

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 7

Pages 7-1 through 7-202

BEFORE

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

DATE:

Tuesday, September 20, 1994

APPEARANCES:

For the State:

Bruce Elliott Reynolds, Esquire
and Robert Gainor, Esquire
Assistant County Attorneys

For the Defendant:

James R. Davis, Esquire and
Ron Koch, Esquire

CLERK:

Stillman D. Rogers, Esquire
Clerk

STENOGRAPHER:

Susan Ronayne, RMR
CSR Certificate #26

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PROCEEDINGS

HEARING OUT OF THE PRESENCE OF THE JURY

THE COURT: Good morning.

MR. REYNOLDS: Good morning, your Honor.

THE COURT: Has everyone seen my order, or has anyone seen my order? Okay. I'm going to just read this order into the record. This is the order on Pauline Goupil and the New Life Center, Inc. "An issue has arisen as to the process used in counseling Mr. Thomas Grover by Pauline Goupil. This procedure could be material to this case. The Court finds there is no other way to obtain the records or testimony. The disclosure would not harm the public interest in attracting people to a substance abuse program and the evidence is important in trying a very serious crime. Additionally, the patient has, during examination, released some information about the nature of these confidential communications and the defendant needs the confidential evidence for the purpose of adequately cross-examining the witness for reliability. The Court grants the State and the defendant access to the records of Mr. Grover's counseling by New Life Center, Inc. and orders that Pauline Goupil appear for interview by both counsel in the presence of the Court on the issue of her technique in

1 counseling Mr. Grover, after which the decision will be
2 made as to whether the witness will be examined with the
3 jury present. Questioning shall be limited to the issue of
4 whether Mr. Grover's recollections of the assaults are his
5 own or were somehow planted by his counsellor, Pauline
6 Goupil."

7 Now, do we all understand each other? Questioning will
8 be limited to that issue alone and if either side wanders
9 away from that, I'll remind you to get back on the
10 subject. Is Ms. Goupil here?

11 MR. REYNOLDS: One other issue, your Honor, so that the Court is
12 aware. As you know, there is civil litigation pending in
13 this matter. I do not know, and I'm certainly not Tom
14 Grover's attorney, but I do not know whether Miss Goupil's
15 information is going to be applicable to any civil actions
16 or not. As we understood the order of the Court, the
17 information contained in the New Life Center files have not
18 been disclosed to anybody other than the attorneys in this
19 matter and I would ask that following the conclusion of
20 this case, that those materials not be permitted to go
21 anywhere but to the attorneys or be turned over to the
22 Court following this.

23 THE COURT: Well, yes. In fact, counsel will have to

1 return--. You have copies of those.

2 MR. REYNOLDS: Yes, we have. I made two sets of copies.

3 THE COURT: They have to be returned to the Court. These are
4 confidential by statute and what I've done by limiting this
5 questioning of Miss Goupil--. I'll explain something to
6 you, Miss Goupil, right now. During your testimony, you're
7 not to talk about what Tom Grover told you. That is
8 confidential information. What you're going to be asked
9 about is the way in which you helped him, counseled him,
10 and how he recalled the events, the alleged events that are
11 involved in this case.

12 MS. GOUPIL: Your Honor, I have a request? I would like to
13 make a statement to the press in terms of my feelings about
14 breaking this confidentiality before I can testify.

15 THE COURT: That's fine. Why don't we do this. I'll have you
16 come up. Come on up. We'll swear you in and you can make
17 your statement and then we'll question you.

18 PAULINE GOUPIL

19 who was called as a witness, and having been first duly sworn,
20 was examined and testified as follows:

21 MR. REYNOLDS: Please be seated.

22 THE COURT: For the record, Miss Goupil, please state your
23 name, age, your place of residence.

1 THE WITNESS: My name is Pauline Goupil and my place of
2 residence is Merrimack, New Hampshire.

3 THE COURT: You can make your statement now, Miss Goupil.

4 THE WITNESS: Thank you. The therapeutic relationship fosters
5 trust and it is that trust that results in the potential
6 healing of the client. In light of that fact and under the
7 circumstances, I feel that I have to begin by apologizing
8 to Tom for jeopardizing his healing and I must also express
9 to this justice system my anger at being ordered to violate
10 that trust and testify this morning.

11 THE COURT: Thank you.

12 THE WITNESS: You're welcome.

13 THE COURT: Counsel? Attorney Koch.

14 MR. KOCH: Your Honor, my understanding was the Court was
15 going to conduct a limited voir dire and then if we wanted
16 to follow up, but whatever the Court's preference is.

17 THE COURT: Well, I'll tell you, I'm not as steeped in this as
18 counsel is. I've already talked with Miss Goupil once.
19 You know what is important to you; you know what the limits
20 of the order are. Go ahead and ask the questions.

21 MR. KOCH: Thank you, your Honor
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VOIR DIRE EXAMINATION

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BY MR. KOCH:

Q Miss Goupil, as I understand your statement, not for the Court but for the press, was that you certainly don't want to violate any confidential nature of communications with Tom Grover?

A That's correct.

Q Now, ma'am, the reason you were called here, and have you seen a copy of the order?

A Yes, I have.

Q And you heard the Judge read you that order?

A Yes, I have.

Q When did you see a copy of that order, ma'am?

A I didn't. Two minutes before I took the stand.

Q Okay. What the order essentially says is that question was limited to the issue of whether his recollections of assaults are his own or were somehow implanted by his counselor.

A I understand that.

Q You understand? Now, ma'am, you are aware that there are situations throughout the country where memory has been enhanced or, in fact, sometimes recreated by the assistance of therapists, are you not?

1 A I believe that that's termed false memory syndrome.

2 Q Is that what you call it?

3 A Yes.

4 Q My question was you are aware, ma'am, that there are
5 therapists sometimes in the therapeutic relationship who
6 somehow assist a person by enhancing their memory process?

7 A Yes, I am aware of that.

8 Q Okay. Now, in this particular case, Mr. Grover testified
9 yesterday under oath that you had assisted him in helping
10 him remember certain events that had occurred and that's
11 kind of what led to the Court order, okay? Are you with me
12 where we are?

13 A Yes.

14 Q What was your response to that particular comment by Mr.
15 Grover and just what was your general counseling process
16 with Tom, without violating the confidential nature of what
17 he told you?

18 A My approach to counseling with Tom had to do with
19 stabilizing his substance abuse. In the process of his
20 sobriety, as is the case in many of these clients, he began
21 to discuss memories of the sexual abuse.

22 Q All right. And how did you facilitate his memory, ma'am?
23 In what manner?

1 A I attempted to validate that what he was in fact stating
2 was the truth, and I assisted him in relieving some of his
3 symptoms of anxiety.

4 Q Did you draw him out through a process of questioning or
5 interrogation as one might do in a courtroom?

6 A No, I did not. The focus of my therapy with Tom was to
7 stabilize his substance abuse.

8 Q That was the primary focus of your --

9 A That's correct.

10 Q -- therapy. Now, what would your response be, ma'am, to
11 the issue of whether or not some of the memory of Tom
12 Grover was, in fact, in some manner or another implanted by
13 you, Pauline Goupil, as his counselor?

14 A What was the first part of that question?

15 Q What would your response be to that question?

16 A I would respond that that's not the truth.

17 MR. KOCH: That's all the voir dire I have on this point,
18 your Honor.

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

20 VOIR DIRE EXAMINATION

21 BY MR. REYNOLDS:

22 Q What do you mean when you say you attempted to validate his
23 memories or his disclosure? I don't understand that term.

1 A It's very important in therapy that when a client makes a
2 statement about sexual abuse, that the therapist honors
3 that as the truth unless and until there is further
4 evidence to null that issue, to null that statement.

5 Q Is that generally done by simply accepting what the
6 individual says and then simply going on from there?

7 A I guess I have to be--. I have to --. It's important for
8 me to impress on the Court that my role as Tom's therapist
9 was to stabilize his substance abuse. These types of
10 situations, at times it is important that underlying
11 conditions which are usually --. I'm going to talk about
12 just this situation, that due to the nature of the
13 substance abuse, that it was important to stabilize Tom in
14 sobriety and that sometimes that requires that issues such
15 as sexual abuse, that are very difficult, are not giving,
16 are not given the primary concern or the primary focus of
17 the therapy, due to the fact that those issues are usually
18 quite painful for the client and may, in fact, jeopardize
19 the client's sobriety.

20 Q So if I'm accurate there, what you first attempt to do in a
21 situation is create a supportive atmosphere and trust, of
22 trust, stabilizing sobriety so that the individual then, if
23 he does, feels comfortable in disclosing whatever

1 information he has?

2 A That's correct.

3 Q Which is absolutely different from you suggesting that he
4 disclose something or you putting words in his mouth and
5 then he affirms those?

6 A That's correct.

7 Q Thanks very much.

8 A You're welcome.

9 THE COURT: Thank you for your testimony. Thank you for your
10 statements.

11 THE WITNESS: You're welcome.

12 THE COURT: You can go ahead.

13 (Witness excused)

14 THE COURT: Attorney Koch?

15 MR. KOCH: Your Honor, my primary purpose in asking for this
16 order, request, was so that we could, one, see the record
17 and, two, interview her. I mean, I've heard what she said
18 and I have no evidence to counter that other than Mr.
19 Grover's own testimony. I wouldn't expect her to get on
20 the stand and say, "Yes, I did try to enhance his memory,"
21 or, "Yes, I did implant memories." That's like asking
22 somebody, "Did you beat your wife," and expecting them to
23 tell you, "I did." But I think in this situation, she also

1 says that her primary focus seemed to have to deal with
2 substance abuse and not sexual abuse issues. I might have
3 asked Mr. Upton yesterday if the reason he sent Tom Grover
4 to Miss Goupil was for substance abuse or sexual abuse.
5 But as I view it now from what she said, it's of limited
6 value for my purposes.

7 THE COURT: Well, from what I heard, I would agree, of course,
8 with you. I don't see any reason to publish or put her on
9 the stand in front of the jury. There's no evidence that
10 she led him into any memories of that sort of thing.

11 Okay.

12 MR. KOCH: Should we return these, your Honor, to the Court?

13 THE COURT: Yes. Well, we'll have the jury up here in about
14 ten minutes. I'm going to come out before the jury because
15 I have an order on the juvenile records.

16 MR. KOCH: Okay.

17 MR. GAINOR: Your Honor, could we do a sidebar before you go
18 in, please?

19 THE COURT: Sure.

20 (Discussion held off the record.)

21 THE COURT: We'll recess now for just a few minutes and then
22 the jury will be up.

23 (Recess taken)

* * * * *

HEARING OUT OF THE PRESENCE OF THE JURY

THE COURT: Please be seated. On the juvenile records, I've decided that the records cannot be used for impeachment in this case and I have a decision in writing that's on the processor right now. You'll get that later. Is the jury up?

THE CLERK: They're coming up.

HEARING BEFORE THE JURY

THE COURT: Good morning, ladies and gentlemen.

MR. REYNOLDS: May it please the Court.

THE COURT: Attorney Reynolds.

MR. REYNOLDS: Art Walker, please

ARTHUR WALKER

who was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REYNOLDS:

Q Please be seated, and please state your name for the record, spelling your last name?

