation, you're in an office at some point in
7 time, Gordon MacRae began to berate you. You breakdown and
8 start sobbing. And then he comes over, unzips your pants,
9 performs fellatio, you black out or leave your body or
10 whatever is happening emotionally. Isn't that sort of the
11 common thread that ran through each of those four instances
12 that you described occurring in the rectory in Keene in the
13 summer of 1983?

14 A I guess if that's how you look at it -- I don't look at
15 it. All I know is he broke me down and did what he did. I
16 don't know -- I -- I -- I wouldn't say any more than
17 that.

18 Q Mr. Grover, with respect to the second time you went back,
19 do you remember how that came about?

20 A No, I don't remember how really any time came about. I
21 wasn't expecting it to happen. I was just there. I didn't
22 know. I didn't know -- I wasn't paying attention. And I
23 was just there and I wasn't expecting it to happen the way

1 it did.

2 Q Yes, sir. But Mr. Grover, I think you remember going back
3 to the first incident that you said occurred, I mean we had
4 the situation that was supposed to have happened at the
5 rectory in the hallway where Gordon MacRae pinned you
6 against the wall, and another time when you were coming
7 back from an airport and he had unzipped your pants and was
8 fondling your penis and I think a third time where he had
9 his hand on your genitals and made some joke about it. Do
10 you remember, without going through all those details
11 again, those are three instances that you told the jury
12 about. Would you agree with that?

13 A Yes.

14 Q Sir, on each of those instances you wanted to do whatever
15 you could to basically stay away from Gordon MacRae, even
16 at that young age. Isn't that true?

17 A Yes. The difference between the times that those three
18 times happened and the other times at the rectory were that
19 he hadn't made me feel the way I did or made me -- or
20 break me down the way he did and I was aware of what was
21 happening and I pulled away when I was -- whereas in the
22 rectory I was crying. I was upset. I was confused. I
23 just wasn't -- I just couldn't move. I just sat there and

1 I was crying and I was crying and I don't know how -- I
2 was just there in the chair sitting there and I didn't --
3 I -- I didn't think about -- I don't know. I didn't think
4 about anything. I was just crying.

5 Q Mr. Grover, when you left after that -- I take it the
6 number one incident in the rectory at Keene, and once you
7 realized you were back at your house in Marlborough, you
8 certainly knew, sir, what had happened to you, didn't you?

9 A I don't recall how I reacted or how I felt -- how I felt
10 was I was just all confused. I couldn't talk to anybody
11 -- I just couldn't talk to anybody at the time. I really
12 was just confused about everything. I didn't have any
13 specific feeling about what happened. I just was -- I was
14 just messed up. I was in there for reasons of -- I was in
15 there for reasons to get help because my life was falling
16 apart and that this happened, I really just don't know how
17 I felt about the whole thing. I just -- I don't know how
18 I live with it now. It's just I do and I have different
19 feelings at different times about what took place.

20 Q Mr. Grover, let me back up. Maybe you misunderstood my
21 question. I didn't ask you how you felt or what was going
22 on, I asked you if you knew, if you had knowledge that that
23 event had occurred when you went back to your home in

1 Marlborough?

2 A Yes, I said I don't recall that.

3 Q When you went to the Keene rectory the number two time, did
4 you remember that the number one event that had occurred,
5 did you know that it had happened?

6 A Again, I wasn't consciously thinking about it. I was just
7 there. I didn't know that what was going to happen on that
8 day. I don't know what I was thinking. I was just there
9 and it happened. I wasn't -- I don't know what I was
10 thinking on that day when I went there. I was just there
11 and it happened and it happened like that. All the other
12 times, too; I just didn't see it coming. I didn't even
13 know any better. I just needed help with putting my life
14 back together and my mother and him said that that was the
15 way it would be helpful and I believed that and that they
16 knew what was best for me at the time and just followed
17 with the decisions that they made concerning the treatment
18 centers, all those things -- the counseling -- all those
19 things were decisions made for me. I just went along
20 because I thought they knew what was best for me. I didn't
21 see it coming when I was going to the office. I wasn't
22 thinking anything about it. I just was there.

23 Q All right. Mr. Grover, what I'm trying to --

1 MR. KOCH: Your Honor, I need to use the board for a second.

2 THE COURT: Yes.

3 Q What I want to show you, sir, is you've described an
4 incident that occurred in the southwest office in the
5 rectory at Keene and then I think you told the jury that
6 sort of the next thing you really were aware of somehow you
7 got home but you have no idea when that was. Now when you
8 went to the rectory in Keene in the summer of 1983 and the
9 second incident occurred, did you remember -- did you know
10 that number one had happened?

11 A I just said I have no -- I wasn't thinking about the first
12 incident. I don't know if I was or not. It was a long
13 time ago. I just was there in the office and all I
14 remember was what happened. I don't know what led up to me
15 being there. I don't know what happened after. All I
16 remember was he made me feel a certain way and then he did
17 what he did and that's all I remember.

18 Q Mr. Grover, when incident number three happened, had you
19 remembered, sir, that number one and two had occurred?

20 A Again, I was -- I don't remember what led up to me being
21 there. I was just there and it happened. I don't remember
22 anything leading up to the point of me being there and me
23 being counseled. I don't know -- I'm not aware of that.

1 Q Then would the same be true with respect to incident number
2 four, that being the -- that you didn't remember or didn't
3 know about three, two and one?

4 A That's correct.

5 Q Now, sir, I think there was a number five incident that I
6 called it and that was where there was a situation that you
7 say occurred in the third floor of the rectory, is that
8 correct?

9 A Correct.

10 Q And I think you told the ladies and gentlemen of the jury
11 yesterday that you couldn't really place it in order. You
12 couldn't say it was number five or anything like that but
13 the only thing you could say for sure is that it occurred
14 after number one. Did I understand your testimony
15 correctly?

16 A Correct.

17 Q Now, sir, wherever that incident occurred -- and I will
18 call it number five -- you state that you were on the third
19 floor of the rectory sleeping on a couch, is that correct?
20 Is that where you were sleeping, sir?

21 A That's what was in the room where I was, uhm -- there was
22 his room and a connecting room which had a couch, his TV, a
23 book shelf and I was overnight and I said I slept on the

1 couch.

2 Q You were spending the night and sleeping at the rectory.
3 Would that be a fair statement?

4 A Yes.

5 Q Now when you were spending the night and sleeping at the
6 rectory, sir, regardless of where it would fall in my
7 timeline, did you remember that these other incidents of
8 being fellated in the office had occurred? Whether it be
9 one, or two, or three, or four?

10 A Once again, I don't know what I was thinking at the time.
11 It just happened. I don't know that. It was a long time
12 ago. I just don't know what I was thinking. I was just
13 -- I was hurt and confused and things in my life also --
14 and I just needed help and he was taking responsibility to
15 try to help me and he told my mother to believe that he
16 would be responsible for me and I don't remember what I was
17 thinking on those days before or after it happened. I just
18 over the years have tried to erase all the things that
19 happened and I just tried to forget about them as best I
20 could.

21 Q All right. On that occasion, sir, I think your testimony
22 was that you were laying there on the couch in your -- how
23 were you dressed? Do you remember?

1 A Yeah, I usually just wear a t-shirt or underwear depending
2 on the time of year or I just usually sleep in my underwear
3 if it's hot out. If it's cold I usually wear just a
4 t-shirt and my underwear but I don't -- that's usually
5 been the way I have always slept.

6 Q Okay. In the summer months -- and in this situation we're
7 talking about summer of '83 -- if it was warm outside you
8 would be wearing a t-shirt and shorts or underwear or just
9 underwear?

10 A No, not always. I mean in the summer time if it's real hot
11 I sometime wear a t-shirt too because of the sweat and I
12 just use the sheet or something so I can't say that it
13 doesn't change from time to time.

14 Q Yes, sir. Would you have memory of that on that incident
15 that you described? In other words, if I take you to the
16 third floor of the rectory when this other situation that
17 I've called number five occurred, you were sleeping on the
18 couch. Do you have memory of what you were wearing that
19 night?

20 A I said I was probably wearing a t-shirt with my underwear.
21 I was sleeping at someone else's house. I might have not
22 felt comfortable and when I sleep at other people's houses
23 I usually where more than I would than if I was sleeping at

1 my house in my bed.

2 Q All right, sir.

3 THE COURT: Attorney Koch, it's 10:30. I think it might be a
4 good time to take a break now.

5 MR. KOCH: All right, your Honor.

6 THE COURT: So we'll take ten minutes now. Bailiff, take
7 charge of the jury.

8 (Recess)

9 CONTINUING CROSS EXAMINATION: (By Mr. Koch)

10 Q Tom, I'm almost done. I'm sure everybody will be relieved
11 to hear that. You testified yesterday or maybe it was the
12 day before that at some point in time Gordon MacRae had
13 threatened you because you had told Debbie Collett about
14 the abuse, is that correct?

15 A Yes, that's correct.

16 Q And that happened, sir, after you had been released from
17 the Tirrell House?

18 A That's correct.

19 Q When you were in Manchester?

20 A That's correct.

21 Q If you could, sir, I have a couple documents I want to show
22 you. Mr. Grover, let me -- what I have in records that
23 I've received from Derby Lodge and from Tirrell House

1 appears to be that you were admitted to Derby Lodge on
2 August 3 of '86?

3 A Yes.

4 Q And then released on September 13 of 1986. Is that what
5 those appear to indicate, sir?

6 A Yes.

7 Q Okay. And sir, from August of '86 until September of '86,
8 August 3 of '86 to September 13 of '86 would be about a
9 five week period, a little over a month?

10 A From the time I was discharged to the time --

11 Q From the time you were first admitted.

12 A Into Derby Lodge?

13 Q Let me just do this. If I have Derby Lodge from August 3
14 of '86 through September 13 was it?

15 MR. REYNOLDS: Yes.

16 Q September 13 of '86, what I was asking is by my way of
17 calculations, sir, that appears to be about, oh, a five
18 week period of time?

19 A Correct.

20 Q A month and ten days or something like that. Now I
21 understand and it would have been during this admission,
22 sir, that you had come in contact with Ms. Collett?

23 A Correct.

1 Q And it was during that admission, sir, I believe when you
2 said that you had told her that Gordon MacRae had abused
3 you?

4 A Correct.

5 Q Now, after you left Derby Lodge on September 13 of '86, you
6 then went to your mother's house, waiting for admission to
7 Tirrell. Would that be fair to say?

8 A Correct.

9 Q Now, sir, the records at Tirrell House, if you would look
10 at those for a minute, for your first admission indicate
11 that you were admitted on October 16 of '86, is that
12 correct?

13 A Correct.

14 Q And then the discharge date, sir, when you were out of
15 Tirrell House?

16 A January 15, 1987.

17 Q Okay. Now this one would have been about 30 days and then
18 if I calculate this correctly, that would be about three
19 months?

20 A Yes.

21 Q October to January of '87. For my clarification, the time
22 when you say Gordon MacRae threatened you to not tell
23 anybody and that you wouldn't be believed, those kind of

1 comments occurred after your release from Tirrell House?

2 A Correct.

3 Q Now that would have been approximately five months after
4 the first date of your admission to Derby?

5 A Correct.

6 Q In other words, if I jump from August of '86 to January of
7 '87, I've got about a five-month period of time in there;
8 would you agree with me?

9 A Correct.

10 Q Now during that time period I think you testified, sir,
11 that after you were released from Derby Lodge, it was your
12 father who had taken you, wasn't it, to the bus station or
13 --

14 A No, when I left Derby Lodge, I left and took Concord
15 Trailways from Berlin into Concord, New Hampshire and it
16 was my father who -- for some reason my mother couldn't
17 make it, so my father came and picked me up in Concord at
18 that time.

19 Q All right. Then I think you testified that during that
20 month or so that you were home between September 13 of '86
21 and October 17 of '86, you did have some contact again with
22 Gordon MacRae?

23 A That's correct.

1 Q Okay. Now the period of contact, sir, to the best of your
2 knowledge that Gordon MacRae had with Debbie Collett, was
3 while you were at Derby Lodge?

4 A I don't know. I wouldn't be able to say. All I know is
5 that one of the conditions that I was -- that he had made
6 that in order to help me get into Derby Lodge was that I
7 signed a release of information form so he could keep tabs
8 on me and so I can't say when he talked to Deborah Collett
9 but Deborah Collett was the only one that I had disclosed
10 anything to -- anything to and later on it came back that
11 someone had told him.

12 Q Sir, you didn't actually sign a release of information
13 form, you signed a form where Gordon MacRae would be your
14 representative after you left Derby Lodge, isn't that true?

15 A No, that -- the form that I signed gave him access to
16 information or updates.

17 Q Sir, let me show you the records that were received
18 pursuant to subpoena of Derby Lodge and also provided to me
19 by the State of New Hampshire through Mr. Reynolds and see
20 if you would identify the form that you're talking about

21 [Documents handed to the witness]

22 Q Mr. Grover, would it be fair to say there is no such record
23 in the records of Derby Lodge?

1 A I don't see the forms that I signed myself being present at
2 this time, the in-take forms. I don't see any of those
3 present in this pile of papers. I signed papers so
4 admitting myself there. Those were taken the very first
5 day and none of those papers appear to be in this pile.

6 Q All right, sir. Now, are you or are you not aware that
7 those records were produced pursuant to subpoena and court
8 order?