A My name is Arthur Walker. Last name is W-a-l-k-e-r.

Q How are you employed, sir?

A I'm employed as a police captain for the city of Keene.

1 Q Let me ask you, do you have a recollection of an individual
2 by the name of Gordon MacRae as having some sort of
3 relationship to Thomas Grover back in March and April of
4 1985?

5 A Yes, sir, I do.

6 Q And is the person you know to be Gordon MacRae in the
7 courtroom today?

8 A Yes, sir, he is. He's the center gentleman in the second
9 table.

10 Q The gentleman I stand behind?

11 A Yes, sir.

12 MR. REYNOLDS: Please let the record show that the witness has
13 identified the defendant.

14 THE COURT: The records so shows.

15 Q Did you have conversations with then Father MacRae that
16 ultimately resulted in the admission of Tom Grover to the
17 Beech Hill program?

18 A At that point, at that era of time, I spoke to Father
19 MacRae three to six times about Tom Grover and ultimately
20 those things were tied into Tom going to Beech Hill for
21 treatment.

22 Q And what representations, if any, do you recall that then
23 Father MacRae made concerning his relationship with Tom

1 Grover?

2 A The first time I recall speaking to Father MacRae, he told
3 me that he'd been dealing with Tom Grover over a period of
4 time serving as a counselor to him for a variety of
5 personal and domestic problems.

6 Q Any of those problems concerning alcohol and drug abuse?

7 A Yeah, including alcohol and drug abuse, yes.

8 Q No further questions. Thank you.

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

10 CROSS-EXAMINATION

11 BY MR. KOCH:

12 Q Sir, I think you said that you talked with Gordon MacRae
13 three to six times or so about Tom Grover. Can you tell me
14 what the substance of the conversation was on those --

15 MR. REYNOLDS: Your Honor--

16 Q -- occasions?

17 MR. REYNOLDS: -- may we approach the sidebar, please?

18 A Yes, you can.

19 CONFERENCE AT THE BENCH

20 MR. REYNOLDS: The sum and substance of his conversations that
21 ultimately led to his going to Beech Hill involved a
22 juvenile justice system matter so if he's going to fairly
23 answer that question, he would have to get into the

1 juvenile record that the Court has already indicated is not
2 to be mentioned in the case, and I would object to the
3 mention of the juvenile matter. This basically is
4 follow-up from the record that's already come in for the
5 sole purpose of offering this as with regard to the
6 admissions of the defendant concerning his counseling
7 relationship with Tom Grover.

8 THE COURT: Where do you stand, Attorney Koch?

9 MR. KOCH: Well, your Honor, Mr. Reynolds keeps asking these
10 questions and when I get up for fair examination or
11 inquiry, he turns around and objects and says, "You can't
12 do it." I remember the Court reading a limiting instruction
13 the other day to the jury about the situation because they
14 felt Tom couldn't fully answer. There's been half a dozen
15 times where this kind of same scenario has cropped up. I
16 didn't elicit the response that, "I talked to him three to
17 six times," and it just, it seems to me that to put it in
18 context it's fair inquiry.

19 THE COURT: Why don't you ask a leading question. Just say,
20 "Did this have something to do with a juvenile offense?"
21 I mean, that's already in evidence anyway that he's in
22 trouble with the law at that age. I think that's--

23 MR. KOCH: If that--

1 THE COURT: --fair to do as long as it's not to anything
2 specific.

3 MR. KOCH: All right.

4 (Conclusion of Conference at the Bench)

5 Q (by Mr. Koch) Sir, without going into the specific nature
6 of the discussions, did those discussions have anything to
7 do with Tom Grover's involvement with the justice system?

8 A Yes, sir, they did.

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

10 THE COURT: Thank you, Attorney Koch. Anything further,
11 Attorney Reynolds?

12 MR. REYNOLDS: Thank you, no.

13 THE COURT: Thank you for your testimony.

14 MR. REYNOLDS: Thank you. Jon Grover, please.

15 JONATHAN EDWARD GROVER

16 who was called as a witness, and having been first duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. REYNOLDS:

20 Q Please be seated.

21 THE COURT: You have to kind of get up close to that
22 microphone so everybody can hear. This room is terrible.

23 Q (continuing) Please state your name for the record,

1 spelling your last name?

2 A My name is Jonathan Edward Grover. My last name is spelled
3 G-r-o-v-e-r.

4 Q Do you have a brother by the name of Tom?

5 A I do.

6 Q Can you describe him to us, please?

7 A He's my brother. He's a year older than I am. I'm 25,
8 he's 26. He's just your average, well, not your average 26
9 year old but he's had some problems and hopefully will get
10 through them.

11 MR. DAVIS: Your Honor, may I move the technical equipment?
12 Unfortunately, I can't see the witness.

13 THE COURT: Yes, you can.

14 MR. DAVIS: Thank you, your Honor.

15 THE COURT: Just let us know when you--.

16 MR. DAVIS: That will be fine, your Honor. Thank you.

17 THE COURT: Okay.

18 Q And do you know a person by the name of Gordon MacRae?

19 A I do.

20 Q Is the person you know to be Gordon MacRae in the courtroom
21 today?

22 A He is.

23 Q Can you point him out, please?

1 A Right there (indicating).

2 Q Is he the gentleman that I'm standing directly behind?

3 A Mmm-Hmm.

4 MR. REYNOLDS: Please let the record show, your Honor, that the
5 witness has identified the defendant.

6 THE COURT: The record shows that the witness has identified
7 the defendant. When you just went, "Mmm-Hmm"--

8 THE WITNESS: Yes.

9 THE COURT: You have to say yes or no, and I just want to
10 point that out to you. It's just for the record.

11 THE WITNESS: All right.

12 THE COURT: And so when you said--

13 THE WITNESS: Yes, that is him.

14 THE COURT: Okay.

15 Q (by Mr. Reynolds) To make a long story short, my
16 understanding is that he came to your knowledge and the
17 family's knowledge back in the summer of '79 as an intern
18 at Sacred Heart Parish in Marlborough?

19 A That's correct.

20 Q And you and your family were members of that parish at that
21 time, is that correct?

22 A That's correct.

23 Q Now, during the course of time that he was with the family,

1 do you recall an incident when your older brother, Chris,
2 was going to be taken to the airport, I believe Logan, by
3 Mr. MacRae because Chris was going to join or rejoin the
4 Air Force?

5 A Mmm-Hmm. Yes, I do.

6 Q What's your recollection of who was to accompany Chris and
7 Gordon MacRae in the car to the airport?

8 A Originally I was to accompany him but circumstances came up
9 where I couldn't go so Thomas accompanied him.

10 Q So your brother Tom went with him instead?

11 A Correct.

12 Q What were the circumstances that came up that you didn't
13 go?

14 A I'm not quite sure what the circumstances were but I think
15 I missed the bus, or something to that effect, where I
16 couldn't make it but there were other--. There was--. I
17 wasn't--. I felt like I wasn't wanted, I wasn't wanted to
18 be there.

19 Q Who conveyed that message to you that you were not welcome
20 to go along on the trip?

21 A It was just a feeling I got from my mother and from Mr.
22 MacRae.

23 Q So when you were late for the bus, is it because you

1 figured you weren't going to be going anyway?

2 A Mmm. It wasn't a big deal.

3 Q Because of that impression that you'd gained that you
4 weren't welcome on the trip?

5 A Right.

6 MR. REYNOLDS: No further questions.

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

8 MR. KOCH: I have no questions, your Honor.

9 THE COURT: Thank you. Thank you for your testimony.

10 THE WITNESS: Thank you.

11 MR. REYNOLDS: Daniel Dupuis, please

12 DANIEL DUPUIS

13 who was called as a witness, and having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. REYNOLDS:

17 Q Please be seated. Please state your name for the record,
18 spelling your last name?

19 A Okay. Daniel Dupuis, D-u-p-u-i-s.

20 Q Mr. Dupuis, where do you presently reside?

21 A Providence, Rhode Island.

22 Q What do you do down there?

23 A I'm a clinical social worker.

1 Q What's that?

2 A A therapist, pretty much.

3 Q Okay. And you're in private practice, I take it, or
4 practice with an agency?

5 A Yeah, I work for a community mental health agency in
6 Dayville, Connecticut.

7 Q Let me ask you, please, are you familiar with an individual
8 by the name of Gordon MacRae?

9 A Yes, I am.

10 Q Do you recognize him in the courtroom today?

11 A Yes, in the center.

12 Q The gentleman that I'm standing behind?

13 A Right.

14 MR. REYNOLDS: Please let the record show that the witness has
15 identified the defendant.

16 THE COURT: The record so reflects.

17 Q How did you become acquainted with Mr. MacRae?

18 A I was a Catholic priest at the St. Bernard's in Keene from,
19 let's see, June of 1981 until July of 1983.

20 Q What function did he serve there, if you know?

21 A He was an associate pastor. In fact, he was coming to
22 replace me because I had decided to leave the ministry, and
23 so he came in on June 15th of 1983, and so we were there

1 together until July 15th.

2 Q Who do you recall was also assigned to that parish between
3 June 15th and July 15th of 1983?

4 A Father Gabriel Houle was the pastor but he was away during
5 the course of that month, and also Father Wilfred
6 Bombardier.

7 Q And Father Houle, why was he away, do you know?

8 A He was in treatment in Michigan for a relapse for his
9 alcohol problem.

10 Q And so he was pretty much out of touch for that last month
11 that you were there?

12 A Right. He was not there for that month.

13 Q So you just had the one month there that was an overlap
14 before MacRae took over your position?

15 A Right. I had agreed to stay for that month so that the
16 pastor could go to treatment when my replacement was to
17 come in so two of us would have been there together for
18 that month and when Father Houle came back, I would then
19 leave.

20 Q Do you recall --. Let me show you a diagram. This might
21 be more helpful, if I can find it. I had it. It's not to
22 scale. Let me ask you to look at that and ask if you
23 recognize that as being more or less a diagram of the first

1 floor of the rectory at St. Bernard's approximately as it
2 appeared in that final summer you were there?

3 A Let's see. Yeah, it is.

4 Q It's not entirely accurate, you'd agree with me?

5 A Right.

6 Q Now, I'm going to turn this in the direction of Main
7 Street, the front of the building, Main Street, and I'm
8 going to ask you to tell me, can you, from that
9 diagram --. Well, did you have an office on that first
10 floor as associate pastor before you left the rectory?

11 A Yes, I did.

12 Q How is that office designated on that diagram?

13 A C3.

14 Q Would you be kind enough, please, to just take this pen and
15 put a circle around that designation?

16 A (Witness complies).

17 Q Do you know which office, if any, was occupied by Fathers
18 Houle and Bombardier?

19 A Yeah. Father Houle had C4.

20 Q C4?

21 A Yeah.

22 Q And how about Father Bombardier?

23 A He didn't have a regular office.

1 Q Why is that, if you know?

2 A I don't know. I mean, there was no other in the sense
3 independent office space, you know, available and he
4 generally didn't see too many, you know, people, you know,
5 in the rectory.