9 A Well, yeah I'm aware of that, but I'm not sure that you're
10 aware that when you go to any type of program you have to
11 sign. They don't just let you walk in. You have to sign
12 in-take papers. They take down information and you have to
13 sign yourself in and those forms that I filled out aren't
14 in this stack of papers because at the time I didn't want
15 contact. The contact I wanted was limited. I didn't want
16 certain people to be able to get in touch with me or have
17 -- I wanted my -- I wanted limited access to me and that
18 was discussed in that conversation when he brought me up
19 there and those forms. None of those forms I see in these
20 papers.

21 Q Okay. Who did you sign that you didn't want to have
22 contact with you?

23 A Well, I limited -- it was just -- I just signed limited

1 for -- I just said who I wanted to be able to -- you know
2 the people that I wanted to be able to be in touch with me.

3 Q Who did you want to be able to get in touch with you?

4 A I'm not aware. I don't recall exactly who. I know I gave
5 permission that Mr. MacRae could have, seeing though he is
6 the one who brought me up there; not my parents, and he was
7 the one that would be able to under agreement that he would
8 be able to have updates or have access to privileged
9 information. And I don't see any of that paperwork present
10 at this time.

11 Q Yes, sir.

12 MR. REYNOLDS: Your Honor, just so the Court understands, that
13 while the State did provide discovery to defendant's
14 counsel, that Court order and that subpoena was served by
15 him to get records as well from the state institution.

16 THE COURT: Thank you.

17 MR. KOCH: Your Honor, so the record can understand on two
18 occasions all the records have been produced, once by the
19 State and subpoena. Those are the records.

20 MR. REYNOLDS: So far as they have been received from Derby
21 Lodge.

22 THE COURT: Apparently there is a difference of opinion about
23 it or there is a question here as to whether or not we

1 really have all the questions. I guess that's obvious.

2 Q Now Mr. Grover, let me show you what was previously
3 introduced as Defendant's A.

4 MR. KOCH: Your Honor, I believe -- I am not sure, but I
5 don't think this exhibit ever made it all the way through
6 to a jury review. We started it and then we recessed.

7 THE COURT: That's right. I remember that. You may publish
8 that to the jury.

9 MR. KOCH: Thank you.

10 Q Mr. Grover, you recognize that document, don't you, sir?

11 A Yes, I do.

12 Q Does that bear your signature?

13 A Yes, it does.

14 Q And can you describe what that document is to the ladies
15 and gentlemen of the jury please?

16 A This is a document basically of my discharge agreement when
17 I left Derby Lodge.

18 Q Now, sir, if I understand correctly, you would have
19 disclosed to Deborah Collett that Gordon MacRae had abused
20 you?

21 A That's correct.

22 Q Prior to the time you signed that document?

23 A That's correct.

1 Q What is the date by the way of that document?

2 A This is 9/12/86.

3 Q That would have been the day before you were officially
4 discharged from Derby Lodge?

5 A Yes. My discharge date was 9/13/86.

6 Q Sir, would you read paragraph three?

7 MR. REYNOLDS: Your Honor, if it's going to be published to the
8 jury and it's a full exhibit, I don't think there is any
9 reason to get it in twice. The jury can read it
10 themselves.

11 MR. KOCH: It's just one particular sentence in the document,
12 your Honor.

13 MR. REYNOLDS: It just doesn't appear to me there is any reason
14 to highlight the document. The whole document is in
15 evidence and may be perceived by the jury and whatever
16 weight is given some or all of it, is up to them to decide.

17 THE COURT: I will allow it. The jury can read the whole
18 thing but I will allow the question. You may read it.

19 Q Sir, paragraph three please?

20 A It says, "I have contacted Father MacRae to be my AA
21 sponsor. Their telephone number is 352-3525".

22 Q Sir, is that a document that you would have filled out
23 yourself or were those blanks filled in by whoever was

1 taking information from you?

2 A That is in my handwriting. I just signed the bottom where
3 it says rather than signature.

4 Q I didn't hear you.

5 A I said none of that is my handwriting except for where it
6 says in the bottom resident signature. The rest is filled
7 in by someone else.

8 Q So what would have happened, sir, if I understand it is you
9 would have been asked to answer those questions as part of
10 your discharge process from Derby Lodge?

11 A Right.

12 Q And that that person would then fill in the appropriate
13 spaces?

14 A Correct.

15 Q Thank you.

16 (Exhibit A published to the jury)

17 Q Mr. Grover, there is one final area I wanted some
18 clarification on. You told the ladies and gentlemen of the
19 jury that you were paying for your counseling sessions?

20 A Yes, part -- well, I made an agreement to -- well,
21 actually I wasn't in on the agreement so I don't know what
22 the agreement is but my -- I only had to pay whatever the
23 agreement was. I paid \$20 when I went in and however it

1 was worked out between the place where I go and my attorney
2 that was worked out between them and they told me that I
3 had to pay \$20 but excluding -- they send me a bill that
4 says you pay \$20 and then I have another amount on top so
5 basically right now they are giving me a sliding scale fee
6 I would say.

7 Q Okay.

8 A And, yes, I do pay for that myself.

9 Q You pay \$20 a session?

10 A Yes.

11 Q Now when you say your attorney, that was Robert Upton?

12 A Yes, sir.

13 Q That is your private lawyer?

14 A Yes, it is.

15 Q And he is an attorney who from time to time has been seated
16 in the back of the courtroom?

17 A I don't recall.

18 Q He was here yesterday and talked with you, didn't he, Mr.
19 Grover?

20 A I didn't see him in the back. He came to the front and
21 said something to me, that he wanted to talk to me outside.

22 Q And without going into the subject matter of what you
23 talked about, you left the courtroom and you were speaking

1 with your attorney, is that correct?

2 A Yes. He was present in the courtroom. He was right here.
3 He walked over here. I saw him, he approached me. All
4 through the trial I haven't really been paying attention to
5 anybody on the other side of the railing. I really --
6 that's not something that I'm really paying attention to.

7 Q Well, sir, throughout this trial, hasn't Pauline Goupil on
8 a couple of days been sitting in a chair right here behind
9 the swinging door?

10 A That's possible.

11 Q That's the therapist that Mr. Upton sent you to, isn't that
12 correct?

13 A If she was sitting there. Pauline Goupil is the therapist
14 which I'm going to, yes, sir.

15 Q And Pauline Goupil is the one, sir, who I believe is
16 basically taking you through a process of relating back
17 what has gone on in your life and helping you identify that
18 that is connected in some respects to the actions of Gordon
19 MacRae?

20 A First I would like to say that I don't really care to get
21 into what me and Pauline Goupil discuss. That's
22 confidential between me and her and also could you please
23 stay over by the podium. You're walking over to your table

1 more often.

2 Q Okay. Excuse me, Mr. Grover. Now things have not been
3 financially easy for you throughout most of your life, have
4 they, Mr. Grover?

5 A No, they haven't.

6 Q In fact, because of the myriad of problems that you've
7 encountered in your life, it's very difficult for you to
8 maintain any kind of steady employment, isn't that true,
9 sir?

10 A No, I get jobs and getting a job is not the hard thing.
11 It's keeping a job, allowing people to get close to me and
12 get to know me. When I'm in a work atmosphere or when I'm
13 working employed at a place and people start to get to know
14 me and get close to me, I don't feel comfortable. I
15 usually for some reason just -- I just don't like because
16 of what has happened and what's been going on, I really
17 don't let people close to me and I usually run away or just
18 don't show up or just become discomplaced and those are the
19 reasons for why a lot of -- why I've lost a lot of jobs.

20 Q All right. And, sir, with all due respect when you were
21 growing up, material things weren't real good for you being
22 in such a large family, were they?

23 A No. I mean I guess when you're growing up you don't really

1 -- I mean I had everything I ever needed or asked for in
2 some ways. Somehow my parents were able to provide that
3 for me. I worked and I earned my own money and got the
4 other things that I wanted that were -- that weren't
5 important things so --

6 Q Mr. Grover, the reason Mr. Upton is here is to try to get
7 you substantial sums of money as a result of what you claim
8 Gordon MacRae did to you. Isn't that true?

9 A No, that's not true. What is true is Mr. MacRae filed a
10 suit against me and Mr. Upton -- me and Mr. Upton had met
11 and discussed certain things. We had never filed any court
12 documents, surrounding any lawsuit against Mr. MacRae or
13 the church until Mr. MacRae had sued us in New Mexico and
14 then had come back to New Hampshire; but up until June of
15 1994, I'm not aware of what action was being taken because
16 of this criminal trial. My lawyer, Mr. Upton, kept as much
17 information away from me and I didn't have any real
18 information about it, just that he was working on it and so
19 there wouldn't be a confusion of anything like that when we
20 came to the courtroom. The only thing I'm aware of that he
21 was doing was he was finding somebody -- he searched and
22 searched to find a counselor for me because that was what
23 was important at the time and he ultimately came up with

1 Pauline Goupil's name and worked an agreement out with her
2 and she put me on a sliding scale.

3 Q Sir, you didn't want anyone to know that you had filed a
4 suit, isn't that true?

5 A There was no suit filed.

6 Q Mr. Grover, didn't you just testify in June of this year
7 that you filed a civil complaint through your attorney
8 against Mr. Grover, I mean against Mr. MacRae?

9 A Yes, and I explained that the only reason he did that was
10 because Mr. MacRae had filed suit against me and Mr. Upton
11 and because of something surrounding statutes, Mr. Upton
12 filed the suit in June of '84 [sic] But from the time I met
13 Mr. Upton in '83 until '84 [sic], there was no filing of
14 any suit. There was no action taken. We had just talked
15 about -- we had just talked about different options and
16 different things. Nothing ever was filed I believe.

17 Q Now I want to ask you, do you recognize the man that's
18 seated on the far end of the table that I sit at, not Mr.
19 MacRae, the other gentleman?

20 A Yeah, well, yes, I recognize who he is.

21 Q He, sir, was a lawyer who questioned you. His name is JR
22 Davis and he interviewed you a week ago or let's see almost
23 two weeks ago on a Friday?

1 A That's correct.

2 Q Interviewed you in the company of Mr. Reynolds, the county
3 attorney?

4 A That's correct.

5 Q And also in the company of Ira Cook?

6 A That's correct.

7 Q Who's an investigator for me.

8 A That's correct.

9 Q Is that your understanding?

10 A Yes, it is.

11 Q At that point in time you were asked, sir, whether or not
12 you had filed any type of cause of action against Mr.
13 MacRae and you told them in that interview taken by a court
14 reporter that you had not. Isn't that true?

15 A That's correct, but being that me and Mr. Upton had not
16 been -- he had kept this information from me just for that
17 reason, I had to approach him and ask him exactly what was
18 filed and up to that point I did not know and I didn't know
19 in June of '94 that there was something filed. He has kept
20 me in the dark as far as what he has been doing as my
21 lawyer and so when I made that statement, that statement
22 was true. I had -- I approached him and asked him because
23 of the very reason that you would probably be asking me

1 that question.

2 Q That I would probably be asking you that?

3 A Yes, when I filed the suit or if I filed a suit.

4 Q Was it your wish that Attorney Upton file a cause of action
5 on your behalf?

6 A The discussions we had were the immediate --

7 MR. REYNOLDS: I object, your Honor. It appears to be a question
8 of privilege here and without the victim's counsel to
9 advise him, I don't think it's an area of proper inquiry.

10 MR. DAVIS: Your Honor, may we approach the bench with a
11 record please?

12 THE COURT: Yes.

13 BENCH CONFERENCE

14 MR. DAVIS: Your Honor, I fail to see how if a civil lawsuit
15 was instituted, why he claims not to have knowledge of and
16 his testimony was much -- that's what his testimony was as
17 to whether or not it was filed. With or without his
18 permission is a matter of privilege. Seems to me it's very
19 important as to the issue of bias. Bias is a fundamental
20 issue of our cross-examination.

21 THE COURT: Bias? Bias isn't even relevant to this argument.
22 What are you talking about?

23 MR. DAVIS: Does he have a suit or not? Was it instituted --

1 does he have a suit?

2 THE COURT: Are we talking about motive?

3 MR. DAVIS: Right. Does he have a suit or doesn't he? Was it
4 instituted with his knowledge or not? Was it instituted
5 with his privilege or not? Was he honest with the jury
6 just a few minutes ago whenever he said he didn't know
7 about it originally? Was he honest whenever he said two
8 weeks ago that he didn't know about it?

9 THE COURT: So far he has answered all those questions. The
10 only question he hasn't answered is the last one and the
11 State objected to that and --

12 MR. DAVIS: Whether his attorney had authority or not is not a
13 matter covered under the attorney/client privilege.

14 MR. REYNOLDS: It's not authority. That wasn't the question.
15 The question was about his discussions with his attorney.
16 Those are privileged materials. I don't know what he will
17 say. You seem to know what he will say. That's
18 speculation.

19 THE COURT: I think you can ask the question did he give his
20 attorney permission.

21 MR. DAVIS: That's not a matter covered by the privilege.
22 It's not confidential information.

23 THE COURT: You can ask that question. I will allow it but

1 you will have to take the answer.

2 MR. KOCH: Your Honor, I'm going to pass the witness.

3 THE COURT: Thank you.

4 OPEN COURT

5 THE COURT: Ladies and gentlemen of the jury, you're getting a
6 half hour early break on your lunch. I understand you're
7 all having dinner together, is that correct?

8 (Jury nodded affirmatively!)

9 THE COURT: Well, that's good. Be back at 1:30. Don't
10 drink! Bailiff, take charge of the jury. You all know
11 what not to do.

12 (Jury Dismissed)

13 HEARING OUT OF THE PRESENCE OF THE JURY

14 THE COURT: Attorney Gainor?

15 MR. GAINOR: For some clarification on redirect and our case
16 that will follow, the defendant's theory of the case I
17 think most prominently is that Tom Grover's allegations are
18 financially motivated as a basis for his suit against not
19 only Gordon MacRae but the Catholic church. He has said
20 that a number of occasions that it is the Catholic church
21 that has the deep pockets. There is a basis in fact for
22 Mr. Grover suing the Catholic church. And that is that the
23 Catholic church knew or should have known of the danger

1 that Mr. MacRae posed to children, specifically in 1983.
2 Larry Carnivale, from Hampton, made a disclosure that Mr.
3 MacRae fondled Larry Carnivale. And that was reported to
4 the Diocese of Manchester in November of 1983. Now much of
5 the allegations in this case occurred while -- well the
6 indicted allegations occurred from June to November of
7 1983. The church was on notice effectively towards the
8 latter part of the indictment hearing period. In reality,
9 there are sexual molestations committed by Mr. MacRae onto
10 Tom Grover that post date the indictment period that go
11 upwards to 1987. Now it's the State's position that to
12 make the bold allegation that Mr. Grover is making these
13 allegations out of sheer financial greed in order to get
14 essentially to the deep pockets of the Catholic church. I
15 believe that out of fairness, the State should be able to
16 show the basis of that liability. In other words, it
17 appears that Mr. Grover is going at the Catholic church
18 based just on this, these allegations in this Court against
19 Mr. MacRae, but in fact it's much more. It is because of
20 what the church knew or should have known pertaining to the
21 incident, Mr. MacRae committed which he is admitted to
22 against Larry Carnivale. And that is the basis of the
23 liability and I think out of fairness in order to give the

1 jury a complete picture of Mr. Grover's suit against Mr.
2 MacRae and the Catholic church to give them a complete
3 picture that the Larry Carnivale abuse should be made
4 mention of and possibly even Mr. Carnivale should be
5 allowed to testify because that is why that is one of the
6 fundamental reasons for Mr. Grover and Mr. Grover's legal
7 counsel making a decision to sue in this case. If there
8 was no notice on the church's behalf of Mr. MacRae's
9 dangerousness to children, to any children, that he would
10 be in contact with, there would probably be no suit in this
11 case, no civil suit and it's only because of what Mr.
12 MacRae did to Larry Carnivale back in 1983 and as the Court
13 has already done once in order to give a complete picture
14 to the jury and not give the jury a half or quarter or a
15 non-truth, that should come in. In essence, the defendant
16 has opened the door towards letting in the basis of Mr.
17 Grover's suit against the church. The defendant raised it
18 in his opening statement. He said this is a case about
19 greed. It's about Mr. Grover suing Mr. MacRae and the
20 Catholic church and that was continued into and made a
21 component of the cross-examination and I believe the door
22 knocked on in opening was certainly most opened when looked
23 at the theory of the defendant's case pertaining to

1 financial greed. And again, your Honor, just to show that
2 there is a basis in fact for this suit that it's not
3 non-based, that there is a reason the church is being sued
4 and that there is a reason for the suit.

5 THE COURT: Attorney Koch?

6 MR. KOCH: Thank you, your Honor. Initially I asked some
7 questions sort of at the end of Mr. Grover's testimony. He
8 said, "I only sued for one simple reason. That was because
9 Gordon MacRae had sued me." That was essentially the sum
10 and substance of what he said. He told the jury that if I
11 had a choice of sending him to prison or getting a million
12 dollars, I would take him going to prison. Your Honor, to
13 say that somehow the allegations relating to Carnivale --
14 and if my memory is right from reading that, your Honor,
15 the allegation of fondling was in 1986, not 1983, somehow
16 and in fact that was found to be unfounded by your own
17 department at that point in time, your Honor, by the
18 Department of Youth and -- I'm sorry, I don't remember.

19 THE COURT: Children and Youth Services.

20 MR. KOCH: That that somehow opens the door to that
21 particular 404-B evidence, your Honor, I think is
22 inappropriate. That's my position.

23 MR. GAINOR: Your Honor, if I may, there was some misstatements

1 probably not intentional by Mr. Koch but the incident
2 involving Larry Carnivale, the defendant when in Hampton
3 had Larry Carnivale on his lap and did kiss him. He
4 admitted to doing that. In 1983 that was investigated.
5 That was founded. The DCYS report said, "Allegations
6 founded. Perpetrator put into counseling." In 1986, Larry
7 Carnivale was seeing a school therapist at the Winnicunnet
8 High School. During that therapy session, Mr. Carnivale
9 brought up the issue of Mr. MacRae not only kissing him on
10 his lap but fondling him; under the statute at that time --
11 that doctor's name was Dr. Brown had a duty to disclose
12 that and Dr. Brown did. DCYS got involved, the local
13 office in Portsmouth, and they investigated it as a new
14 allegation not having any knowledge that part of this
15 allegation was investigated in 1983. During the course of
16 the investigation, top officials at DCYS learned that part
17 of this allegation was investigated in 1983 and they put an
18 immediate stop to it. And that's where it was found to be
19 unfounded because top officials at DCYS said this is not a
20 new allegation. And there are some clouds over exactly as
21 to how that was handled but what Attorney Koch is referring
22 to is what DCYS perceived to be a reinvestigation of an old
23 investigation that was shut and they determined there was

1 no new factual allegation so I just wanted to correct to
2 the Court that it was founded, the kissing on the lap, and
3 it was investigated.

4 MR. DAVIS: Your Honor, if I could briefly be heard on this?

5 THE COURT: Yes.

6 MR. DAVIS: Irrespective of what happened, where and how with
7 Lawrence Carnivale, it seems to me what the State is asking
8 is can we further explore by bringing in other alleged bad
9 acts on redirect, or perhaps I'm missing it but that's what
10 they want to know.

11 THE COURT: Rather than impeach? As a result of the
12 impeachment?

13 MR. DAVIS: Right, as I understand it. Now we've previously
14 gone through this issue on numerous occasions but the first
15 starting point is is it relevant information and if it's
16 relevant, what's the scope of its relevancy? Is it unduly
17 prejudicial? I don't hear any argument here about how the
18 analysis the Court has previously gone through carefully
19 and repetitively on the 404-B issues have anything
20 whatsoever to do with the State wanting to open the door to
21 try to force the door open so they can bring in another
22 alleged prior bad act. Mr. Koch on his cross-examination
23 -- to the best of my memory, never attacked Mr. Grover

1 from the standpoint of, "How did you choose to bring this
2 suit?" Or "How did you come to talk to the police?" That
3 is it had nothing to do -- didn't open any doors about
4 whether Mr. Grover had learned of police involvement
5 because of reports in the press or learned of police
6 involvement because of reports from family members or
7 learned from the press because he had heard about
8 Carnivale. Name was never mentioned. The only issue was,
9 "Who did you see first? The attorney or the police
10 officer?" And I respectfully would submit that based upon
11 discovery information that we received, some of the answers
12 may have been inconsistent with some of the materials that
13 we have received in discovery. That's a point for the jury
14 but there is clearly a motive here for fabrication.
15 Whether that motive will carry today, is a matter for the
16 jury; but whether or not this other prior bad act did or
17 did not occur, has nothing whatsoever to do with Thomas A.
18 Grover's motivation. It may be that his suit might or
19 might not be stronger against the Diocese of Manchester but
20 we're not trying the case against the Diocese of
21 Manchester. We're trying the case of State v. Gordon
22 MacRae regarding alleged incidents involving Thomas A.
23 Grover so what the State is trying to say is because we

1 think there is other evidence that makes Thomas Grover's
2 civil suit against the Diocese of Manchester stronger, we
3 should be able to use that to show that because he has got
4 a stronger case he has got less motivation to not tell the
5 truth? Now, that's horse talking and creative, ingenious
6 but it has nothing to do with unfair prejudice. There was
7 no representation. There's been no opening the door and
8 there is no State v. Fecteau issue whatsoever.

9 THE COURT: Let me ask you this, Mr. Davis. You mentioned the
10 impeachment about the family member and going to the lawyer
11 and that sort of thing. During that impeachment there was
12 a hesitation in the witness' testimony and it was actually
13 picked up by both newspapers and myself and it concerned
14 the order whether Thomas Grover went to Detective
15 McLaughlin or to his attorney first.

16 MR. DAVIS: Attorney Cleary.

17 THE COURT: And it was very confusing and it was obvious to me
18 that the defendant -- that the witness wanted to say
19 something else about it to explain why he was confused
20 about who he went to first, McLaughlin or Cleary. Does
21 anybody know what his answer would have been had my order
22 not excluded other bad act evidence? Just from my own
23 observation here I had the feeling when he looked at me for

1 help and the newspaper picked it up, Hayward picked it up
2 and Elizabeth Crowley picked it up in the Sentinel and the
3 Union Leader. It had to have an impact on the jury. My
4 only question is was it another bad act because the only
5 -- I am prepared to deny the State's motion if it was
6 other than that but that's the only area that I might
7 consider allowing in other bad act evidence. Now, what
8 would he have said?

9 MR. GAINOR: Your Honor, this was the State's second issue. The
10 only reason Tom Grover got the courage to come forward with
11 these allegations is because his brother, Jon Grover, came
12 forward, spoke with Detective McLaughlin, and only then did
13 Tom have the courage knowing that there was someone else to
14 corroborate, to support him that he came forward.

15 THE COURT: That's fine, but what he didn't say -- was that
16 what he intended to say?

17 MR. GAINOR: At that juncture, no, your Honor.

18 THE COURT: He was not going to mention anything about talking
19 to McLaughlin or anything along that line? That's not what
20 confused him?

21 MR. REYNOLDS: I have got to tell your Honor that since your
22 order on 404-B, I have spoken with Mr. Grover several times
23 concerning not opening any doors with regard to each of

1 these issues where it's been raised concerning motivations
2 to come forward and with regard to the nature of his
3 lawsuit and that sort of thing. It appears to me that he
4 was cognizant of these other circumstances and the reasons
5 for the suit that was ultimately filed. The most recent
6 conversation I had with him was about two weeks ago in
7 Manchester shortly after he had met with his lawyer. My
8 understanding of Mr. Grover and my reading of Mr. Grover is
9 that he felt compelled not to be able to answer questions
10 about the lawsuit because of your Honor's 404-B order. He
11 was not to raise those things.

12 THE COURT: Well this is the only way if he was going to
13 answer and I can't remember exactly what the question was.
14 Maybe Mr. Koch would remember it or Mr. Davis or maybe the
15 clerk does.

16 MR. KOCH: There is no representation from the State that
17 that is what he was going to say. I think Mr. Gainor said
18 that.

19 MR. REYNOLDS: I have to talk with Mr. Grover.

20 THE COURT: Have you talked with Mr. Grover? Is Mr. Grover
21 here now?

22 MR. REYNOLDS: No, he is at lunch, sir.

23 THE COURT: Then I don't want anybody to talk to him other

1 than to tell him he is going to be back in here without the
2 jury. We're going to Voir Dire him and see what the answer
3 would have been. If the answer would have been that he
4 heard from Cleary about abuse to his brothers and that was
5 the reason he was confused and unable to answer clearly
6 that question about who he went to first, McLaughlin or
7 Cleary, I will consider allowing in that bad act evidence.
8 Otherwise, the other State's arguments I'm not ready to
9 buy. I will tell you what I'm going to do. Please sit
10 down. I am very concerned that the trial move along
11 smoothly and that the State and defendant understand my
12 concern about the 404-B issue. I think it's been handled
13 very well by both sides throughout this trial and the only
14 place that I have a problem is the place that actually
15 Attorney Davis raised about the family and who he went to,
16 McLaughlin or Cleary, who he talked with or something like
17 that. Actually I got up about 2:00 this morning and I
18 wrote something and I am not sure I am going to read it now
19 to you because I believe it will give the State an idea of
20 where I am on 404-B so we don't run into a question about
21 open door all the time and on other issues as I see them in
22 this case and as I have explained to the defendant and the
23 defendant's attorney, I want to emphasize that if the

1 defendant takes the stand, and I know your counsel is able,
2 but I want to emphasize that your credibility will be
3 coming into issue and there is evidence there that the
4 Court would consider. I'm not issuing any opinion or any
5 order on that but there is evidence of other acts that the
6 Court would consider just by the defendant taking the
7 stand. And then of course if any witness for the defendant
8 or any witness is developed by the defendant, and brings in
9 character evidence, a substantial part of the other bad act
10 evidence will come in. And I want to make that perfectly
11 clear.

12 MR. KOCH: What your Honor is saying is counsel is able but
13 maybe not that able.

14 THE COURT: Well I'm saying you're a darn good lawyer and that
15 there is nobody in this courtroom that doubts it but I want
16 to emphasize that and that's all.

17 MR. KOCH: And then the decision obviously has not been made
18 fully in that regard yet because the case isn't over in
19 terms of the State presentation and I can't represent at
20 this moment if Mr. MacRae will testify. If he does testify
21 and I would like him to testify, I would certainly approach
22 the bench and have some very clear --

23 THE COURT: We'll do this. If we come to this and we will get

1 it worked out so that nothing happens that at least I might
2 be wrong but at least we'll all know what I have done when
3 we do it. I'm going to read you what I wrote and this
4 concerns 404-B evidence. The defendant is innocent until
5 proven guilty and you are innocent until proven guilty in
6 this Court. You are innocent now and we've only heard a
7 small part of what this case is going to be and I know it.
8 But it is true that there are an abundance of allegations
9 of other bad acts similar to the ones alleged in the
10 indictments in this case. And those other bad acts are
11 relevant but they go to the defendant's character and it is
12 fundamental that a defendant not be convicted because he or
13 she has done other bad things, but only if the state proves
14 beyond a reasonable doubt that the defendant is guilty of
15 the acts charged.