6 Q I see. Was that because he was getting on in years?

7 A Right. Yeah. I think he was probably in his early 60s.

8 Q So he's kind of winding down his involvement?

9 A Right, yeah.

10 Q In those offices, were those offices available to other
11 priests? If you were another priest in the rectory and the
12 office was not in use, was it all right to go in and share
13 and use the space if need be?

14 A Sure.

15 Q And when you left, do you have knowledge of who took over
16 your office, C3?

17 A No, I don't.

18 Q But certainly that was the only office that would have
19 become available at that time for the associate pastor?

20 A Right.

21 Q Is that pretty much known as the associate pastor's office,
22 C3?

23 A Sure.

1 Q All right. Had been for I guess the time that you were
2 associate pastor there?

3 A Right.

4 MR. REYNOLDS: Your Honor, I ask that this be admitted as a full
5 exhibit, without objection.

6 THE COURT: The Court will receive it. It may be marked as a
7 full exhibit.

8 (Diagram of the First Floor of St. Bernard's
9 Rectory marked State's Exhibit 5)

10 Q I show you that C3, that's the southeast office, is it, on
11 the first floor?

12 A Yeah, that would be right.

13 Q And when did you ultimately vacate that office?

14 A On or about July 15th.

15 Q When you say on or about July 15th, how were you occupied
16 in your last month prior to leaving?

17 A I was in the process, you know, of moving and, you know,
18 resettling in the Boston area to begin graduate school.

19 Q You had to take some time to look for an apartment down in
20 Boston, that sort of thing?

21 A Right. I was pretty much in and out during the course of
22 that month.

23 Q I see. And Father MacRae came on June 15th, it's my

1 understanding?

2 A Right.

3 MR. REYNOLDS: If I may have just a conference with cocounsel,
4 your Honor.

5 THE COURT: You may.

6 (Pause)

7 Q Let me show you, please, a diagram of what purports to be
8 the third floor of the rectory, and again not to scale, and
9 ask if you recognize that?

10 A Yes, I do.

11 Q All right. That appears to be the general description,
12 layout, of the rooms on the third floor of St. Bernard's
13 rectory here in Keene?

14 A Yes, it is.

15 Q Do you recall which rooms you occupied as your personal
16 apartment before you left on July 15th of '83?

17 A Okay. Yeah, rooms 1a, 2 and 3.

18 Q Let me ask you if you would, please, to circle those?

19 A (Complies)

20 Q If you were to describe those rooms, where are those
21 situated in the rectory, if you were to give a compass
22 direction?

23 A The west side of the building, you know, from the north to

1 south corners.

2 Q How would you describe, from the times that you were there
3 in the summer in the rectory, in terms of the business
4 activities that normally go about in the rectory?

5 A Generally the summer was more quiet then, you know, roughly
6 the school time of year. I mean, it's hard to remember,
7 you know, after eleven years and given the fact that I was
8 in and out quite a bit during that month.

9 Q But generally the summer is a slower time?

10 A Right, yeah. I'm assuming that, you know, the bookkeeper
11 was there, you know, the mornings, you know, that she was
12 there, you know; the pastor's mother, the cook, you know,
13 was up and down and through the kitchen. But in terms of
14 meetings and organizations, you know, happening, it was
15 fairly quiet.

16 MR. REYNOLDS: Your Honor, I ask this be marked next in line as
17 a full exhibit, without objection.

18 THE COURT: Yes. The Court will receive it and it may be
19 marked.

20 (Diagram of the Third Floor of St. Bernard's
21 Rectory marked State's Exhibit 6)

22 Q And I take it that when you left the rectory on or about
23 July 15th of 1983, it was those rooms on the third floor

1 that became vacant.

2 A Right.

3 Q No further questions. Counsel may have some for you.

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

5 MR. KOCH: Yes, please, your Honor. May I have this marked
6 for identification, please?

7 (Diagram of the Second Floor of St. Bernard's
8 Rectory marked Defendant's Exhibit F
 for Identification)

9 CROSS-EXAMINATION

10 BY MR. KOCH:

11 Q Sir, let me show you what I've marked or has been marked as
12 Defendant's F, which is similar to the diagrams that were
13 shown to you by Attorney Reynolds. Do you recognize that,
14 sir?

15 A Right, yes, the second floor of the rectory.

16 Q All right, sir.

17 MR. KOCH: Your Honor, I'd move for Id. F as a full exhibit.

18 THE COURT: Yes. The Court will receive it as a full
19 exhibit. The Id. may be stricken. Why don't you just hand
20 that to the reporter.

21 (Identification stricken from Defendant's Exhibit F)

22 Q Sir, I know Mr. Reynolds had you draw. I'm going to have
23 you just go over your circles again, if you would, with a

1 colored pen so it would be easier. Let's start with the
2 third floor, and would you mark the areas of your living
3 quarters with that pink?

4 A (Witness complies).

5 Q All right.

6 THE COURT: Which exhibit is he marking?

7 MR. KOCH: Your Honor, he's marking State's 6.

8 Q Can you tell the ladies and gentlemen of the jury, sir, who
9 was in what would be marked as, say, 1b or--

10 A 1b was a guest room.

11 Q All right. And can you write on there, sir, maybe why
12 don't we do it with in pen, "guest room"?

13 A (Witness complies).

14 Q Then there's a number 8 there that looks like some type of
15 a--

16 A Right, yeah, Father Bombardier, his suite was 8 and number
17 3. This was, 8 was his living room and 3 was his bedroom.

18 Q Would you write Bombardier in those spaces, sir?

19 A (Witness complies).

20 Q All right. Thank you. Now, with respect to --.

21 MR. KOCH: And may I publish that to the jury, your Honor,
22 State's 6?

23 THE COURT: Yes, you may.

1 Q So we get orientation here, can you write on this diagram,
2 which is State's 5, where Main Street would be?

3 A (Witness complies).

4 Q And then could you write where the church would be then?

5 A (Witness complies).

6 Q And then again, sir, if you'd take that pen and circle the
7 office that you described as being yours--

8 A (Witness complies).

9 Q -- from June and July of 1983. That's the one you've
10 designated as C3?

11 A Right.

12 Q There is a room that appears to be marked C1 on that
13 diagram. What would that be called?

14 A Like a central, you know, reception area.

15 Q Could you write "reception" on there for me, sir?

16 A (Witness complies).

17 Q Then there's another room, sir, that's C2?

18 A Mmm-Hmm.

19 Q That appears to be just off the reception area and sort of
20 behind your office. What was the function of that
21 particular room?

22 A That was just a, you know, an open office. There wasn't
23 much furniture in there and I remember it being used to,

1 you know, count the collection on, you know, Sundays so it
2 was pretty much desk and a couple of chairs and that was
3 it. It was pretty sparse.

4 Q Do you know whether or not Fred Laffond had an office in
5 there at the time?

6 A I believe he considered his office to be an office down in
7 the basement.

8 Q Okay. Who else would have been there? Father Bombardier?

9 A Yeah. He didn't have, like I said, you know, a standing
10 office that he used.

11 Q Now, by the way, can you show me what rooms on the second
12 floor Gordon MacRae occupied in 1983?

13 A I don't recall what rooms, you know, he stayed in. I had
14 originally assumed that he had stayed up in that guest room
15 on the third floor until I was shown a diagram of the
16 second floor. I had forgotten there was a guest room down
17 on the second floor and so I don't recall which of those
18 two rooms he stayed in during that month.

19 Q Is your memory, sir, that he was on the second floor?

20 A No.

21 Q You have no independent memory today of where Gordon MacRae
22 was living?

23 A No. No.

1 Q Okay. Now, where did Father Houle live?

2 A He lived the second floor, the front rooms along Main
3 Street.

4 Q Okay. Can you put that on? Can you find those on
5 defendant's F?

6 A (Witness complies).

7 Q And then if you would, please, write "Father Houle"?

8 A (Witness complies).

9 MR. KOCH: All right. Thank you. If I may publish State's 5
10 and Defendant's F to the jury, your Honor?

11 THE COURT: Yes, you may.

12 (State's Exhibit 5 and Defendant's Exhibit F
13 passed to the jury for examination)

14 Q Sir, in the office that you had at the rectory there, what
15 types of things would you use that office for?

16 A Doing desk work, meetings, counseling, you know, people.
17 Those kinds of activities.

18 Q Sir, do you have any memory of whether or not locks worked
19 on the doors at the time you were there?

20 A No, I don't. I remember I think there was a keyhole in the
21 door, you know, for some kind of key but I never had one
22 and I don't know if there was one that existed so--. I
23 never locked the door. I don't even know if that lock

1 works but I seem to remember, you know, a keyhole under the
2 handle.

3 Q During the time--. And how long were you there at St.
4 Bernard's?

5 A For two years.

6 Q During that time, did you ever find occasion to use a lock
7 on the door?

8 A No.

9 MR. KOCH: If I may confer with counsel, your Honor.

10 THE COURT: That's fine.

11 (Pause)

12 Q Sir, do you remember if a Mrs. Lynn Quinn (?) Worked at the
13 rectory in 1983 that summer?

14 A What was the name again?

15 Q Mrs. Lynn Quinn?

16 A No.

17 Q Okay. Thank you.

18 MR. KOCH: That's all I have, your Honor.

19 THE COURT: Thank you. Anything further, Attorney Reynolds?

20 REDIRECT EXAMINATION

21 BY MR. REYNOLDS:

22 Q When you were engaged in counseling in your office on the
23 first floor with regard to personal matters and such

1 things, would you normally close the door for privacy with
2 the individual you were counseling?

3 A Yes.

4 Q Was that an accepted practice in the rectory?

5 A Right.

6 Q Thank you.

7 THE COURT: Anything further, Attorney Koch?

8 MR. KOCH: No, your Honor.

9 THE COURT: Thank you for your testimony.

10 THE WITNESS: Thank you.

11 MR. REYNOLDS: Thanks very much.

12 MR. GAINOR: The State calls Detective McLaughlin

13 JAMES F. McLAUGHLIN

14 who was called as a witness, and having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MR. GAINOR:

18 Q You can be seated, sir. Please tell the jury and Judge
19 your name and spell your last name for the record.

20 A James F. McLaughlin. It's M-c-L-a-u-g-h-l-i-n.

21 Q And it's Detective McLaughlin, correct?

22 A Yes.

23 Q Detective, where are you employed?

- 1 A With the Keene Police Department.
- 2 Q How long have you been employed there?
- 3 A Since 1981.
- 4 Q How long have you been a Detective with the Keene P.D.
- 5 A Since 1988.
- 6 Q Any prior law enforcement experience prior to coming to the
- 7 Keene Police Department?
- 8 A Yes. I was with the Marine Corp. as a military policeman
- 9 and an investigator starting in 1977.
- 10 Q Do you have a college education, sir?
- 11 A Yes,. I have an associates degree in law enforcement and a
- 12 B.A. in psychology.
- 13 Q Are you studying in a masters program right now?
- 14 A Yes, in criminal justice.
- 15 Q Do you have a type of case which you specialize in
- 16 investigating?
- 17 A Yes. I investigate child sexual abuse and exploitation
- 18 cases.
- 19 Q So if there is an allegation of child sexual abuse in
- 20 Keene, you would be the responding detective?
- 21 A Yes.
- 22 Q How long have you been engaged in this type of specialty?
- 23 A For the last six years.

1 Q If you could give the Judge and jury an approximate number
2 of how many child sexual abuse allegations you personally
3 have investigated?

4 A Somewhat over 750.

5 Q And how many times have you testified in court for these
6 types of cases?

7 A Oh, at least 50 times.

8 Q Have you written any articles regarding the investigation
9 of child sexual abuse cases?

10 A Yes, I have.

11 Q And how many articles have you written?

12 A Three or four articles.

13 Q Are they published?

14 A Yes.

15 Q In what type of publication?

16 A It's a statewide law enforcement magazine. I also had a
17 small piece published in a Vanity Fair magazine.

18 Q Do you lecture at all other investigators or other
19 professionals in investigating sexual assault allegations?

20 A Yes.

21 Q And what type of groups do you lecture to in this area?

22 A I teach a course for the University of New Hampshire, two
23 courses for Keene State College. I'm a member of the

1 Attorney General's task force and lecture investigators,
2 social workers, child protection workers, psychologists
3 from different counties that comprise multidiscipline
4 groups in the investigation of child sexual abuse, people
5 that deal with domestic abuse that also that children are a
6 part of. Different organizations that deal with different
7 vulnerable populations.

8 Q Have you met with a Thomas Grover?

9 A Yes, I have.

10 Q Pertaining to what?

11 A His victimization by the defendant.

12 Q So are you the lead detective in investigating Gordon
13 MacRae for allegedly having sexually abused Tom Grover?

14 A Yes, I am.

15 Q When did you meet with Tom Grover in regard to his
16 allegations against the defendant?

17 A The exact date?

18 Q Yes.

19 A It would be March 23rd, 1993.

20 Q Where did you meet with Tom Grover on that date?

21 A The first time I met with him was at the Keene police
22 station.

23 Q When you meet with an alleged victim of sexual abuse, do

1 you take notes during the initial interview?

2 A Yes.

3 Q And during this interview, did Tom Grover make any direct
4 mention of the defendant having sexually molested him?

5 A Yes, he did.

6 Q What did he say?

7 A He outlined a number of incidents that happened when he
8 first met the defendant and also outlined the incidents
9 represented by the indictments.

10 Q Were you able to figure out when the defendant met Tom
11 Grover, the date?

12 A Yes, the year.

13 Q And what year was that?

14 A 1979.

15 Q How were you able to come up with that year?

16 A Tom himself said that he was 10 or 11 at the time and he
17 said that the defendant was stationed at St. Bernard's
18 Church at the time. Through defendant's discovery, he
19 stated that he was at the church in 1979 in Marlborough as
20 well as after he had met the defendant, and he had gone
21 back to the seminary, he had sent back some souvenirs from
22 a baseball game, a world series that had taken place, a
23 ball. A check at the library revealed that that world

1 series had taken place in 1979.

2 Q Did Tom mention to you an incident that occurred at the
3 rectory in Marlborough that summer, 1979?

4 A Yes, he did.

5 Q What did he disclose to you?

6 A He stated that he was delivering newspapers at the time and
7 that the defendant would see him and talk to him and
8 invited him in on one day and then he had pressed up
9 against him, unzipped his fly and fondled him. And also
10 that he had, the defendant had pushed up by his body and
11 started to rub it up against him.

12 Q Did Tom make mention of having a paper route for that
13 rectory in Marlborough that summer?

14 A Yes, he did.

15 Q Now, how many times have you met with Tom for this
16 investigation?

17 A Twice.

18 Q And have you talked about non sexual abuse issues with Tom?

19 A Yes.

20 Q Describe his demeanor when disclosing to you the abuse by
21 the defendant?

22 A Every time he has spoken about the sexual abuse, it's a
23 very emotionally charged situation for him and he'll tear

1 up, become emotional.

2 Q Now when you say tear up, do you mean tears streaming down
3 his face or do you mean eyes watering?

4 A No, just eyes watering. I don't believe he had any actual
5 tears come down.

6 Q Did Tom mention to you any abuse following the 1979
7 incident at the Marlborough rectory?

8 A Yes.

9 Q What was the next, chronologically speaking, advancing
10 forward in time, what was the next incident that he
11 mentioned to you?

12 A He mentioned an incident when he was in a vehicle alone
13 with the defendant and that the defendant, he said, had
14 reached over and fondled his genitals over his clothes.

15 Q Did Tom mention where he was heading with the defendant in
16 the car when that happened or where he was coming from?

17 A I have to check my notes.

18 Q If you need to refresh your memory.

19 (Pause)

20 A He stated that his brother Chris needed a ride to the
21 airport.

22 Q Again advancing in chronological order, advancing forward
23 in time, was there another incident of sexual abuse between

1 Tom Grover and the defendant that Tom relayed to you?

2 (Pause)

3 A Well, there was another incident also involving his being
4 in a car on 101 in Keene where he was fondled as well.

5 Q Did Tom give you a year or an age that he was when that
6 happened?

7 A He gave an age--. Well, actually, no, he said that was the
8 first half of 1982.

9 Q And then based on that, in your police report did you
10 ascribe a year for that age?

11 A Incorrectly I put down 15. I later calculated that he was,
12 actually would have been 14 at the time.

13 Q Actually, I think my question was a little confusing to the
14 jury. Tom gave you a year that that happened?

15 A Yes. He said the first half of 1982.

16 Q And then what did you put for an age?

17 A In the initial report I put down I thought that he was 15.

18 Q And you're not a math major, I take it?

19 A No. (Laughter) He's born in November so that would make
20 him 14.

21 Q So again, Tom didn't give you his age; he just gave you the
22 year?

23 A Yes.

1 Q And reaching back to the other incident that we were just
2 talking about, the one where the defendant molested Tom
3 coming back or going to the airport, what year was that?

4 A That would have been in June of 1981.

5 Q Now I want to talk to you about Tom's disclosing to you
6 what happened at St. Bernard's rectory in Keene. Did you
7 have some interviews with Tom regarding those incidents?

8 A Yes.

9 Q Was that on the first or second meeting, do you recall,
10 with Tom?

11 A Both.

12 Q Why don't you tell us what Tom disclosed to you about what
13 happened at St. Bernard's rectory?

14 A He stated that he was involved with some counseling with
15 the defendant because of family relationship problems and
16 substance abuse and that he was there in a first floor
17 office at the rectory being counseled and that there was an
18 emotional situation where he broke down, and that was the
19 time when the defendant then approached him, unzipped his
20 pants and performed fellatio on him.

21 Q Did Tom tell you of his emotional state prior to these
22 rectory incidents? In other words, what his state of mind
23 was in general going into these counseling sessions?

1 A He said that he was having a great deal of problems at
2 home.

3 Q And did he use the word with you that he was seeing Gordon
4 MacRae for counseling or is that your summary of what Tom
5 related?

6 A It's my summary from my notes.

7 Q How do you base, based on your interview with Tom, that it
8 was a counseling relationship from what Tom said?

9 A Well, he also spoke about the fact that he thought that he
10 would go there for counseling and that would be
11 professionally handled, that his mother had suggested that
12 he see the defendant, try to resolve some of the problems
13 he was having.

14 Q So was it Tom that used the word "counseling"?

15 A Yes.

16 Q Now, during the counseling sessions at the rectory in the
17 rectory offices, how did Tom describe to you what the
18 defendant did prior to the molestation? Did he describe a
19 certain process before the molestation?

20 A He was there and they were talking about his problems at
21 home with family members about his substance abuse and that
22 conversation led to him being upset emotionally.

23 Q Did Tom describe to you the degree of his emotional state

1 prior to being molested?

2 A He said that he was crying.

3 Q How many incidents did he relate to you happened in the
4 first floor at St. Bernard's?

5 A He described the first one and then he said I believe after
6 the first one there was three or four subsequent, so we're
7 talking four or five incidents in total during counseling.

8 Q Did he, did Tom state that all of these resulted in the
9 defendant fellating Tom?

10 A Fellatio did not take place during every counseling
11 session, no.

12 Q Did Tom mention to you which offices these events happened
13 in?

14 A I'd have to check.

15 Q If it would refresh your memory.

16 (Pause)

17 A I had down here just first floor of the rectory. I don't
18 have the specific office.

19 Q Did Tom mention to you any incidents between he and the
20 defendant that occurred on the third floor of the rectory
21 at St. Bernard's?

22 A Yes, he did.

23 Q And what did he relate to you about that?

1 A He said that while he was still 15 and later when he was
2 16, that he had spent some nights at the rectory and that
3 the defendant had engaged him in fellatio when he was
4 spending the night.

5 Q And that time you're talking about the act of fellatio on
6 the third floor, that was when Tom was under 16?

7 A Yes.

8 Q And all of these incidents that we're talking about, the
9 fellating on the first floor of the rectory, did Tom give
10 you an age when these happened, how old he was?

11 A He stated he was 15 years old.

12 Q What was the second date of your meeting Tom Grover about
13 these incidents?

14 A The first of April, 1993.

15 Q When you interview a victim of sexual abuse, do you
16 use --. Strike that. When you interview a victim of
17 sexual abuse, describe the interviewing process. What kind
18 of questions do you ask?

19 A I try to recognize the fact that it's a very emotional time
20 for a person to, emotional incident to be asked to describe
21 this type of information, especially being a male victim,
22 and so I try to get the, have them, ask open-ended
23 questions and have them give information versus asking them

1 specific questions or a leading question. I try to get
2 them to come forward with the information.

3 Q What's a leading question?

4 A For instance, if he said, "The defendant did so and so,
5 sexually abused me," for me to say, "Well, tell me how many
6 times he put his penis in your mouth," would be a leading
7 question. That would assume that that had taken place.

8 Q And did you use those kinds of questions on these
9 interviews with Tom Grover?

10 A No, we did not.

11 Q Did you coach Tom Grover at all before or during these
12 interviews?

13 A Coach him?

14 Q Yes.

15 A Oh, no.

16 Q How many victims of sexual abuse have you interviewed in
17 your career?

18 A Victims? Over a thousand.

19 Q Describe to the jury and Judge, please, the--. I want to
20 call it--. If you could describe disclosure of sexual
21 abuse as a process rather than an event, what would you
22 have to comment on in regard to that statement?

23 A Victims of sexual abuse--

1 MR. KOCH: Your Honor, with all due respect, has Detective
2 McLaughlin been qualified as an expert? It seems this
3 calls for--

4 THE COURT: He's not been qualified. I'm going to take that
5 as an objection and sustain it.

6 Q Now, you said you've interviewed approximately a thousand
7 victims of sexual abuse?

8 A Yes.

9 Q And over how many years span have those interviews taken
10 place?

11 A Since 1984. Some ten years.

12 Q And have you attended any seminars or taken any courses in
13 interviewing techniques regarding sexual abuse victims?