16 Now, the New Hampshire Rule of Evidence 404-B does
17 provide a limited exception to the rule that bad character
18 evidence is inadmissible. The rule provides that such
19 evidence may be admissible for other purposes such as proof
20 of motive, opportunity, intent, preparation, plan,
21 knowledge, identity or absence of mistake or accident. The
22 plain meaning of the rule would seem to allow the other
23 alleged acts to be admitted to show some of these things in

1 this case. However, these other acts, all but one at
2 least, are only allegations. They have never been proved
3 in a court of law.

4 Now, the New Hampshire Supreme Court in a very recent
5 line of 404-B decisions, has been struggling to define the
6 boundary of 404-B. The latest case, State v. Whittaker,
7 stands as the most definitive interpretation although
8 admittedly it is a 3 to 2 decision. Nevertheless, it is
9 the law and it is the law that this Court will apply.

10 Now, it's true that other states do not interpret the
11 404-B exception as narrowly as the New Hampshire Supreme
12 Court does. And for instance if we were in Massachusetts,
13 the other bad acts would more likely be admitted. But it's
14 not the job of this Court to apply a different standard
15 than the New Hampshire Supreme Court has set in Whittaker.
16 And the judiciary is only one of the three branches of New
17 Hampshire government. If the people of New Hampshire
18 disagree with the Supreme Court's interpretation of Rule
19 404-B, then they may work through the governor and the
20 legislature to have it broadened or amended. Other states
21 have done that. But it's not up to this Court to do it and
22 I am not going to do it during this trial.

23 Now, it is true that I have substituted a new

1 reasonable doubt instruction for the -- that differs from
2 the New Hampshire Supreme Court standard. I did that
3 because I believe the new standard is clearer and it's not
4 to favor either party. And I have discussed this with
5 counsel and there has been no objection to the new
6 standard. I say these things because I am concerned about
7 them and because I want all the parties to know where we
8 are as we go into the rest of this trial. So we'll break
9 now until 1:30. We'll have Tom Grover back here. We'll
10 put him on for Voir Dire. You're not to discuss anything
11 about what we've talked about here with him. Thank you.

12 MR. REYNOLDS: Your Honor, if I may, I just have one brief
13 commentary about one very small point that you mentioned in
14 what you just read to us. One of the things you mentioned
15 concerning the 404-B was that these allegations have not
16 been proven in a court of law. As I understand all the
17 404-B decisions that deal with the admissibility of the
18 other bad acts, that what the Supreme Court of this state
19 means by clear proof.

20 THE COURT: Okay. I'll give you this Attorney Reynolds.
21 404-B evidence -- 404-B does not require that these things
22 have been proven before a court of law. We know that from
23 analysis and it only needs to be evidence that you have

1 clear proof of. And there is a substantial amount of that.

2 MR. REYNOLDS: For example an eye witness or a victim who would
3 testify clearly as to the act would be sufficient.

4 THE COURT: Yes, and then we have -- the Court has to find
5 that the evidence is relevant and that the evidence is not
6 substantially more prejudicial to the defendant than it is
7 probative for the State. Thank you very much.

8 (Luncheon Recess)

9 OPEN COURT

10 THE COURT: We will have to keep this as short as we can. I
11 know you have to explore, but if she has to leave.

12 MR. DAVIS: Just so it's clear, if the witness wants to agree
13 on some kind of hand sign if she is uncomfortable.

14 THE COURT: I'll be watching her and she is just going to look
15 at me.

16 KATHERINE HALL

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

19 DIRECT EXAMINATION: (by Mr. Reynolds)

20 Q Please state your name for the record spelling your last
21 name?

22 A Katherine Hall, H-A-L-L.

23 Q Ms. Hall, I'm going to ask you to please speak into that

1 microphone otherwise I won't be able to hear you.

2 A Katherine Hall, H-A-L-L.

3 Q Where do you live, Ms. Hall?

4 A In North Swanzey.

5 Q And let me ask you, what was your maiden name please?

6 A Murray.

7 Q And do you know or did you know at one time an individual
8 by the name of Thomas Grover?

9 A Yes.

10 Q And can you tell the jury please how you first met Tom
11 Grover?

12 A Through a friend.

13 Q And when did you first meet Tom Grover if you recall?

14 A In the summer of '83.

15 Q 1983?

16 A Yes.

17 Q And let me ask you, did you and Tom date starting in that
18 summer of 1983?

19 A Yes.

20 Q And is it fair to say that you were boyfriend and
21 girlfriend for a number of years starting in 1983?

22 A Yes.

23 Q Did you have occasion to go to Tom Grover's house in the

1 summer and I guess autumm of 1983?

2 A Yes.

3 Q And how often would you be over Tom's house I guess at the
4 beginning of the relationship until you went away to school
5 in the fall that year?

6 A Quite often.

7 Q And did you have a chance to meet some or all of Tom
8 Grover's family?

9 A Yes.

10 Q And where were the Grovers living in the summer of 1983 and
11 into the fall?

12 A In Marlborough.

13 Q And did you ever meet or see at the home an individual at
14 the time you knew to be Gordon MacRae, a priest in the
15 Roman Catholic church?

16 A I don't recall in Marlborough.

17 Q Subsequent to Marlborough, did you come across MacRae at
18 the home at the Grover home?

19 A Yes.

20 Q And with what kind of frequency?

21 A Occasionally.

22 Q And did you have any understanding of his relationship with
23 the family?

1 A I knew he was close.

2 Q In the summer of 1993 and in the autumm when you might be
3 home on vacations from school and that sort of thing, did
4 you ever have occasion to take Tom Grover over to the St.
5 Bernard's rectory in Keene?

6 A Yes.

7 Q For what purpose were you taking him over to the rectory
8 for those times do you recall?

9 A No, I had no idea.

10 Q Was that a fairly frequent occurrence?

11 A Somewhat.

12 Q If you had to look back and make a reasonable estimate
13 based on your memory, how often would you say that summer
14 into the early fall would you have occasion to drive Tom
15 over to the rectory?

16 A A few times a week.

17 Q And did you ever have occasion to pick him up from the
18 rectory to maybe go someplace else?

19 A Yes.

20 Q You described Gordon MacRae as having a close relationship
21 with the family?

22 A Yes.

23 Q Can you tell us please what kinds of things you were aware

1 of that he did that would indicate he was close to the
2 family to you?

3 A No, he was there I believe holidays and special occasions.

4 Q And did he ever babysit the family or any of the kids when
5 Pat Grover, Tom's mother, was out of the house, if you
6 know?

7 A I don't know if he actually babysat.

8 Q Would be present as a caretaker?

9 A Left in charge I guess. Whether he stayed I don't know.

10 Q And during the course of your relationship with Tom Grover,
11 did you understand Mr. MacRae to be providing counseling to
12 Tom?

13 A Not -- no. Not counseling per se.

14 Q Well, did Tom ever talk about the purposes for his going to
15 Mr. MacRae?

16 A No, he didn't.

17 Q And did you ever hear from any other source during that
18 period of time why Tom was seeing Father MacRae?

19 A No.

20 Q Did Father MacRae ever give any indication to you what his
21 expertise sort of thing might be in counseling?

22 A No.

23 Q Did he ever mention to you that he had a Master's degree in

1 counseling?

2 A I don't believe so.

3 Q Did Father MacRae ever provide an instance of counseling to
4 you and Tom over at the rectory?

5 A If that's what you want to call it.

6 Q Characterized it another way, did you ever meet with Tom
7 Grover in the presence of Father MacRae over at the
8 rectory?

9 A Yes.

10 Q And do you recall what year that was?

11 A It must have been '85.

12 Q At that time if you know, did Father MacRae and Tom Grover
13 appear to be close?

14 A Yes.

15 Q And you may not be able to answer this, the person you knew
16 to be Father MacRae back in 1983, 1984, 1985, is he in the
17 courtroom please?

18 A Yes.

19 Q Can you point him out please?

20 A (Witness pointed to the defendant).

21 Q To the gentleman I'm standing behind?

22 A Yes.

23 MR. REYNOLDS: Please let the record show that the witness has

1 identified the defendant.

2 THE COURT: The record so shows.

3 Q One second please. Did Tom Grover drink or have a drug
4 problem in 1983 when you knew Tom?

5 A Yes.

6 Q And you mentioned you wouldn't characterize as counseling
7 your meeting with Father MacRae and Tom Grover. What would
8 you characterize it as, if you can?

9 A His giving us his opinion.

10 Q Do you recall that yesterday you mentioned to me that
11 felt Gordon MacRae had a Master's degree in counseling?

12 A No, I don't.

13 Q Thank you.

14 THE COURT: Attorney Koch?

15 MR. KOCH: Your Honor, this will be Attorney Davis.

16 CROSS-EXAMINATION: (By Mr. Davis)

17 Q Ma'am, my name is JR Davis and I'm a lawyer and I represent
18 Gordon MacRae. And I talk funny so if you don't understand
19 what I say, just shake or whistle or something. Have we
20 ever met before today?

21 A No.

22 Q Have we ever talked before today?

23 A No.

1 Q When did you first come to know Tom Grover?

2 A 1983.

3 Q That was in the summer? I am sorry, ma'am?

4 A Yes.

5 Q This woman, just so you will know, takes down everything
6 you and I say. Sometimes she has trouble figuring out what
7 I say but if we don't say it, it won't go on the record. I
8 know normally in conversation we nod and shake. I just
9 need to, whenever you answer, to say it in a word.

10 And that's because ya'll became close with each other?

11 A Yes.

12 Q You were boyfriend and girlfriend, is that right?

13 A Yes.

14 Q And that would have been in the summer of 1983?

15 A Yes.

16 Q Now you were a couple years older than Tom, is that right?

17 A Yes.

18 Q Four?

19 A Two and a half.

20 Q Two and a half years older than Tom. And had you graduated
21 from high school in May of '83?

22 A Yes.

23 Q And so when Attorney Reynolds spoke a minute about the fall

1 of '83, you then went on to college?

2 A Yes.

3 Q And you and Tom hit it off with each other right from the
4 beginning?

5 A Yes.

6 Q And irrespective of how the relationship ended, ya'll were
7 together for a couple years, is that correct?

8 A Yes.

9 Q And during that time period became quite close?

10 A Yes.

11 Q And it wasn't just a situation where you were boyfriend and
12 girlfriend, ya'll were extremely close with each other, is
13 that right?

14 A Yes.

15 Q And again excuse me I have to go into this, irrespective of
16 how the relationship ended, you all believed at one time
17 you loved each other, is that right?

18 A Yes.

19 Q And as far as you knew, it was a deep seeded emotional
20 relationship for both of you at points of your
21 relationship, is that correct?

22 A At points.

23 Q Now when you all first met in the summer of 1983, Tom

1 really seemed to enjoy being with you, didn't he?

2 A Yes.

3 Q And ya'll just started dating and things worked out pretty
4 well at least in the beginning, right?

5 A Yeah.

6 Q Tom seemed happy whenever ya'll were together and doing
7 stuff in the summer of 1983?

8 A Yes.

9 Q Do you ever remember any times in the summer of 1983 when
10 Tom seemed to be totally unaware of what was happening to
11 him?

12 A Yes.

13 Q And that's when he was drinking?

14 A Yes.

15 Q And he was drinking a lot in the summer of 1983, wasn't he?

16 A Yes.

17 Q He already had pretty strong tendencies to drink in the
18 summer of 1983, is that right?

19 A I would say.

20 Q Do you remember where you met? I don't need to know the
21 person's house, but was it a party or beach?

22 A Through a friend.

23 Q And that was the beginning of the summer?

- 1 A Probably mid-summer.
- 2 Q And where did you go to school, ma'am? College?
- 3 A UNH.
- 4 Q In Durham?
- 5 A Um-hmm, yes.
- 6 Q That's a yes?
- 7 A Yes.
- 8 Q Now ya'll were together for a couple years, is that right?
- 9 A Yes.
- 10 Q So ya'll were together in the summer of '84 as well?
- 11 A Yes.
- 12 Q And do you remember Tom having odd jobs and work that he
- 13 did in the summer of '84 at either St. Joe's Cemetary or
- 14 St. Bernard's Church in Keene?
- 15 A I don't recall.
- 16 Q Do you remember whether he had a job like that in the
- 17 summer of '85?
- 18 A I don't recall.
- 19 Q Do you remember him ever having any kind of work at either
- 20 St. Bernard's or St. Joe's?
- 21 A Not that I can recall.
- 22 Q You had a car in the summer or access to a car in the
- 23 summer of '83?

- 1 A Yes.
- 2 Q And the summer of '84?
- 3 A Yes.
- 4 Q And the summer of '85?
- 5 A Yes.
- 6 Q And during various of those times you would take Tom to St.
- 7 Bernard's?
- 8 A Yes.
- 9 Q Do you ever remember taking him to St. Joe's?
- 10 A Not that I recall.
- 11 Q Do you remember taking Tom to St. Bernard's Church?
- 12 A Yes.
- 13 Q But you don't know why he was going there?
- 14 A No, I don't.
- 15 Q And you don't know who he saw or what he did when he was
- 16 there?
- 17 A No.
- 18 Q And there were occasions when you would pick him up as
- 19 well?
- 20 A Yes, I would.
- 21 Q Now at some point in your relationship with Tom, you had
- 22 occasion to meet his mom, is that right?
- 23 A Yes.