14 A Yes, I have.

15 Q If you could name them to the Court, please?

16 A Since 1984, I started off by having a course on
17 interviewing child sexual abuse victims at the Police
18 Academy here in Concord. I also traveled to the University
19 of Alabama and received a national certificate for
20 intervening in sexual abuse cases in 1990, and I've had
21 courses from the federal government on, specifically on how
22 to interview children. I've also had training through the
23 American Professional Society in abuse of children so far

1 as how to interview children at different conferences,
2 recently in Cambridge, Massachusetts, last year in
3 Chicago. I've received training from the National Center
4 of the Child Advo--. The National Center for the Child
5 Advocacy Center in Alabama so far as interviewing
6 children. Local seminars here at the Brattleboro Retreat,
7 which is associated with Dartmouth College, on interviewing
8 children. There's probably some others that I'm not coming
9 up with.

10 Q Do you read any literature in this area about interviewing
11 victims of sexual abuse, child victims of sexual abuse?

12 A Yes, I have.

13 Q And how voracious is your reading in that area? I mean,
14 how many articles have you read?

15 A I'm not sure how many articles. I've read approximately 80
16 books on intervening in child sexual abuse, child
17 maltreatment. We receive professional journals, the
18 Journal of Interpersonal Violence, Child Neglect Journal,
19 articles that are published and come monthly.

20 MR. GAINOR: Your Honor, at this time, I move to qualify
21 Detective McLaughlin as an expert not only based on his
22 extensive experience of personally interviewing child abuse
23 victims but also on his education.

1 MR. KOCH: Your Honor, I'm not sure--

2 THE COURT: At this point, what we will do is recess. Ladies
3 and gentlemen of the jury, I want to explain something.
4 We're going to be having some discussions here, not
5 necessarily about this. There's a couple of other issues
6 that we have to get out of the way. I know it's very
7 difficult for you to have to leave and stay away for some
8 period of time but believe it or not, what we're trying to
9 do when we have these conferences is get things out of the
10 way that would otherwise leave you up here for many, many
11 more hours listening to testimony that may not be necessary
12 for the case. That's part of what we're trying to do, at
13 least, so we're not trying to be disrespectful to you and
14 we are thinking about your job and the fact that nobody is
15 paying you to be here, at least enough to speak of.

16 (Laughter)

17 THE COURT: So at this point, George, take charge of the jury
18 and we'll see you, my guess is in half an hour but you can
19 leave for half an hour and come back. Let's let take
20 five. I've got some notes I've got to look at on the other
21 issue.

22 (Recess taken)

23 * * * * *

HEARING OUT OF THE PRESENCE OF THE JURY

1
2 THE COURT: Please be seated. Okay. We've got a couple of
3 issues here. One is qualifying or not qualifying Detective
4 McLaughlin as an expert. The other is the question of
5 certain letters sent to Mr. MacRae by Detective McLaughlin;
6 that is, whether the responses to those letters I guess
7 should be allowed in evidence. My understanding is that
8 Detective McLaughlin wrote the letters to Mr. MacRae, and
9 represented that the letters had been sent by Jon Grover,
10 that Mr. MacRae responded to those letters and later
11 admitted that all the time, or something like that, that at
12 all times he had believed that Jon Grover was not sending
13 the letters but that Tom Grover was sending the letters.
14 So let's first discuss and decide the issue--

15 MR. KOCH: Your Honor, let me state that the Court's
16 understanding with regard to that last sentence I believe
17 is incorrect.

18 THE COURT: Okay. That's fine.

19 MR. KOCH: Okay.

20 THE COURT: Good. I'm glad you point it out. I'll of course
21 listen as you present--

22 MR. KOCH: Certainly.

23 THE COURT: And my mind is open as far as any decision is

1 concerned. Let's talk about Detective McLaughlin's
2 qualifications first.

3 MR. GAINOR: Your Honor, I believe that through Detective
4 McLaughlin's lengthy experience of interviewing
5 approximately a thousand victims of child sexual abuse, and
6 I believe that maybe the way I phrased it was a little bit
7 confusing. I was saying interviewing child victims of
8 sexual abuse when, in fact, many times the children are
9 adults when they disclose. That's what I was meaning to
10 say but maybe that's not the way it came across. The fact
11 that Detective McLaughlin has interviewed about a thousand
12 people who are victims of child sexual abuse and our New
13 Hampshire case law I believe is very, very lenient on that
14 standard as to what makes someone an expert. And there
15 have been some recent cases, unfortunately I don't have
16 them at my fingertips, that rule that police officers,
17 based on their experience, who may not even have any
18 training in the area that they have the experience in, that
19 that experience in and of itself can lead someone to be an
20 expert. And the rule of evidence, I believe it's 702, says
21 that someone can be qualified based on training or,
22 disjunctive, or experience. I believe that Detective
23 McLaughlin has it on that prong, his experience. As the

1 Court well knows, a piece of sheepskin, a degree, may pale
2 in comparison to someone's hands-on training, rather
3 hands-on experience. So I believe that we satisfy rule 702
4 there and for qualification.

5 What I'm seeking to deem him an expert in is discussing
6 the process in which victims disclose the sexual abuse,
7 mainly looking at the inconsistencies that are more times
8 than not seen and the fact that a victim just doesn't come
9 out in one interview and tell everything, that this is more
10 a process rather than an event. It's hard for me to put
11 one magical word onto what I want to deem him an expert
12 in. I basically want to deem him an expert in the
13 interviewing process of sexual abuse victims and how he
14 physically sees disclosure come out, looking mainly at
15 inconsistencies. And the training, he does have training
16 as well to go with the experience prong and I believe that
17 that based on what he said in the qualification questions
18 and answers, that he is an expert for this purpose.

19 THE COURT: Well, as long as that's the scope, I'll consider
20 this at this point. I haven't heard from the defendant yet
21 but I do want to point out something and that is, and I'm
22 sure that you're well aware of this, that Detective
23 McLaughlin cannot give an opinion as to whether or not this

1 victim, this alleged victim is, in fact, a victim.

2 MR. GAINOR: And I have read Cressey many times.

3 THE COURT: Okay. I just want to be absolutely sure.

4 Attorney Davis.

5 MR. DAVIS: Well, your Honor, I think both Cressey and In re:
6 Gina D., that's a July 22, 1994 decision of our Supreme
7 Court and that's at Volume 10, page 185 of the Supreme
8 Court Reporter, the looseleaf decision, makes it clear that
9 irrespective of the fact that New Hampshire, all things
10 being equal, has a very wide open rule regarding the use of
11 expert testimony and who may qualify for an expert, that
12 the threshold inquiry is twofold. One, will the expert, as
13 the rule 702 states, assist the trier of fact to understand
14 evidence or to determine a fact in issue. So the first
15 thing is will it be of assistance to the jury, which
16 implies a subject of inquiry that is beyond the common
17 understanding of jurors. The second issue, threshold
18 issue, is reliability; that is, how reliable will the
19 expert opinion be and necessarily how subject to
20 challenging or examination is it.

21 Now if I understand the State's offer, your Honor,
22 they're going to offer Detective McLaughlin to talk about
23 how in his experience alleged victims, the victims of child

1 sexual abuse, and I assume irrespective of whether at the
2 time of the interview they are still minors or they're then
3 adults, it's not clear to me, have in his past experience
4 related the incidents of alleged abuse. I don't see how
5 that will materially assist the trier of fact in any issue
6 that's in dispute in this case, in all due deference. To
7 me it's but a backhanded way to attempt to do what the
8 Court has already advised it would not allow, that is,
9 allow Detective McLaughlin to opine as to whether or not he
10 believes Tom Grover or whether or not Tom Grover is in
11 effect a victim of sexual abuse and for the very reasons
12 that the Court disallowed such testimony in State vs.
13 Cressey, 137 New Hampshire 402, and for the very reasons
14 the Court in In re: Gina D. did, which of course was a
15 civil case under the CHINS standards where the rules of
16 evidence don't even apply. And the Court said evidence
17 identifying someone as a victim of child sexual abuse
18 without attempting to say who the victim was was so
19 inherently unreliable as to not even meet a threshold
20 reliability standard where the rules of evidence did
21 apply.

22 In all due deference, your Honor, our position would be
23 that irrespective of any expertise he has as a result of

1 his experience, that any testimony relative to that would
2 not assist the trier of fact in any relevant inquiry. This
3 isn't a civil lawsuit in which there's allegations of
4 improper police conduct or suggestive police conduct. This
5 is a criminal case in which the State is attempting to
6 prove the indictments and in all due deference to the
7 State, it seems to me that his expertise has nothing to do
8 with what Tom told him, when. Thank you, your Honor.

9 THE COURT: Let me just make an observation and ask you a
10 question. One of the biggest issues in this case is the
11 question of credibility. The witness may have made some
12 inconsistent statements. If Detective McLaughlin testifies
13 that in his experience in interviewing these hundreds of
14 witnesses, that inconsistencies sometimes appear, will that
15 or will that not assist the trier of fact in deciding
16 whether or not to believe this witness?

17 MR. DAVIS: I don't see how it actually would, your Honor, and
18 the reason I don't is that's no different than saying given
19 the particulars of this case, and we have to view it in the
20 particulars of this case, the particulars of this case is
21 the alleged acts that occurred as indicted in 1983, the
22 prior bad acts that the Court has allowed were from the
23 time period of 1979 through perhaps 1982, and the

1 discussions which Detective McLaughlin, from his previous
2 testimony, are in March and April of 1993, so in any case
3 it's ten years after the fact and I think that it would be
4 clearly within the province of the jury, in light of their
5 common understanding and knowledge, to assume that if in
6 fact these events occurred, it would not be unusual for ten
7 years after the fact, given the age of Mr. Grover when they
8 happened, if they happened, and given the passage of time,
9 the traumatic nature, if they happened, and his age at the
10 time, he may not get it all right the first time. That's
11 what they're offering Detective McLaughlin for. That is, I
12 don't see how we get beyond needing specialized knowledge
13 and, again, the specialized or expert knowledge doesn't
14 have to be scientific, it can be anything, but it has to be
15 something beyond the ken of the normal juror and what this
16 testimony is really offered for is to buttress his
17 credibility. It's just another way of saying, "You ought
18 to believe him," okay? That decision is for the jury, not
19 for Detective McLaughlin, not for the defense, the State,
20 or even the Court. That's for the jury and the jury has
21 had the best opportunity to do that. That is, they had the
22 opportunity to see and hear the gentleman who's making the
23 accusations.

1 And factually, your Honor, I don't think that there's a
2 meaningful way that we confront his so-called expert
3 conclusions relative to that and, of course, that's the
4 other reason that both Cressey and Gina D. didn't allow the
5 particular kind of psychological testimony in those cases,
6 because there's no normalized standards or testing to where
7 the defense could proffer its own expert to challenge the
8 conclusions of the State's expert in that case. It's not
9 like there's a Minnesota Multiple Personality Test that can
10 be taken or an intelligence test or any other kind of
11 standardized way. It's nothing, to be quite honest, it's
12 nothing more than intuition based upon experience. That's
13 not what admissibility in criminal trials is about, in all
14 due deference to the State.

15 THE COURT: Well, I want to read the two cases and it'll take
16 me a little time to make this decision. Obviously I'm not
17 going to make it from the bench.

18 Okay. On the question--. I don't have copies of
19 the--. I may have them but I don't have them here.

20 MR. DAVIS: Your Honor, I unfortunately don't have my copy of
21 Cressey but this is the slip opinion and the citation for
22 Cressey is on like the introductory paragraph.