- 1 Q And her name is Pat Grover?
- 2 A Yes.
- 3 Q And after some point in time you and Pat had some
- 4 disagreements, is that right?
- 5 A Some.
- 6 Q Irrespective of why, Pat didn't want you and Tom together,
- 7 is that right?
- 8 A No, I don't recall her ever saying that.
- 9 Q At least to you?
- 10 A At least to me.
- 11 Q But you know there was tension?
- 12 A Yes.
- 13 Q Between you and Pat?
- 14 A Sometimes.
- 15 Q And there was tension between Pat Grover and Tom as well,
- 16 is that right?
- 17 A Some.
- 18 Q And that came up in 1984, do you remember that?
- 19 A No, I don't.
- 20 Q You don't remember Pat Grover trying to interfere with your
- 21 relationship with Tom in 1984 or 1985?
- 22 A No, not her.
- 23 Q So she didn't have any problems as far as your relationship

1 was concerned that you knew of?

2 A She wasn't always happy about it.

3 Q But at the beginning it wasn't a problem, right?

4 A Not that I know of.

5 Q It was only after you saw Tom for a while and you had been

6 dating for a while that it became a problem, that you were

7 aware of?

8 A That I'm aware of.

9 Q Now you and Tom ultimately had a child together, is that

10 right?

11 A Yes.

12 Q And I don't need to know your child's name but could you

13 tell me when your child was born?

14 A June of '85.

15 Q June of 1985?

16 A Yes.

17 Q And Thomas Grover is the father?

18 A Yes.

19 Q And after that ya'll broke up?

20 A Yes.

21 Q And again I don't need to know the reason. Now you don't

22 remember Mr. MacRae ever holding himself out to be a

23 counselor?

1 A Not that I recall.

2 Q And you don't know whether or not Tom ever went to him --
3 when I say Tom, I mean Thomas Grover. You don't ever know
4 Tom going to see Mr. MacRae for counseling, is that
5 correct?

6 A No.

7 Q And irrespective of why, Tom had a drinking problem from
8 the time you first met him, is that right?

9 A I didn't consider it a problem at first.

10 Q Tom didn't consider it a problem?

11 A I didn't.

12 Q Neither one of you did?

13 A No.

14 Q Looking back on it now, the amount he was drinking and in
15 the summer of 1983 given his age, it was a problem though,
16 wasn't it?

17 A I would say now.

18 Q Hindsight is always a little clear. And Tom had a drug
19 problem in addition to alcohol as well, didn't he?

20 A I originally was not aware of that.

21 Q But you learned?

22 A Yes.

23 Q After you were with him for a little time?

- 1 A Yes.
- 2 Q And that was a problem as well, wasn't it?
- 3 A Yes.
- 4 Q Irrespective of Tom's problems that summer, ya'll met and
5 first started dating and he was happy?
- 6 A There were a lot of problems.
- 7 Q Tom had a lot of problems?
- 8 A Yes.
- 9 Q But he sure liked being around you?
- 10 A I guess.
- 11 Q Ya'll got very close?
- 12 A Yes.
- 13 Q Do you remember having an opportunity to talk with Tom or
14 visit Tom at a place called Beech Hill in Dublin, New
15 Hampshire?
- 16 A Yes.
- 17 Q And that was what, about April of 1985?
- 18 A Yes.
- 19 Q And Tom was in treatment there, wasn't he?
- 20 A Yes.
- 21 Q Because of his drugging and drinking?
- 22 A Yes.
- 23 Q He still didn't think he had a problem then, did he?

1 A I don't believe so.

2 Q But he did, didn't he?

3 A I would say, yes.

4 Q And do you know whether or not Mr. MacRae helped him get
5 into Beech Hill?

6 A Yes, I believe he did.

7 Q And Tom considered Mr. MacRae his friend, didn't he?

8 A Yes.

9 MR. DAVIS: No further questions, your Honor.

10 THE COURT: Thank you, ma'am. Thank you, Attorney Davis.
11 Attorney Reynolds?

12 REDIRECT EXAMINATION: (by Mr. Reynolds)

13 Q Did Tom talk a lot about Father MacRae to you?

14 A No, not a lot.

15 Q During the summer of 1983, what can you tell us about the
16 frequency of Tom's drinking?

17 A Often.

18 Q How often is that please?

19 A Summer?

20 Q Yes.

21 A Probably close to every day.

22 Q Mr. Davis asked you a question about Tom and Father MacRae
23 in counseling and he asked you something to the effect do

1 you understand Tom to be in counseling with Father MacRae
2 or something to that affect and you hesitated and seemed to
3 think a good long time before you answered. Can you tell
4 me why you hesitated about that?

5 A I don't know -- was he referring to that one meeting that
6 we had which they called counseling? I didn't refer to it
7 as that.

8 Q No, I'm referring to the summer of 1983, Tom's contact with
9 MacRae then of what you understood about that?

10 A Because I was trying to recall if anybody ever called it
11 counseling, if anybody ever said to me that's why he was
12 going.

13 Q Okay. I'm not talking about what anybody said about it,
14 I'm talking about what you understood was going on?

15 A No, I never really knew why he was going.

16 Q But you knew he was seeing Gordon MacRae a lot?

17 A Yes.

18 Q And at the rectory?

19 A Yes.

20 Q And that's one of the places you would drop Tom off quite a
21 bit?

22 A Yes.

23 Q Thanks very much.

1 THE COURT: Anything further, Attorney Davis?

2 MR. DAVIS: No further questions, your Honor. The witness may
3 be excused as far as the defense is concerned.

4 THE COURT: All right. Bailiff, take charge of the jury. It
5 will probably be about half an hour, 15 minutes to a half
6 hour before you're going to be back. So go ahead and take
7 charge of the jury, George.

8 I want to thank you for coming and testifying.

9 (Recess)

10 HEARING OUT OF THE PRESENCE OF THE JURY

11 VOIR DIRE EXAMINATION OF THOMAS GROVER

12 THE COURT: Good afternoon, Mr. Grover. I'm going to ask you
13 some questions. The first thing I'm going to do is just
14 read you some of the transcripts of your testimony and the
15 questions that Attorney Koch was asking you two days ago
16 and this is just to refresh your memory as to what the
17 questions were and what your answers were. The question is
18 this. Attorney Koch says, "Would you have reason to
19 dispute Detective McLaughlin's notes that say that
20 Detective McLaughlin got your name from William Cleary, an
21 attorney and long time friend of the Grover family?" And
22 then you said, "Yeah, that may be but the way I interpreted
23 you asking me is when I sat down and talked and -- I never

1 sat down and talked to Bill Cleary in any detail of what
2 had happened. Jim McLaughlin was the first person outside
3 of Deborah Collett that I sat down and actually talked to
4 and went into detail about that. The incident. I can't
5 discuss any other reasons why. I just -- it wouldn't be
6 appropriate." And then Attorney Koch asked, "When you
7 contacted Mr. Cleary, though, or talked to him, sir, was it
8 in part to let him know what the situation was about?" And
9 you answered, "No, he had been my lawyer for a few -- in a
10 few other incidents and I called him as much as a personal
11 friend and a former lawyer to ask him his advice and no, I
12 did not go into any detail about anything, just basically
13 asking." And then there is another part of the testimony
14 on the same subject later on. And Attorney Koch asks you,
15 "Excuse me, you hadn't even talked to Jim yet, is that
16 correct?" And your answer is, "Right" and then Attorney
17 Koch asked, "So, sir, from my understanding of your earlier
18 testimony, you talked to William Cleary before you talked
19 to Detective McLaughlin, not vice versa, isn't that true?"
20 And then you answer, "No, you asked me whatever your
21 question was who I talked to about the incidents, Deborah
22 Collett in 1986 and next -- who did I talk about and I
23 said I talked to Jim McLaughlin in detail about what

1 happened. I talked to Bill Cleary, maybe it was before I
2 talked to Jim but was only out of friendship and as a
3 former lawyer to ask for his advice. You have to
4 understand there were other circumstances going on at the
5 time which aren't able to -- "

6 Now, you weren't able -- you referenced this twice.
7 You say, "I can't discuss any other reasons why, it just
8 wouldn't be appropriate." And you say, "You have to
9 understand there were other circumstances going on at the
10 time which aren't able to --" Do you remember those
11 answers?

12 THE WITNESS: Yes, I do.

13 THE COURT: What was the reason that you could not complete
14 your answers? As far as the Court orders are concerned
15 about there being no testimony about assaults on anybody
16 else, you can disregard those orders right here and now.
17 There is no jury here. You can just answer the questions
18 the way you would have if those orders hadn't existed.

19 Would your answers be the same now or different.

20 THE WITNESS: They would be different.

21 THE COURT: And what would your answers be? Just give me a
22 better idea of what your response would be.

23 THE WITNESS: This is the way it happened. I'm not really close

1 to my family. I come a couple times a year and keep in
2 touch with them a couple times a year. I called my mother
3 and she had said that Jim McLaughlin had been doing an
4 investigation on Mr. MacRae and that my brother, Jon, was
5 going to be seated in front of the grand jury in two days.
6 She asked me again, which she had done in the past, asked
7 me if I knew anything about -- you know, surrounding MacRae
8 and so I didn't say anything to her. The conversation went
9 on and then we just -- it just ended after that and then I
10 called Jim McLaughlin's office and he wasn't in. Then on
11 the same morning or the same day I called Bill Cleary
12 because he was already my brother's lawyer and I asked him
13 you know basically what I should do, that I had called Jim
14 and we were going to meet and just what he thinks -- well
15 first I asked him if I could come talk to him but he said
16 that being my brother's lawyer he wouldn't feel it would be
17 fair to my brother to have two -- to represent both of
18 us. He said, "Let me refer you to somebody." He said --
19 then -- well, he didn't tell me right then who he was going
20 to refer me to. He said he would get back to me.
21 Meanwhile, I had talked -- I had talked to Jim McLaughlin
22 on the phone and then Mr. Cleary got back in touch with me
23 and gave me another reference to another lawyer that I

1 should speak to. And that was about it. That's all the
2 conversation -- Mr. Cleary knew what was going on and Mr.
3 Cleary knew about the sexual things that happened to my
4 brother and he just knew -- I mean, when I talked to him
5 he knew immediately what I was talking about without going
6 into any detail.

7 THE COURT: Now is the reason for your somewhat confusing
8 testimony to these questions because of what the Court
9 order said?

10 THE WITNESS: Yes. I felt that I couldn't answer them without
11 explaining -- without being able to fully explain exactly
12 because Mr. Reynolds had said that I couldn't refer to
13 certain things and on some of the questions Mr. Koch was
14 asking me I was -- I didn't know how to answer them
15 because of that very fact. There were some things that
16 were important throughout my cross-examination that I was
17 not able to disclose.

18 THE COURT: And is that the reason you looked back at me?

19 THE WITNESS: Yeah, I would look at you.

20 THE COURT: Hoping that I might be able to guide you and I
21 couldn't.

22 THE WITNESS: Yes.

23 THE COURT: Okay. Now what I'm going to do is ask that both

1 sides in the case have an opportunity to ask you some
2 questions now too. Okay.

3 Attorney Reynolds, do you have any questions or
4 Attorney Gainor?

5 DIRECT VOIR DIRE: (by Mr. Reynolds)

6 Q Tom, I want to be sure I understand. Was the thing you
7 felt you couldn't refer to in that conversation with Bill
8 Cleary your knowledge of the sexual abuse of your brother,
9 Jon, by the defendant?

10 A No, I hadn't -- I had never had any detail. All I knew
11 was that Jim McLaughlin had been doing an intense
12 investigation over a period of time. I don't know when
13 that time was and then that -- the cause of that
14 investigation was that my brother would be coming on before
15 the grand jury in two days time and --

16 Q And why was he going to grand jury?

17 A Because of a sexual assault on him by Mr. MacRae.

18 Q And you knew that when you called Bill Cleary?

19 A Yes, I did know that.

20 Q Okay. So basically you and Bill didn't get into it but
21 from what he said from what you knew, he is representing
22 Jon concerning the sexual abuse on him by MacRae?

23 A That's correct.

1 Q And that's something you couldn't talk about during your
2 disclosure in front of the jury?

3 A That's correct.

4 Q And you were thinking about that and how to get out of not
5 mentioning that?

6 A Right. I was trying to come up with an answer where I
7 didn't have to bring that -- I started to when he asked me
8 -- I was just about making that the way I wanted to say
9 it but I couldn't do it that way because of what you had
10 said earlier that I can't refer to certain things, about
11 the other trials and stuff like that, the other trials.

12 Q And the abuse of the other victims?

13 A Right.

14 Q To be sure I understand, you spoke with your mother, she
15 had related that Jon was coming forward and you knew from
16 what little was said that that was about sexual abuse by
17 Gordon MacRae against Jon, your brother?

18 A That's correct.

19 Q You didn't want to discuss that with your mom, you
20 basically avoided --

21 A She didn't know much at the time either. What did she call
22 -- it was a secret indictment and she didn't know any
23 information. She just knew that it was -- that there was

1 an investigation already had taken place and that -- I
2 don't know, so she didn't really know too much so she
3 didn't actually say anything about any details. It was
4 just I knew when she said that he was going in front of the
5 grand jury about Mr. MacRae, I knew what it was about.