23 THE COURT: I've got it.

1 MR. REYNOLDS: Which one is that slip opinion, your Honor?

2 MR. DAVIS: In re: Gina D.

3 MR. REYNOLDS: What was the date of that?

4 MR. DAVIS: July 22, I believe.

5 THE COURT: Yes, 1994.

6 MR. REYNOLDS: New Hampshire Supreme Court?

7 THE COURT: Yes.

8 MR. DAVIS: And just so it's clear for the record, your Honor,

9 In re: Gina D. was a case in which there was an appeal to

10 the Supreme Court from an abuse and neglect proceeding and

11 the Court disallowed the identical testimony that had been

12 disallowed in State vs. Cressey, even though in that

13 particular adjudication it was civil in nature and because

14 it was an abuse and neglect case under 169-C, the rules of

15 evidence didn't even apply. They said it just doesn't even

16 meet threshold standards of reliability.

17 THE COURT: All right. I'll read the case.

18 MR. REYNOLDS: Your Honor, if I may, I think I need to articulate

19 a little more the State's opinion on this issue. The focus

20 here is child sexual abuse is not within the understanding

21 of the average juror, the nature of the disclosure and all

22 that part of the process. As a matter of fact, this jury

23 was particularly chosen because they didn't know anything

1 about that stuff. Now we have an individual who basically
2 spends a good deal of his professional life interviewing
3 and understanding the process of disclosure in the
4 interview processes, got a bachelors degree in psychology,
5 which is not something the average juror has otherwise.
6 Detective McLaughlin will not be called upon to render any
7 opinion as to the truth or veracity or the existence or non
8 existence of sexual abuse. That is forbidden by Cressey
9 and that's what Cressey, and apparently In re: Gina stands
10 for the same thing Cressey does, that's what they stand
11 for. The standard here is if the specialized knowledge
12 will assist the trier of fact to understand the evidence or
13 to determine a fact in issue. A fact in issue is the
14 credibility here. What we're asking is that the jury be
15 allowed a particular perspective as well as any other
16 perspectives that they might effectively be able to use to
17 determine whether, to determine what the facts are. That's
18 the entire point behind the qualification of the expert
19 here, rather than any kind of an opinion as to the truth or
20 veracity of the witness which is forbidden under Cressey.

21 THE COURT: Anything further?

22 MR. DAVIS: I'll rest on what I previously stated.

23 THE COURT: Let's get on to the letters. Do you have an extra

1 growing to address the letters first and then lay the
2 foundation that links the defendant to believing that he
3 was at some point corresponding with Tom Grover.

4 THE COURT: Okay.

5 MR. GAINOR: Thank you, your Honor. By way of background, your
6 Honor, Detective McLaughlin wrote to the defendant. It was
7 not Jon Grover who penned these letters, it was Detective
8 McLaughlin purporting to be Jon Grover. If these do come
9 into evidence, the State would obviously not relate that
10 there was a Jon Grover who was a victim of sexual abuse by
11 the defendant. We would put Detective McLaughlin on and
12 state simply, "Did you write to the defendant in the name
13 of Jon Grover these letters," and that would be the extent
14 of that. Obviously we wouldn't set the foundation further
15 by saying that Detective McLaughlin wrote to the defendant
16 in the name of Jon Grover because the defendant was
17 suspected to have abused Jon Grover. That would not be the
18 presentation at all. The first letter, your Honor, was
19 dated September 25th, 1992, and it writes, "Dear Gordon--

20 THE COURT: Excuse me.

21 MR. GAINOR: I'm sorry, your Honor. The 26th. The transcript
22 I have had the 25th. It's actually, on the handwritten
23 letter it's dated September 26.

1 THE COURT: Okay. I've got it.

2 MR. GAINOR: 1992. And Detective McLaughlin wrote, "Dear
3 Gordon. I called your mother and she gave me your address.
4 It seems like a long time since we have talked. When I
5 went with Dave to get his things at your place I felt like
6 I wanted to talk to you alone. I don't have any hard
7 feelings. I really liked many of the times we had
8 together. Looking back, I'm still confused about others. I
9 have never told and never will." And then the letter goes
10 on with some other words.

11 On September 28th, 1992, Detective McLaughlin got a
12 response from the defendant. The letter reads: "Dear Jon,
13 I received your letter today. My sister called me and told
14 me that you asked my mother for my address so I was waiting
15 for you, or rather for your letter. Jon, you don't know
16 how happy I was to hear from you. I guess I have a lot to
17 say and I don't really know where to begin. I guess at the
18 beginning would be the best place.

19 "First of all, Jon, I always did and still do care very
20 much about you. If there is ever anything you need or
21 anything I can help you with, I would do my very best.
22 That has not changed as far as I'm concerned.

23 "I knew for a long time that something was wrong with

1 me. It was like I was going gradually insane or something
2 over a couple of years. Four years ago, after the
3 accusations first came, I went into a psychiatric
4 hospital. I thought I was a terrible person to do and say
5 the things that I had said to others. I was in the
6 hospital for a year. They found out that there were
7 several things wrong. The biggest and hardest to
8 understand was that they discovered I have a disease in the
9 brain called temporal lobe epilepsy. It causes insanity
10 and causes people to say and do bizarre things. I went
11 through chemotherapy for months and now take a drug every
12 day to control it. I am much better now and I have never
13 had the same problems again. I don't feel as if this
14 changes the fact that I am responsible for everything. I
15 still feel responsible but they convinced me that I had a
16 lot more wrong with me to deal with than just being a bad
17 person doing bad things. When the year of treatment was
18 over there were some things that I remember and some things
19 that I don't remember." And then that paragraph goes on,
20 then there is another paragraph. Picking up here:

21 "Jon, you mentioned that you look back and have been
22 confused about things in our relationship. If I ever hurt
23 you or confused you in any way, I am very sorry. I always

1 saw myself as sort of another father to you and someone you
2 could count on. Please understand that I really feel that
3 way and I know how confusing mixed messages must have
4 been. I apologize if I was ever anything but someone you
5 could count on. As I said before, if you ever need
6 anything even now I would help all I could." And then the
7 letters goes on.

8 There was a follow-up letter from Detective McLaughlin
9 dated October 5th, 1992. In this letter, your Honor,
10 Detective McLaughlin gets more explicit. Picking up in the
11 second paragraph: "Was I just an object to you or did you
12 have sex with me because of love?" Then--

13 THE COURT: Excuse me. What is the date on this one?

14 MR. GAINOR: That one is dated October 5th, 1992.

15 THE COURT: Okay. I've got it.

16 MR. GAINOR: And again, your Honor, Detective McLaughlin gets
17 more explicit in his probing and says, quote, "Was I just
18 an object to you or did you have sex with me because of
19 love?" There was a response to that letter from the
20 defendant dated October 11th, 1992. There the defendant
21 says: "Hi. I received your letter two days ago. I was
22 really confused by it because the things described in the
23 letter never took place. Not ever. I was confused about

1 many things but I know one thing for certain, nothing like
2 that ever took place between Jon Grover and I." Paragraph.

3 "Now I am wondering if the person writing to me is
4 really Jon Grover because he would know that nothing like
5 that ever happened. If you are who I think you are, I have
6 been waiting to hear from you for a long time. After all
7 that happened there is really only one person I wanted to
8 hear from and make amends to. If you are this person,
9 please call me. If you are not, don't bother."

10 Your Honor, the defendant, a rather unusual occurrence
11 in a criminal case, provided the State with work product,
12 basically Gordon MacRae's response, detailed response to
13 each and every paragraph of the State's voluminous
14 discovery. In culling through that and the copies that the
15 defendant is aware of and the copies provided to the Court,
16 on the top there's a P003, the last paragraph.

17 THE COURT: Wait a minute. I have a paragraph 8ff.

18 MR. GAINOR: That's it, your Honor.

19 THE COURT: Okay.

20 MR. GAINOR: Following down from P003.

21 THE COURT: Okay. I don't have any P003 on mine.

22 MR. GAINOR: Well, it's part of Par. 8ff.

23 THE COURT: Okay.

1 MR. GAINOR: Last paragraph. "Sometime prior to this," and
2 again this is from Gordon MacRae, "I had received two calls
3 at work from someone claiming to be Jon Grover. I was not
4 available either time and the individual calling refused to
5 leave a message. I was very suspicious and doubted that
6 these calls were really from Jon Grover. The reason I
7 doubted this was that I knew that the three letters I
8 received the previous September and October were not from
9 Jon Grover. I knew this because the content in the letters
10 about sexual contact between Jon and I was false." Then,
11 your Honor, going on to the next page on the last full
12 paragraph.

13 THE COURT: I got it.

14 MR. GAINOR: About two-thirds down into that paragraph, quote,
15 again from the defendant's mouth, "I now knew that it was
16 Tom who had been trying to call me and I assumed that he
17 had also called using the name of Jon Grover. I also
18 assumed now, wrongly, that it was Tom who wrote the three
19 letters the previous September and October claiming to be
20 Jon and fabricating this story about sexual involvement."

21 It doesn't end there, your Honor. In the telephone
22 conversation which was recorded at the direction of
23 Detective McLaughlin between Tom Grover and Gordon MacRae,

1 in a paragraph Gordon MacRae says, "You're the one who
2 wrote me the letters awhile back and signed them 'Jon.'"
3 And this phone conversation was--

4 MR. REYNOLDS: April 30th, I believe, 1993.

5 MR. GAINOR: Correct, your Honor, April 30th, 1993 was that
6 phone conversation and that has been marked State's Exhibit
7 1 for Id.

8 THE COURT: Exhibit 1. Okay.

9 MR. GAINOR: Your Honor, clearly the defendant, through his own
10 admissions, has stated explicitly that he believed at some
11 point that the correspondence between Detective McLaughlin
12 purporting to be Jon Grover and he were actually between
13 Tom Grover and he. In other words, he believed that he was
14 writing to at some point and receiving letters from Tom
15 Grover and actually in that second letter, the defendant,
16 the second response that the defendant made, he states flat
17 out when these explicit questions are made about sex, the
18 defendant says, "I now know you are not Jon Grover but I
19 believe you are someone else whom I have been waiting to
20 hear from. If you're really that person, contact me." So
21 right there he has in that second response said, "I don't
22 believe this is Jon Grover. I believe you're someone
23 else," and then later in his work product and in the

1 telephone conversation, he says, "I believed it was Tom
2 Grover who wrote those letters."

3 Now why would he believe those letters were from Tom
4 Grover unless if what Tom Grover said had some truth to it,
5 and that's the relevancy. Granted, they're not in the
6 defendant's initial response to that letter, they're not
7 outright confessions to the exact allegations, but they
8 certainly are inculpatory. He says, "I'm sorry if I
9 confused you. I've changed. I didn't mean to confuse
10 you. I'm not the person that I once was. I'm sorry for
11 anything I may have done."

12 In the battle of credibility where there is only one
13 word against another word, any evidence of this nature
14 becomes highly, highly, highly probative which makes the
15 Court's analysis on the prejudice side one of having to
16 find an awful lot of prejudice to outweigh the probative
17 value, which these letters clearly are. And the defendant
18 in the second letter says, "I want to make amends. I want
19 to make amends with the person," you know, "who this may
20 be," and then he ties it all up, I think, by stating on
21 numerous occasions he believed that it was Tom Grover he
22 was writing to.