6 Q So your response based on your knowledge was "Jon, too," by
7 golly?

8 A Yeah.

9 Q So what's the reason you came forward to Bill Cleary and
10 Jim McLaughlin then based on your conversation with your
11 mother? Why did you want to come forward on the sexual
12 abuse for you then?

13 A Because all along Mr. MacRae -- well, first Ms. Collett
14 would -- her reaction to my admission that I was being
15 sexually abused by Mr. MacRae, her response of total
16 disbelief and just the way she reacted made me believe that
17 what Mr. MacRae had been telling me over the years that no
18 matter -- that no matter who I told, no one would believe
19 me and, so I just believed that for a long time until
20 somebody else -- it didn't have to be my brother. Just as
21 long as it was someone else that was coming out and that
22 somebody did believe them, I just -- I don't know. I just
23 didn't believe that other people would believe because of

1 continuously -- MacRae continually, continually telling me
2 that no one would believe me, no one would believe me and a
3 lot of things that he said were true over the years that he
4 had said when he would say something and then it would
5 happen that way.

6 Q So now based on this conversation with your mother that
7 somebody else, anybody else had come forward, so now you
8 believed if you came forward, too, you could be believed?

9 A Yes, exactly.

10 Q And that's what you couldn't tell the jury?

11 A That's right.

12 Q And that's why you came forward because you knew you had a
13 partner, you had an ali?

14 A That's right.

15 Q Thank you, Tom.

16 THE COURT: Any questions?

17 CROSS VOIR DIRE: (by Mr. Davis)

18 Q When you had that telephone conversation with your momma,
19 you called, right?

20 A Yes, correct.

21 Q Tom, speak up a little bit because I am hard of hearing.
22 And she let you know that it had to do with Gordon MacRae
23 and Jon and sex abuse, is that right?

1 A I don't know if she said those exact words, "sex abuse".

2 Q It had to do with Jon, Gordon and something inappropriate
3 with sex, whether she used the term sex abuse or not. You
4 knew that in the conversation?

5 A Again, she didn't use the word sex abuse. I'm not sure how
6 she referred to it.

7 Q Bear with me, Mr. Grover. I'm not asking if she used the
8 words "sex abuse" but when you talked to your mother on the
9 telephone, you knew that she was telling you that Jon was
10 going to the grand jury and had been talking to Detective
11 McLaughlin regarding Gordon MacRae and something having to
12 do with sex?

13 A I came to that conclusion myself.

14 Q And she tried to find out if anything had ever happened to
15 you?

16 A She said what she said to me was a secret indictment,
17 nothing was known. Nobody talked about it. I didn't know
18 about it. She didn't know about it until two days before
19 he was to go before the grand jury.

20 Q Well, if he hadn't gone before the grand jury, how could
21 there already be an indictment and how could it be a secret
22 indictment?

23 A I don't know. I just know what the conversation was Mr.

1 --

2 Q And she told you that Bill Cleary represented Jon?

3 A Yeah, somewhere in that conversation.

4 Q She told you you ought to talk to Bill Cleary?

5 A No, she didn't say anything to me about talking to
6 anybody. That was on my own -- I did it on my own. I
7 called Jim McLaughlin on my own. No one said you have to
8 do this or you should do this or that. She didn't even
9 know and I'm sure when I told -- she was surprised when I
10 told her I called Jim McLaughlin and that's all I said to
11 her. I didn't say what we talked about. All I said was I
12 called Jim McLaughlin and out of --

13 Q That's the second telephone conversation?

14 A Right.

15 Q I'm back on the first one. When you called your mom out of
16 the blue, just happened to be calling and she happened to
17 mention that your brother was going to the grand jury and
18 had been talking to Detective McLaughlin, at that time she
19 told you Bill Cleary represented Jon, is that right?

20 A Later on in the conversation.

21 Q During that same telephone conversation?

22 A Yes, in that same telephone conversation.

23 Q That's conversation one. All right. Let's just call that

1 the first telephone conversation. There was another
2 telephone conversation later that when you talked to your
3 momma after you talked to Detective McLaughlin, correct?

4 A Yes.

5 Q That's telephone conversation two?

6 A Correct.

7 Q Now this first conversation at the end of that telephone
8 conversation you knew Attorney Cleary was representing Jon?

9 A That's right.

10 Q Okay. And you decided, it wasn't your momma that put you
11 up to it, but you decided to call Attorney Cleary?

12 A That's correct.

13 Q And you decided to call Mr. Detective McLaughlin?

14 A That's right. The only question my mother asked me is if I
15 knew anything. That's all she said, if I knew anything.

16 Q During the first telephone conversation?

17 A Right, during the first telephone conversation.

18 Q You thought she was trying to find out something, right?

19 A Well, she was asking me a question if I knew anything.

20 Q About sexual abuse?

21 A She did not use that term. She just simply said, "Do you
22 know anything?" She just said, "Do you know anything about
23 it?" That's all she said. There was nothing ever brought

1 up about sexual abuse. There was nothing brought up about
2 that in that first conversation. She simply said, "Do you
3 know anything about it?"

4 Q And just a couple minutes ago in response to Attorney
5 Reynolds' questioning, did you say something about "and she
6 tried to find out in the past" or words to that effect or
7 "she had asked me in the past"?

8 A Yeah, she had asked me in the past but I can't say exactly
9 when in time.

10 THE COURT: Attorney Davis, I am going to tell you something.
11 When you ask a witness a question and the witness is
12 answering I want you to look at that witness and listen to
13 the answer.

14 MR. DAVIS: Sorry, your Honor. I've been listening.

15 THE COURT: Well he is formulating an answer and you two are
16 talking.

17 Q When?

18 A I said I don't recall when she asked me that.

19 Q I mean are we talking about that -- this conversation, the
20 first conversation with your momma on the phone, that
21 spring of 1993, correct?

22 A Correct.

23 Q Are we talking about some time in 1993 or sometime in '92?

1 A I don't recall.

2 Q Are we talking about back whenever you were still living
3 with your mother?

4 A Sir, I don't remember.

5 Q You have no idea when she previously asked you about
6 whether anything wrong happened between you and Mr. MacRae?

7 A I just said I don't remember.

8 Q Do you have any idea how many times it happened?

9 A She asked me?

10 Q Yes.

11 A Maybe one time before and then twice including that first
12 conversation.

13 Q So then she asked again after the first telephone
14 conversation?

15 A Before. She asked me before the telephone conversation and
16 during the first telephone conversation for a total of two.

17 Q Okay. I'm sorry. I got confused. But you have no idea
18 what she said when she asked previously?

19 A No.

20 Q Do you know if it was in person or on the phone?

21 A Chances are it was on the phone. I really don't spend that
22 much time at my mother's house, maybe twice or three times
23 a year even that. I'm not really on -- I don't have

1 constant contact with her.

2 Q You don't now and you haven't for some period of time?

3 A Right.

4 Q But for instance if we go back to the date of these
5 allegations of indictment, you were living with her then.
6 That was summer of '83 and the fall semester of 1983,
7 correct?

8 A That's correct.

9 Q You were still living home then?

10 A That's right.

11 Q And then you continued to live at home on and off at
12 various times and even came back and lived with either your
13 mother and father after you went to California in the late
14 '80's?

15 A Yes, I lived with my father.

16 Q So you have no idea of whether she is previous -- whether
17 the previous inquiry from your mother whenever she was
18 trying to find out if anything ever happened between you
19 and Mr. MacRae?

20 MR. REYNOLDS: I think we're way beyond the scope of this
21 hearing.

22 MR. KOCH: Well, I also think we've learned for the first
23 time some new evidence that I believe may contradict some

1 previous statements that I have from Mr. Grover and some
2 information he has given to the Detective.

3 MR. REYNOLDS: Well he has also answered this question about four
4 times that he doesn't remember.

5 THE COURT: Yes. It's been asked and answered. The objection
6 is sustained.

7 Q When you talked to Attorney Cleary, he told you he couldn't
8 represent you because of what lawyers call a conflict?

9 A He didn't call it a conflict, he just said he would rather
10 refer me to someone else.

11 Q Because he was representing Jon?

12 A That's correct.

13 Q And he gave you the name of one or more other attorneys?

14 A No, he did not. He didn't just pick up -- he didn't just
15 pick a name out of thin air and tell me over the phone in
16 that conversation. He told me he would get back to me and
17 then what came about was he gave me a name and I went to
18 see him.

19 Q So whether it happened in the first time you talked to
20 Attorney Cleary or not, you got a reference as to another
21 attorney that you might speak to and you did?

22 A That's correct.

23 Q And for whatever reason, that didn't work out with that

1 attorney and then you saw Attorney Upton?

2 A That's correct.

3 Q Thank you.

4 THE COURT: Anything further?

5 MR. REYNOLDS: No.

6 THE COURT: All right. Then you can step down. And what I
7 plan on doing is I will listen to arguments from counsel
8 and then make a decision and we'll have the jury come back
9 up.

10 MR. DAVIS: Your Honor, because of the nature of the argument,
11 might I suggest that it be outside of the hearing of the
12 witness.

13 THE COURT: I guess the witness is leaving anyway.

14 MR. DAVIS: Moot. Thank you, your Honor.

15 MR. KOCH: Your Honor, I want the Court to note that I was
16 listening to every word Mr. Grover was saying. I was fixed
17 on him.

18 THE COURT: I thought that was a discourtesy for Mr. Davis to
19 ask a question and then turn away from the witness.

20 MR. KOCH: All right, your Honor.

21 THE COURT: I just don't expect to see that.

22 MR. KOCH: Certainly.

23 THE COURT: It was nothing against you.

1 Attorney Gainor?

2 MR. GAINOR: Your Honor, the whole issue here is on fair
3 advantage. Whether the defendant, through asking
4 questions, has gained a non-fair advantage by what the
5 witness cannot say, what the Court's order prohibits that
6 witness from saying and what he was prohibited from saying
7 is the reason he came forward, the main reason. The sole
8 reason he finally came forward is because there was
9 corroboration. His brother, Jon Grover. And now in spite
10 of the defendant's threats of people not believing him, Tom
11 Grover, for once in his life, had the confidence to come
12 forward and that was the reason. The most important reason
13 which the defense put into issue which Tom Grover could not
14 tell that jury and that's the unfair advantage because they
15 don't know, the jury doesn't know that was the reason. And
16 also the sequence of events. Tom had to basically skate
17 around the truth and be very careful and appear to be
18 hesitant on the stand looking to counsel for assistance,
19 looking to your Honor for assistance. The jury doesn't
20 know what all of that was about. It was about him asking
21 for assistance because he was being led by the defendant
22 into areas where he could not go unless he wanted a
23 mistrial which he certainly does not and the reason he

1 contacted Bill Cleary was because of Jon Grover, his
2 brother coming forward. Tom could not say that. Again the
3 defense led him into that avenue. But for Jon, he wouldn't
4 have contacted his lawyer or his possible lawyer to be,
5 Bill Cleary and Tom couldn't say that. Tom had to give a
6 half hearted, half truth explanation, "Well, the reason I
7 went to him is because he was an old lawyer of mine, a
8 friend of the family." That is partially true; but the
9 main reason he went to him is because his brother came
10 forward and told Tom that he had the same experiences. It
11 may not have been verbatim as to Jon telling Tom exactly
12 what happened but certainly Tom knew what it was all
13 about. And the same goes for Detective McLaughlin as to
14 why this witness, Tom Grover, contacted Detective
15 McLaughlin. It was not solely because of what happened to
16 him, it was because there was corroboration. There was
17 another victim out there and Tom, only because of him, had
18 the confidence and the ability to come forward and that is
19 a misleading advantage the defense has now. Tom had very
20 good reason to speak his mind as to the truth and he could
21 not because of the Court order and again the defense led
22 him into that box.

23 THE COURT: Thank you. Attorney Koch?

1 MR. KOCH: Thank you, your Honor. The Court felt I think
2 from some of our side bars that Mr. Grover was trying to be
3 as responsive as he could but, your Honor, if the Court
4 will review the questions and we had been told before this
5 case to begin especially me, Mr. Koch, you have to be very
6 careful in the terms of your questioning and what you ask
7 and what you're expecting. So throughout this entire time
8 of cross-examination of Mr. Grover, I have tried to make my
9 questions extremely pointed and not open the door so to
10 speak. In fact, the State, on a couple of occasions, when
11 they thought we might be broaching an area and it wasn't
12 one of these, thought well maybe we're moving a little
13 where we shouldn't be and they even brought it to the
14 attention of the Court and myself which I appreciated
15 because with a witness like Tom Grover, your Honor, that
16 you can't get a straight answer from to a very simple
17 question, you have to be very artfull in terms of the way
18 you ask your questions.

19 Now, the Court read the questions I asked him and
20 there was nothing confusing about those. If I remember
21 correctly, your Honor, what I asked him is did you talk to
22 Detective McLaughlin or to William Cleary first? The whole
23 nature of the conversation and questioning that I asked had

1 to do with that. Was the cart before the horse or vice
2 versa and if the Court will look to my questions again, now
3 if that somehow leads him or puts him in a position where
4 he just can't answer that question, I think that's taking
5 unfair advantage of the defense. All I was trying to do is
6 find out, "Who did you talk to first? Is it as you say
7 here today that you talked to Detective McLaughlin because
8 that was his testimony and then to William Cleary or is it
9 as Mr. McLaughlin states in his report that you talked to
10 William Cleary and then Detective McLaughlin." I didn't go
11 into any detail, your Honor, about what the nature of the
12 conversations was. Part of it is attorney/client. It's a
13 confidential communication and furthermore, all I wanted to
14 know was, "Was that the reason you had gone?" In other
15 words, "Did at least Mr. Cleary know the reason you were
16 there had to deal with an issue relating to some kind of
17 abuse?" And the same thing with Detective McLaughlin.

18 Now, your Honor, in my mind that called for a very
19 simple response and it was not convoluted and I asked the
20 Court on several occasions to please have him answer the
21 question. I don't think I could ever get a single answer
22 out of him, yes or no. It was always somewhat a rather
23 lengthy explanation and even with those questions the Court

1 reads there, his responses, "Did you talk to Mr. Cleary
2 first or Detective McLaughlin first?" And off he goes. Now
3 if he felt that somehow he was constrained of that it was
4 appropriately so but his answer was not responsive in that
5 regard and it's not in any form or fashion misleading. If
6 the Court allows that kind of evidence based on a question
7 like that, then in part we're into a situation where we're
8 again trying what was told to Mr. Cleary and in other words
9 what attorney/client communications -- what did they
10 discuss and additionally what about these allegations
11 regarding Jon Grover? And I would respectfully request the
12 Court not allow those simple questions to open up that full
13 area of inquiry. Thank you.

14 MR. REYNOLDS: Your Honor, you can't view these questions in
15 isolation. What Attorney Koch did very artfully is create
16 an entire structure within which the same response would
17 create in the minds of the jury that this disclosure,
18 whatever it was, was a put up job on the part of the
19 defendants in league somehow with Mr. Cleary and Mr.
20 McLaughlin and his mother. That's the impression the jury
21 got from that exchange. And that's the unfair advantage.
22 It wasn't a put up job. It went from point A, to point B,
23 to point C and he couldn't give us B, C and D because of

1 the constraint on the 404-B order. He was led blindly
2 down the pike with regard to the context in which the
3 questions took place and now he looks like a prevaricator
4 at the very least and perhaps someone who's obstinant in
5 trying to deny giving out information that may be important
6 for the defense based on the structure of the questions.
7 It looks like he is up to something and he is not up to
8 anything. He is up to trying to give a fair response to
9 fair questions and he didn't get fair questions.

10 THE COURT: Well, I will tell you. Immediately upon him
11 answering -- and I do remember him answering, "You have to
12 understand there are other circumstances --" and then
13 looking at me and my knowing that his answer was being --
14 was coming across as confusing and not logical because he
15 knew that the Court had ordered that nothing could be
16 disclosed about the allegations of abuse of his brothers or
17 that grand jury proceedings which he pointed out here
18 today. Now the fact -- that leapt out at me at the moment
19 that it happened here. I know that my law clerk's notes
20 picked that up immediately. I know that that's what the
21 State raised in its argument here and actually Attorney
22 Davis raised it better than the State did.

23 Now, something is wrong. We have two newspaper

1 reporters who observed the same thing and then I know they
2 have to write a lot but not only did they observe it and
3 write it down, it ended up in two newspapers so it had to
4 have had an impact on the jury similar to the impact that
5 it had on the press, on the judge and so I feel that my
6 order in that context and within the context of the
7 questions that Attorney Koch asked, resulted in an unfair
8 advantage or misleading advantage to the defendant on the
9 question of this witness' credibility and as I pointed out
10 before, credibility is the biggest issue in this case as it
11 is in most of these sorts of cases. One person's word
12 against the other and he was damaged up here due to my
13 order on his inability to answer fully the questions. I
14 don't -- I am not going to allow in the prior act
15 evidence. What I'm going to do is simply read the part of
16 the testimony that we have in the transcripts to the jury
17 verbatim and then I will give them an instruction that they
18 are to disregard any confusion that may have resulted as
19 the witness answered those questions because the witness
20 was unable to answer them fully because of a court order in
21 this case and then I'll go back here and figure out exactly
22 how I am going to do it but I will do it to the effect that
23 they are not to make any conclusion one-way or the other

1 concerning any of this testimony. I think that's the fair
2 thing to do. That keeps out the bad act question and
3 removes the confusion from the testimony and puts everybody
4 back on the same playing field again. So that's what we'll
5 do. I'll go in and draft what I'm going to do. We'll
6 probably take about ten minutes and go back to work.

7 MR. DAVIS: With your permission, do I still have permission
8 to leave the Court early this afternoon?

9 THE COURT: Yes.

10 MR. KOCH: Your Honor, may I register an objection now or
11 after the order is prepared?

12 THE COURT: No, that's fine. You can object now.

13 MR. KOCH: Your Honor, I would object to that process and
14 we've already stated our reasons why. I don't think I
15 opened the door. I don't think there was confusion. I
16 think he was non-responsive; and with all due respect, I
17 think the record shows that. The question was simple.
18 "Who did you talk to first?" And that was his response.
19 But thank you, your Honor.

20 THE COURT: Okay. Thank you.

21 (Recess)

22 OPEN COURT

23 THE COURT: Okay. Before we go forward, you will recall I

1 think two days ago Mr. Grover testified during
2 cross-examination by Mr. Koch that he had made statements
3 to Detective McLaughlin and Attorney Bill Cleary. I am now
4 going to read you two portions of that testimony. That
5 will include the question and answers. First Attorney
6 Koch's question, "The -- would you have reason to dispute
7 Detective McLaughlin's notes that say that Detective
8 McLaughlin got your name from William Cleary, an attorney
9 and long time friend of the Grover family?" And then there
10 is Mr. Grover's answer, "Yeah, that may be but the way I
11 interpreted you asking me is when I sat down and talked. I
12 never sat down and talked to Bill Cleary in any detail of
13 what had happened. Jim McLaughlin was the first person
14 outside of Deborah Collett that I sat down and actually
15 talked to and went into detail about that. The incident.
16 I can't discuss any other reasons why. I -- it just
17 wouldn't be appropriate." Now this is a question from Mr.
18 Koch, "When you contacted Mr. Cleary though, or talked to
19 him, sir, was it in part to let him know what the situation
20 was about?" Answer, "No, he had been my lawyer, a few --
21 in a few other incidents and I called him as much as a
22 personal friend and a former lawyer to ask him his advice
23 and no, I did not go into any detail about anything just

1 basically asking --" And then there was another part of the
2 testimony. There was a question from Attorney Koch.

3 "Excuse me, you hadn't even talked to Jim yet? Is that
4 correct?" And the answer was, "Right". And then Attorney
5 Koch asked, "So, sir, from my understanding of your earlier
6 testimony, you talked to William Cleary before you talked
7 to Detective McLaughlin, not vice versa, isn't that true?"
8 And the answer from Mr. Grover, "No, you asked me whatever
9 your question was. Who I talked to about the incidents.
10 Deborah Collett in 1986 and next who did I talk about and I
11 said I talked to Jim McLaughlin in detail about what
12 happened. I talked to Bill Cleary maybe it was before I
13 talked to Jim but it was only out of friendship, and as my
14 former lawyer, to ask for his advice. You have to
15 understand that there were other circumstances going on at
16 the time which aren't able to --"

17 Ladies and gentlemen, you may not consider those
18 statements for the purpose of determining whether Mr.
19 Grover told the truth when he testified to those
20 statements. You may not consider those statements for the
21 purposes of determining whether Mr. Grover is telling the
22 truth during the rest of his testimony. At the time Mr.
23 Grover made those statements, he could not fully answer Mr.

1 Koch's questions. There was a standing Court order in this
2 case that prevented Mr. Grover from answering the questions
3 completely. So this -- these parts of the testimony that
4 I point out here are not to be used by you. Thank you.

5 THE COURT: Attorney Reynolds? May it please the Court.

6 REDIRECT EXAMINATION: (by Mr. Reynolds)

7 Q Tom, I'm going to try to take you backwards a little bit
8 through the cross-examination and ask you a few points
9 about that. First thing I want to ask you about is
10 Defendant's Exhibit A and this is the discharge agreement,
11 is it, from Derby Lodge?

12 A Yes, it is.

13 Q And you indicated I think earlier that the only writing of
14 your own on there is your signature?

15 A That's correct.

16 Q And it was filled out by someone else?

17 A That's correct.

18 Q Do you remember whether or not that was filled out in front
19 of you that day or so before your discharge?

20 A I can't recall.

21 Q Could have been filled out the day before you were
22 discharged or sometime earlier as well?

23 A That's correct.

1 Q It lists Gordon MacRae as your AA sponsor. Isn't that
2 right?

3 A That's correct.

4 Q Did you have any choice about who your AA sponsor was going
5 to be when you left Derby Lodge?

6 A Did I have a choice?

7 Q Yes.

8 A Yes, I had a choice.

9 Q Why did you pick Gordon MacRae?

10 A I didn't put that in there.

11 Q All right.

12 A What led up to this, why this might be the way it is was
13 because there were other papers that weren't in the stack
14 of papers that was presented to me this morning. I signed
15 other papers -- what would you call those.

16 Q Releases?

17 A Yeah, releases but when you sign yourself into a place like
18 that.

19 Q Some sort of admission papers?

20 A Yeah, admission papers. I signed admission papers and a
21 couple releases and those papers weren't present in that
22 stack of papers that was here this morning and the only
23 thing I can come up with how they put Mr. MacRae's name on

1 there was because Mr. MacRae brought me there, Mr. MacRae
2 -- I had signed a release for Mr. MacRae and at the time
3 my things that were going on in my life, my family didn't
4 want anything to do with me and Mr. MacRae stepped in and
5 once again tried to -- he tried to take matters into his
6 own hands. You know, just brought up the point that he
7 knew an AA person at Derby Lodge and that he could get me
8 in there and he brought me up there. I called my mother
9 just before we left and she didn't really respond either
10 way to it. She just, at that point, was glad I suppose to
11 see that something was happening and so whoever filled this
12 in may have just been going on the fact that I had come
13 with Mr. MacRae and that I had signed a release for Mr.
14 MacRae.

15 Q So they could have made the assumption or you could have
16 just fallen into it given the history he had with getting
17 you in and keeping you at Derby Lodge?

18 A That's correct. Also on this paper it says I agree to call
19 Debbie referring to Debbie Collett at Derby Lodge. Debbie
20 Collett was no longer at Derby Lodge when I left Derby
21 Lodge. She had stepped down as director or whatever her
22 position there was. She had left at that point. Sometime
23 during my treatment for some unknown reason just dropped

1 off and was no longer employed there and so I don't know
2 how they came up with I agree to call Debbie. Like I said,
3 somebody else had filled this out. I signed it on the
4 bottom.

5 Q Let me ask you this. I'll ask you what this Derby Lodge
6 document is, page number D-237 counsel, and ask you if you
7 can tell me what that document is, what the title is?

8 A This is a discharge summary from Derby's Lodge in 1986.

9 Q And let me show you where it lists on that document, does
10 it note what your support system is according to Derby
11 Lodge on the discharge summary? Does it list what your
12 support system was?

13 A Yes, part way down the page it says support system, and it
14 reads after that, "client support systems appears to
15 consist of the following: Father Gordon MacRae" and no
16 other names after that.

17 Q And that's not a document that you filled out, that's their
18 internal stuff?

19 A That's correct.

20 Q Tom, by the time you got out of Derby Lodge, you had been
21 pretty well estranged from your family, hadn't you?

22 A Yes, well, up to -- yeah, up to that point.

23 Q You got a ride from Concord after you left Derby Lodge to

1 Tirrell House I guess or was it for about a month between
2 the two as I recall, a ride from your father?

3 A When I was released from Derby Lodge, I went from Berlin on
4 the bus to Concord and my father picked me up. I went to
5 my mother's house only under certain conditions and some of
6 those conditions were that I be waiting to go to Tirrell
7 House because the waiting list was so long. Originally
8 Derby Lodge is only a three month program or a little bit
9 less, 28 days or something like that and they extended me
10 some time because I had been waiting on a waiting list to
11 get into Tirrell House so under certain conditions made
12 between my mother and Mr. MacRae was I allowed to stay at
13 my mother's house for the period of time between leaving
14 Derby Lodge and entering Tirrell House and during that time
15 Mr. MacRae would frequently visit me at my mother's house
16 and would take me to meetings and things of that nature.

17 Q So while you were at your mother's house, you're staying
18 there for the month or so it takes you to get into Tirrell
19 House after Derby Lodge but basically the defendant is
20 still running the show?

21 A That's correct.

22 Q When you were 15 years of age and you were being assaulted
23 in the rectory of St. Bernard's Parish Church, who was

1 running the show then?

2 A Mr. MacRae.

3 Q As a matter of fact, from that time he pretty well ran the
4 show for most of your adolescent and late teen years,
5 didn't he?

6 A That's correct.

7 Q Is it fair to say that in terms of counseling sessions that
8 took place in the rectory, that you sometimes had
9 counseling sessions with MacRae that did not involve
10 assaults, some --

11 A Yes, there were times when we had spoke and had those
12 counseling sessions that things went all right or talked
13 and whatever, that nothing happened.

14 Q And you disclosed that to Detective McLaughlin that
15 sometimes you had counseling sessions and were not sexually
16 assaulted?

17 A I believe so.

18 Q Approximately how long was your first conversation with
19 Detective McLaughlin when you actually talked about the
20 assaults?