23 Now granted, your Honor, there are some prejudicial

1 things in there and the State would not take exception and
2 would even suggest this, of excising parts which may be a
3 little bit tangential to the relevancy parts; for example,
4 "I was in chemotherapy," things of that nature, "I was
5 suffering from insanity." Obviously those things could be
6 excised but there are some portions, such as in the
7 September 28th letter about two-thirds of the way through
8 when the defendant says, "You mentioned that you look back
9 and have been confused about things in our relationship.
10 If I ever hurt you or confused you in any way, I'm very
11 sorry. I always saw myself as sort of another father to
12 you, somebody you could count on. Please understand that I
13 really feel that way and I know how confusing mixed
14 messages must have been. I apologize." I believe that's
15 highly relevant, your Honor.

16 THE COURT: Thank you. Attorney Koch.

17 MR. KOCH: Yes, please, your Honor. There's quite a leap in
18 imagination that Attorney Gainor has done here, your Honor.
19 He's taken things completely out of context. And let me
20 start from the end and go backwards so that these can be
21 placed in context.

22 Gordon MacRae did provide almost a detailed paragraph
23 by paragraph response or commentary to the discovery I'd

1 received in this case. Now you have to remember, your
2 Honor, the discovery he received in the case related to all
3 allegations, including everything that concerned 404(b)
4 evidence. As we know, there is an indictment relating to
5 Jon Grover and there's the indictment that we have here
6 obviously relating to Tom Grover. Gordon MacRae, in his
7 wisdom or lack of wisdom, I don't know what you want to
8 call it, was trying to--. He wanted to provide this
9 information to the County Attorney's office feeling that if
10 they tested the fabric of the story of these allegations,
11 that maybe they would be convinced that they had no merit
12 and would be dismissed. That is a naive position but that
13 was why the discovery, the work product, was produced out
14 of Gordon's own hands.

15 As the Court can tell when it begins to review it, he's
16 reflecting back on a whole series of events that have taken
17 place. That series of events relate to two things. One,
18 your Honor, Detective McLaughlin, and I haven't even
19 addressed this issue in terms of the legality of illegally
20 using the United States Postal Service as, sort of like in
21 the wiretap situation we've previously argued, to send
22 these 68; kinds of letters.

23 It is obvious from the letters, your Honor, that Gordon

1 MacRae thought that he was communicating with Jon Grover.
2 If you look at the initial series of letters, "Dear Gordon,
3 I called your mother--." This is September 26th. "Dear
4 Gordon, I called your mother and she gave me your address.
5 It seems like a long time since we have talked. When I
6 went with Dave to get his things at your place, I felt like
7 I wanted to talk with you alone. I don't have any hard
8 feelings. I really liked many of the times we had.
9 Looking back, I'm confused about others. I never told and
10 I never will. I have my own address and would like to
11 write. You told me many times that we had a special
12 relationship. I would like to continue with writing, if it
13 is all right with you. Jon Grover. P.O. Box 187, Keene,
14 New Hampshire, 03431."

15 THE COURT: Can I just interrupt? I hate to interrupt you but
16 Attorney Reynolds, is this the letter that you say at the
17 time that Mr. MacRae received this letter, he may have
18 believed that this letter was from Jon Grover?

19 MR. REYNOLDS: At the time he received it, he may have believed
20 it was Jon Grover. It was subsequently that he indicated
21 he believed that all the letters were from Tom.

22 THE COURT: Okay. I apologize.

23 MR. KOCH: Thank you, your Honor. So what we have is a

1 situation where it appears that for some reason, Jon Grover
2 is writing to Gordon. And we trace the history of the
3 letters, it seems as though then Gordon then responds to
4 this letter he thought was from Jon. "Dear Jon, I received
5 your letter today. My sister called me and told me that
6 you asked my mother for my address so I was waiting for
7 your letter. Jon, you don't know how happy I was to hear
8 from you." He's addressing Jon. "I guess I have a lot to
9 say and I don't really know where to begin. I guess at the
10 beginning would be the best place." First of all, he's sort
11 of responding to Jon. What I'm saying, I guess, is Jon was
12 writing in the first letter, "I was confused. We had a
13 special relationship," you know, those kinds of things.

14 "First of all, Jon, I always did and still do care very
15 much about you. If there is ever anything you need or
16 anything I can help you with, I would do my very best.
17 That has not changed as far as I'm concerned.

18 "I knew for a long time something was wrong with me.
19 It was like I was going gradually insane or something over
20 a couple of years. Four years ago, after the accusation
21 first came, I went into a psychiatric hospital." Now, your
22 Honor, putting that in context, the Court will remember the
23 1988 situation where there was the plea to the misdemeanor

1 involving J.B., if you trace back four years. "I went into
2 a psychiatric hospital. I thought I was a terrible person
3 to do and say the things that I had said to others. I was
4 in this hospital for a year. They found out that there
5 were several things wrong. The biggest and hardest to
6 understand was that they discovered I have a disease in the
7 brain called temporal lobe epilepsy. It causes insanity
8 and causes people to say and do bizarre things. I went
9 through chemotherapy for months and now take a drug every
10 day to control it. I am much better now and I have never
11 had the same problems again. I don't feel as if this
12 changes the fact that I am responsible for everything. I
13 still feel responsible but they convinced me that I had a
14 lot more wrong with me to deal with than just being a bad
15 person doing bad things. When the year of treatment was
16 over there were some things that I remember and some things
17 I don't remember. I don't remember you and Dave coming to
18 get Dave's things, as you said in your letter. The doctors
19 who treated me said this illness was progressing for about
20 ten years and causes a kind of multiple personality. I
21 remember most things and always had a hard time accepting
22 that it was me who did these things. I hated myself for it
23 and I just wanted to die because I couldn't accept that I

1 had let everyone down.

2 "I also was accused of some things that I never did. I
3 never took bad photographs of anyone or anything like
4 that. I can only ask you to take my word on that. Most of
5 what happened involved things that I said or strange
6 behavior but I never did those other things.

7 "Jon, you mentioned that you look back and have been
8 confused about things in our relationship. If I ever hurt
9 you or confused you in any way, I am very sorry. I always
10 saw myself as sort of a father to you and someone you could
11 count on. Please understand that I really feel that way
12 and I know how confusing mixed messages must have been. I
13 apologize if I was ever anything but someone you could
14 count on. As I said before, if you ever need anything,
15 even now, I would help all I could.

16 "I have often wondered where you are and what you are
17 doing. I didn't know you were in Keene. The last memory I
18 have is that you were in the Navy. What are you doing for
19 work? Do you need help?

20 "I have a good job now at the same hospital where I was
21 once a patient. I have left the priesthood and will never
22 go back. In trying to put my life back together again I
23 have had ups and downs but things are okay now. I have

1 never had any repeat of the past and when I look back, it
2 is as if that person has died and I am someone else now.
3 That probably makes no sense to you.

4 "Jon, I would like to hear from you again. Please let
5 me know if I can help you in any way. I hope we can be
6 friends again. Can you forgive me? Gordon." Then he goes
7 on to give him some numbers where he can call him. Once
8 again, very obviously and clearly he thinks that he's
9 communicating with Jon Grover. It is Detective McLaughlin
10 pretending that he is Jon Grover.

11 Now, Jon Grover gets a little more specific. It's sort
12 of like he's thrown out the line and he's trying to reel
13 Gordon in like he's got him as a fish. This is the October
14 5th letter:

15 "Dear Gordon, Thanks for writing back so quickly and
16 for your phone number. I hope you don't mind but I would
17 like to exchange letters for awhile before we speak. I
18 need a few answers first. I really felt bad for you when
19 you were arrested. I wanted to reach out to you but at the
20 same time, did not want anyone to know about us. The sex
21 that we had was very special to me. I was jealous about
22 Tony at times. One of my questions concerns the sex we
23 had. Was I just an object to you, or did you have sex with

1 me because of love?

2 "Another thing I need an answer to is about Father
3 Scruton. One night you were having oral sex with me and
4 then left. Father Scruton came in and finished. Were you
5 doing a favor for him? If so, shouldn't you have asked me
6 first? I'm confused about these questions and would like
7 some help from you to understand this. I trust that you
8 have not told others about our past sex. I have never told
9 as well. Please assure me that you never will. Please
10 don't disappoint me by saying you can't remember.

11 "I don't recall hearing anything about you taking bad
12 pictures of anyone. Were you charged with this? I know you
13 never did this to me. I still believe I can count on you.
14 I hope to have a friendship with you after the air has been
15 cleared."

16 That letter is a letter where it appears to me, your
17 Honor, that Jon Grover once again, and it's clear that that
18 was who Gordon MacRae assumes he is speaking with, he comes
19 right out and starts accusing Gordon directly of having
20 had, or there's innuendos and that kind of thing. I
21 suppose one could read those earlier letters with
22 implications, what do you mean by special relationship,
23 those kinds of things. But there in letters he comes right

1 out and says, bam, "Here's what you did to me and I want
2 some answers."

3 Well, then Gordon writes back to Jon. "I received your
4 letter two days ago. I was really confused by it because
5 the things described in the letter never took place. Not
6 ever. I was confused about many things but I know one
7 thing for certain, nothing like that ever took place
8 between Jon Grover and I.

9 "Now I am wondering if the person writing to me is
10 really Jon Grover." Gordon is beginning to question, if
11 you take the letter at its face value, "Well, I mean, who's
12 writing me? If it's Jon Grover and he suddenly says I've
13 done all these sexual acts to him and I didn't, is it
14 really Jon? I mean, what's going on? I was confused about
15 it". "Now I'm wondering if the person writing me is really
16 Jon Grover because he would know that something like that
17 never happened. If you are who I think you are, I have
18 been waiting to hear from you for a long time. After all
19 that happened there is really only one person I want to
20 hear from and make amends to. If you are this person,
21 please call me. If you are not, don't bother.

22 "I am in the middle of moving because I have a new job
23 in the northeast. I don't have a new address yet but would

1 like to send it to you if you are who I think you are. It
2 is okay to call me if you are the person I hope you are. A
3 lot has changed."

4 Then in the last letter, Jon writes back, or Detective
5 McLaughlin writes back feigning anger, I guess. "Gordon, I
6 don't know what you're trying to pull. If you don't think
7 it's me, write and ask me a question I would only know.
8 What happened between us happened. Don't try to change
9 this. I only ask that you help me understand why it
10 happened. I can only think that you thought you were
11 writing to someone else by mistake and you panicked.
12 Please write back and explain."

13 Well, that seems to be the end of the correspondence.
14 All of that correspondence, your Honor, is very clearly and
15 directly related to Jon Grover. There's only one point in
16 there where there becomes apparently some sort of
17 question. I mean, "Now who's writing me here?" I mean,
18 "What's this really about?" Now, Gordon received those
19 letters in part of the discovery. He also received other
20 discovery, for instance, your Honor, this taped
21 conversation, the taped conversation that Tom Grover makes
22 from the law offices of Attorney Upton, tried to make some
23 phone calls to Gordon and then later at the Keene Police

1 Department where Tom Grover tried to get Gordon MacRae
2 apparently to make some admissions about improper
3 activity. Mind you, your Honor, this is all 404(b)
4 evidence that we've already discussed. I'm not saying that
5 this may or may not come in in Jon Grover's case and what
6 its implications may be but it's a matter of trying to back
7 door it here.