21 A I can say it was lengthy, more than an hour.

22 Q An hour to two hours?

23 A That's fair to say.

1 Q And I think he asked you on one or two other occasions, I'm
2 not sure of the number, but one or two other occasions to
3 fill in some additional details. Is that right?

4 A Yes, he did.

5 Q Now you and I spoke, I want to say a couple of weeks ago,
6 late one week and then the next week following, isn't that
7 right?

8 A Yes, that's correct.

9 Q And that was here in Keene and then in Manchester?

10 A That's correct.

11 Q And do you recall who did most of the talking? You or me?

12 A I did most of the talking.

13 Q And do you recall that basically in those two sessions
14 starting with the first one and going through the second
15 one you had pretty much covered the assaults that you have
16 laid out for the jury here the last few days?

17 A Yes, I did.

18 Q And if you put those two sessions together from start to
19 finish, approximately how much time did you spend talking
20 over those two days?

21 A I'd say more than six hours.

22 Q And were you able in that period of time to provide some
23 more detail than you had in the conversations with Mr.

1 McLaughlin back a year or so ago?

2 A Yes.

3 Q And is that what you related to the jury here in the last
4 few days?

5 A Yes.

6 Q Anybody put words in your mouth?

7 A Never.

8 Q Do you recall indicating to Mr. McLaughlin when you spoke
9 with him that perhaps you didn't use the term breakdown but
10 you were emotionally upset by the defendant when he was
11 assaulting you in the rectory?

12 A I think I used other descriptive words to that nature.

13 Q Mr. Koch brought up a lot of issues, did he not, about you
14 being a fairly strong, active, mid-teen, violent behavior,
15 that sort of thing. Do you recall that?

16 A Yes, I recall.

17 Q And do you recall testifying that basically force and that
18 sort of thing was primarily something you did in your
19 younger years and you did against your peers?

20 A That's correct.

21 Q Is Father MacRae the kind of person you ever considered
22 using force against?

23 A No.

1 Q Why not?

2 A Because he was my whole life line at the time. He had
3 control over every aspect of my life. It was either him or
4 nobody. My family just had no longer wanted to back me in
5 any way and it was an opportunity for Mr. MacRae to step in
6 and do basically whatever he pleased.

7 Q Speaking of the assaults in the southwest office, you had
8 indicated, did you not, that while people may have come in
9 that office, that you don't recall anybody actually working
10 in that office when you and MacRae went in, into the
11 entryway?

12 A Could you ask that again?

13 Q I sure can. Speaking of the first couple of assaults,
14 those times when you were assaulted in the southwest
15 office, in order to get to the southwest office of course
16 you have to go through the entryway, correct?

17 A Correct.

18 Q And that entryway or entry office is I think you described
19 it, did you not, as -- it's my term -- Grand Central
20 Station, but people come and go through there?

21 A Correct.

22 Q Do you have any recollection of anyone actually being in
23 that office other than simply to mosey through from time to

1 time?

2 A Using it as an office?

3 Q Actually using it rather than just simply passing?

4 A No one was there using the office at the time. There was
5 just a lot of traffic coming in and out.

6 Q Is it reasonable in a counseling session going on behind a
7 closed door that someone walking by might hear someone
8 crying?

9 A Yes. On other occasions when I was at the rectory I had
10 heard people crying. Some of the other priests would leave
11 their doors ajar, depending on what they were talking about
12 but there were people that had come for counseling and you
13 could hear them crying so it wasn't an uncommon thing to
14 happen.

15 Q Let me show you this photograph, State's Exhibit C-5, which
16 the jury has already seen. Thanksgiving 1983. It shows
17 the defendant, you, and some other members of your family,
18 is that right?

19 A Correct.

20 Q And you took that out of an old family photo album?

21 A Yes, I did.

22 Q And can you tell this jury with certainty that the assaults
23 that you've testified to took place in that rectory prior

1 to that 1983 Thanksgiving?

2 A Yes. The assaults had happened to me that were described
3 to you took place before this picture in 1983.

4 Q Thank you. During the period of 1983, even as the assaults
5 were going on that you've described, was the defendant
6 doing some nice things for you?

7 A Yes. He had -- he would buy presents, give gifts, take me
8 out to eat. He would even give me money, spending money,
9 money that I spent to buy drugs and buy alcohol. It was
10 money that was given to me from Mr. MacRae.

11 Q You said something that I'm afraid I didn't quite
12 understand. Maybe you can explain it to me. You said
13 under cross-examination from Mr. Koch that you, Tom Grover,
14 felt that you had brought the problems on concerning the
15 defendant and that you took responsibility for the
16 defendant's behavior. Can you tell me about that or
17 explain that to me?

18 A I didn't know -- I just felt ashamed and guilty and didn't
19 really know -- didn't really know what to think. I thought
20 it was me. I thought because of everything that was going
21 on.

22 Q Please speak up, Tom?

23 A I was just -- I don't know. I was just confused and hurt

1 ashamed, and felt guilty and I just thought that I deserved
2 what was happening and didn't know any better and never
3 once did I ever think that what he was doing was wrong and
4 I felt bad for a lot of years because I sat there and I
5 didn't do anything to stop it and I couldn't stop it. I
6 had to rely on -- just had to rely on -- he made me rely
7 on him. He cut my family out of my life and he took over.
8 He took over that -- he took their place and I just never
9 thought of ever blaming him. I was just all messed up
10 inside.

11 Q And you were 15?

12 A Yes, I was 15 years old.

13 Q During this period of time from when the assaults began up
14 until the -- up until just before you -- well as you had
15 gone through Derby Lodge, all those other circumstances,
16 what's your self-esteem been like?

17 A I really guess I don't have any. I think of -- I don't
18 think of myself as a good person. I hurt all the time and
19 I think -- I don't know. I just don't have any respect
20 for myself because I feel like I could have done something
21 to stop what happened but I didn't and now it hurts and
22 that never, never, never goes away. I wake up in the
23 morning with it. I go to bed with it every day. Even when

1 I try to have fun, even when there is a hundred people
2 around, you still think -- I still feel -- it eats away at
3 me.

4 Q And you've tried not to think about it?

5 A I tried not to think about it and it's just there and just
6 keeps on being there and I try not to think about it. The
7 only way I ever found that numbed it enough was to drink
8 and do drugs and that, too, wouldn't take away all the
9 pain, just maybe for the time, for the few hours or
10 whatever.

11 Q During the time, Tom, after the separation of your mother
12 and your father and going into the divorce, you had contact
13 with your father I guess and sports teams and that sort of
14 thing but did you have the kind of contact with him that a
15 teen-age boy needs with his father?

16 A No. No. We just -- outside of going to practice and
17 hitting the ball around or playing ball, I really didn't
18 have much contact at home or any conversations or anything
19 like that. I just wasn't that close to my father.

20 Q And did you have a father substitute?

21 A Yes, I did. Somebody who came along and played the role
22 that I thought a father should be and just took control and
23 just used whatever he could to keep me under that control.

1 Q Do you know how the arrangements were made to get Jon to go
2 to the airport with you and Chris and Gordon MacRae that
3 time you were taking Chris back to the Air Force?

4 A Who made the arrangements?

5 Q Yeah.

6 A Well, Mr. MacRae was also very friendly with Jon, my
7 brother, and he wanted both of us to go with him and Gordon
8 had volunteered to take my brother, Chris, and wanted us to
9 go with him but Jon didn't make it for whatever reason.

10 Q And you don't know what reason Jon did have for going?

11 A Right.

12 Q At Tirrell House -- the chart up there that Mr. Koch drew
13 indicates up in that chart about a three month period that
14 you were in Tirrell House. Tell the jury please what the
15 Tirrell House system is? Meetings all day long, every day
16 or do you do different things? How does that work?

17 A Tirrell House is just basically called a halfway house
18 where other alcoholics or drug abusers go as a stepping
19 stone from usually they just come out of a 30 day program
20 and go there where they are in a safe environment and you
21 go -- all it is is you have an assigned room and you go to
22 work, you look for work -- you have to work while you're
23 there. You go to work, you come home, and you all eat

1 together and you have certain chores you have to do and
2 once a week you have a house meeting and once a week you
3 have one-on-one counseling sessions and I think there is a
4 mandatory rule that you have to go to three AA meetings a
5 week and it's just a structured environment that some
6 people need.

7 Q That's the kind of structured environment somebody with an
8 alcohol and drug problem needs?

9 A Correct.

10 Q Mr. Koch asked you a question and showed you a paper and
11 let me show you another copy of that same thing. It's the
12 one -- do you remember he read you half of the sentence you
13 wrote and not the whole sentence?

14 A Yes.

15 Q And what was that whole sentence that you wrote that he
16 didn't read to you?

17 A It says, "I lied a lot to get what I wanted or sometimes
18 out of fear".

19 Q Now part of that document also -- and it's a long one.
20 It's about a page and a half that you wrote?

21 A Yes.

22 Q It talks about in the first -- very first paragraph it
23 talks about something to do with AA programs and I have

1 highlighted some stuff there. Can you read that please?

2 A It says, "In order for the AA program to work, we must have
3 spirituality. Spirituality to me is the faith and
4 acceptance of a power greater than ourselves".

5 Q Now I've never been to an AA meeting but I have heard the
6 phrase "one day at a time" mentioned. Where does that come
7 from, do you know?

8 A What does it mean?

9 Q Yeah? What's that do for you in terms of AA?

10 A Just means that sometimes it's just a minute at a time or
11 an hour at a time or that you sometimes have to say that to
12 yourself in order not to drink. If you look at it in a too
13 broad of a span, then some people like myself end up
14 drinking again, but if you can just look at it as a second
15 at a time or, "Okay, right now I am not going to drink.
16 When I walk out of this courtroom, I'm not going to drink."
17 That's one day at a time. That's what that means.

18 Q So is it fair to say that the focus on AA and in these
19 programs you were in is like on the here and now?

20 A Yes.

21 Q What do I need to do today not to drink?

22 A Correct.

23 Q And so is it fair to say in these various programs you have

1 been to and going to AA meetings you don't get in a whole
2 lot about all the underlying causes for the drinking, you
3 get into what do I need to do right now not to drink?

4 A That's correct.

5 Q Is spirituality as you understand it having been through
6 these programs, is that a big part of AA?

7 A Yes, it is. It's the most important part of the 12 steps.

8 Q And have you had difficulty accepting the spirituality part
9 of AA as you try to make it through these programs over the
10 years?

11 A Yes. Because of, uhm, the way I thought of spirituality
12 was my faith and my religion and because of what happened I
13 no longer had that to fall back on and just couldn't come
14 to accept spirituality because just too many things had
15 happened to make me lose faith.

16 Q So the very thing that caused you to drink ultimately is
17 the same thing that took AA and spirituality away from you?

18 A Correct.

19 Q Before I forget, Tom, Mr. Koch asked you to read a portion
20 of again about a one-page document. It's on two pages.
21 One page document. I think it said, "When I was growing
22 up, I had one of the worst tempers. Took me many years to
23 learn the kind of self-control that came to discussing

1 problems or being confronted." Do you remember that?

2 A Yes.

3 Q And that was on -- that was due August 22 of '89, one of
4 your assignments at Tirrell House I guess?

5 A No, at the Farnum Center.

6 Q And on 8/22/89, take a look at that and didn't you write
7 something else?

8 A Yes, on August 22, 1989 I wrote that.

9 Q And can you tell us please what you wrote on that date?

10 A "I have the most problem with fear. I am one of those
11 people who let fear rule their lives. I have a problem
12 with making decisions and standing by them for fear of
13 making the wrong choice. I am working on acceptance and
14 self-discipline. I am trying to take a day at a time. I
15 am working on making sound and responsible decisions."

16 Q On that same day or at least part of that assignment, again
17 another line, there's more material here. But again I have
18 highlighted a couple things. Do you recognize your having
19 written those?

20 A Yes.

21 Q And what did you say that are highlighted in yellow?

22 A "People who matter to me. Their opinions ruled my life.
23 For the longest time I have always been afraid of failure

1 and figure if someone else told me what to do, I could
2 always have -- always have that excuse".

3 Q And then down at the bottom of the page?

4 A "My goal is to stay sober a day at a time and to learn what
5 steps I can take to help myself achieve these goals".

6 Q One day at a time again?

7 A Yes.

8 THE COURT: Excuse me, ladies and gentlemen of the jury, it's
9 4:00. Is there anyone that has a problem going until 4:30

10 (No response from the jury)

11 THE COURT: Counsel, why don't you approach.

12 (Discussion held off the record.)

13 THE COURT: I'll tell you, we're going to take the weekend and
14 we'll see you at 9:00 on Monday. I want to thank you for
15 your service this week. It's a tough business for
16 everybody involved. And I want to remind you not to
17 discuss this case with anyone. Be particularly careful to
18 stay away from any radio or television that might be about
19 this or anything in the newspaper or anything like that.
20 We appreciate your work.

21 Bailiff, why don't you take charge of the jury.

22

23

1 THE COURT: There is something I want to talk to you
2 about.

3 (Discussion held off the record.)

4
5 (End of Day 5)

6
7 CERTIFICATE

8
9 I, Lorena Werner Patria, Certified Court Reporter for the
10 State of New Hampshire and Official Court Reporter in the
11 above-captioned matter, do hereby certify and affirm that the
12 foregoing transcript, pages 1 through 140, represents a true and
13 accurate transcription, to the best of my skill and ability, of
14 my stenotype notes taken in the above-captioned matter.

15
16 Date

3/22/95

Lorena Werner Patria

Lorena Werner Patria, CSR
Certificate #41