8 So what do we have, your Honor? If we look at paragraph
9 8ff, and this is in the work product that came, I mean,
10 months and months later after these indictments and all
11 these other events had taken place. Gordon MacRae writes,
12 "Detective McLaughlin states that he, Tom, and Tom's
13 attorney, Robert Upton of the law firm of Upton, Sheeney
14 and Bass in Concord, New Hampshire, attempted to call me in
15 New Mexico at my place of employment. The receptionist,
16 who was temporary and filling in for the full-time
17 receptionist, told the caller, who had identified himself
18 as Tom Grover, told him that I was no longer there and
19 could be reached at 1-800-484-9675. She did this at my
20 request and the reason is identified below. Detective
21 McLaughlin states that he then attempted to call the 800
22 number and received a recording. He then states that he
23 attempted the 800 number again the next day and received

1 another recording. I have attached a copy of a telephone
2 bill indicating that Detective McLaughlin and Attorney
3 Upton attempt, or attempted to call this number two times
4 on April 1st from Attorney Upton's office. There is also
5 one call on April 2nd, two on April 10th, and two on April
6 13th. These calls are all made from Detective McLaughlin's
7 office in Keene."

8 Then he goes on to note, "Sometime prior to this, I had
9 received two calls at work from someone who said they were
10 Jon Grover. I was not available either and the individual
11 calling refused to leave a message. I was very suspicious
12 and doubted that these calls were really from Jon Grover.
13 The reason I doubted this was that I knew the three letters
14 I received the previous September and October were not from
15 Jon Grover." How did he know that, your Honor? Because he
16 says Jon Grover accused him of certain sexual activity
17 which Gordon writes back and says no, it didn't happen. "I
18 knew that those three letters had not come from Jon
19 Grover. I knew this because the content in the letters
20 about sexual contact between Jon and I was false. I felt
21 that even if Jon Grover was telling someone else a
22 fabrication for the purpose of extorting money, why would
23 he tell me? He would know that both of us would be fully

1 aware that the behaviors described in his letters never
2 took place. Also, all three letters came from Keene. I
3 could not understand why Jon Grover would be using a post
4 office box as his return address. Because I was suspicious
5 about the identity of the caller, I took certain steps to
6 try to learn the identity of the caller, or at least where
7 he was calling from.

8 "For quite some time I have had a personal 800 number
9 from MCI at my home. I did this so that my mother and
10 sister could call me at any time and the toll would appear
11 on my phone bill and not theirs. I asked the personnel in
12 the receptionist's office where I work to give this 800
13 number to any person calling for me and identifying himself
14 as Jon Grover. They already knew that this person was
15 suspicious because he would always refuse to leave a
16 message or a number where I could return his call. The
17 nature of my job was such that I could rarely take calls
18 directly and usually had to call a person back. It was
19 just by chance that the temporary receptionist took this
20 same step when Tom Grover called. She gave Tom Grover my
21 800 number and told him that I could be reached at that
22 number. I know now, I now knew that if this individual
23 called this number and received my machine message, I would

1 then have a record of where the person was calling from.
2 The originating number would appear on my telephone bill."
3 It was a way that Gordon MacRae was identifying where phone
4 calls were coming from, your Honor.

5 Now, he says, "On April 10th of 1993, Saturday--." The
6 dates of these letters, your Honor, are in September and
7 October of '82, I mean '92, so here we've jumped forward
8 almost six months after the time this series of
9 correspondence had come. It says, "On April 10, 1993,
10 Saturday, I received a call at home from a person whose
11 voice I recognized, Tom Grover. He did not recognize my
12 voice, however. Tom asked, 'Is Gordon MacRae there?' I
13 asked, 'Who is calling, please?' He said, 'Tom.' I realized
14 he did not recognize my voice, which I made no attempt to
15 disguise. I asked, 'What number are you calling?' He
16 responded, '1-800-484-9675.' Without my saying anything
17 else, he said, 'I must have dialed it wrong or something.'
18 I said, 'Okay,' and he hung up. A few minutes later he
19 called again and this time I let my answering machine
20 answer. The attached copy of my phone bill indicates that
21 these calls were made from Detective McLaughlin's office at
22 the Keene Police Department." Now Gordon makes an
23 assumption in his work product, because he's starting to

1 receive these calls from Tom. "I now knew that it was Tom
2 who had been trying to call me," because he recognized, you
3 know, basically recognized the voice, "and I assumed he had
4 also called using the name Jon Grover. Somebody is writing
5 to me. It can't be Jon so maybe it's Tom that's writing to
6 me." "I also assumed now, wrongly, it was Tom who wrote the
7 three letter the previous September and October claiming to
8 be Jon and fabricating this story about sexual
9 involvement. I thought Tom was attempting to extort money
10 somehow. This would be somewhat consistent behavior for
11 Tom."

12 He goes on to say, "On the following Monday, I called
13 MCI to determine the origination of the calls. MCI told me
14 this could not be determined for a few weeks, call back in
15 two weeks. April 30th, I received another call in my
16 office. The receptionist said it was Tom Grover and asked
17 if I wanted to take it. She said I was unavailable and he
18 said, "Just give me extension 28." I told her I'd take the
19 call. The attached transcript of the call was provided by
20 Detective McLaughlin. At that time, I did not know it was
21 from Detective McLaughlin's office."

22 Now, your Honor, that's the one that had been
23 introduced, marked for identification, the transcript of

1 the taped phone call made by Detective McLaughlin of Tom's
2 discussion with Gordon MacRae. "In this conversation, Tom
3 makes a cryptic reference to tapes with kids he alleges he
4 found in my apartment. Now I feel certain Tom was
5 attempting to extort money. He even made reference to
6 having received a phone message from a Keene detective but
7 that he didn't call him back. The Grover family would have
8 been aware from the newspapers that Jon Grover and his
9 family filed suit against me and against the Diocese of
10 Manchester in April of '90 and this suit included a
11 fictitious accusation I took obscene photographs of
12 Plankey. Detective McLaughlin accused me of this in
13 September '89. There were never photographs, tapes, nor
14 was there an attempt to create them. I felt that Tom was
15 aware of the nature of the suit, was going to offer to
16 withhold his fact statement about seeing the tapes for an
17 amount of money." To put that in context, your Honor, the
18 court would have to review that transcript.

19 "After I hung up the telephone, I called Steve Bragdon,
20 an attorney in Keene who was representing me. I told
21 Bragdon about the call from Tom and I then sent Bragdon the
22 letters I had received from Jon the previous September and
23 October. Attorney Bragdon stated it sounded like someone

1 was going to ask for money and told me to keep him
2 informed, if I heard of this individual again that he'd
3 make a notation of this money and send me a letter. Now
4 having read this discovery and learned that the letters
5 were actually written from Detective McLaughlin and Tom's
6 call of April 30th was made from McLaughlin's office and
7 taped by McLaughlin, it is of note that Tom makes no
8 mention of allegations that I sexually abused him."

9 There again he's talking about the transcript of the
10 conversation, your Honor. If you review the transcript of
11 the conversation that Tom had when he was obviously calling
12 Gordon to bait him, he doesn't once accuse Gordon MacRae of
13 any type of sexual impropriety at all. It doesn't say,
14 "You abused me," or, "Why did you do that?" Nothing in
15 there of that nature. He only mentions an allegation that
16 would support Plankey's suit against the Diocese of
17 Manchester.

18 "If I said these fabrications about the tapes are
19 true(?), they're not true, for what it's worth. It was not
20 until after my arrest on the New Hampshire warrant that I
21 again called MCI and learned that the calls made from Tom
22 were from an attorney's office in Concord and Detective
23 McLaughlin's office in Keene."

1 That's the context of the way that work product was
2 produced and sent to the County Attorney's office. What
3 the State's trying to do, your Honor, is take that evidence
4 relating to Jon Grover and say because Gordon MacRae says
5 now that it couldn't have been Jon because Jon accused him
6 falsely of sexual molestation, it had to be somebody else,
7 well then that must somehow mean that it's Tom, it must
8 mean that it's Tom because Tom, in fact, placed calls to
9 Gordon MacRae. There aren't those kinds of admissions or
10 anything else here, your Honor. It's the grossest
11 speculation and innuendo that one could ever be called upon
12 to make in a case. The only way to accurately assess that
13 and deal with it just opens up this whole other scenario,
14 404(b), that we've been trying to scrupulously avoid. I
15 don't see any manner in which that could be done.

16 The other thing I might note parenthetically, your
17 Honor, the time Gordon prepared this work product in New
18 Mexico, we were in the height and in the middle of these
19 allegations of abuse against priests. I mean, we've
20 literally had hundreds of victims come forward and so many
21 lawsuits that I can't even count them and his efforts were
22 to try to respond to what the State was saying had
23 occurred. To allow the State to get into those things and

1 open up all this 404(b) to create maybe a possible
2 impression that when Gordon wrote in the letters, "Well, if
3 you're the guy I really want to hear from--." And I might
4 note the only name mentioned in there was Tony, if you look
5 back to the letters. If you wanted to do speculation or
6 assumption, your Honor, that somehow that was Tom, it is
7 going to be, first of all, not relevant because it does
8 call for speculation, for conjecture; second, the
9 prejudicial value cannot withstand the test, your Honor, of
10 a balancing, it's so grossly unfair and prejudicial in this
11 case. At any rate, your Honor, that's how that all plays
12 out.

13 MR. GAINOR: Your Honor, if I may approach. I don't believe
14 the Court has a copy of the pertinent part of the
15 transcript between, the phone call between Tom Grover and
16 the defendant, and I'm going to be very brief. What the
17 defendant is doing here is back pedaling. He's reading
18 parts in his work product which are now being used to back
19 him away from these inculpatory admissions. Basically the
20 defendant, who prides himself on being quite clever, has
21 boxed himself in, I'm sure inadvertently. I don't know how
22 else you could read--. This isn't wild speculation. I
23 don't now how else you can read the defendant's saying in

1 response to an explicit letter by saying, "I know you are
2 not this person because these things never happened. If
3 you are who I think you are, contact me." I mean, right
4 there he's disavowing any contact of a sexual nature
5 between he and Jon Grover and he's inviting the person who
6 he thinks is writing to actually contact and come forward
7 to him. What he's saying is, "I know you're not Jon Grover
8 but you're someone out there," and this is in direct
9 response to this person writing and saying, "Tell me about
10 the sex. What did the sex mean to you?" A flat out
11 explicit question from someone who is writing in the name
12 of Jon Grover. "Tell me about the sex. What did it
13 mean?" The defendant, upon getting that, says, "You can't
14 be Jon Grover. That never happened. Who are you? If
15 you're that person I think you are," obviously the person
16 who he thinks that he had sex with, "then contact me." And
17 then in work product the defendant says. "I now knew it's
18 Tom Grover that wrote the letters." In the phone
19 conversation with Tom Grover, "It's you, Tom, who wrote
20 those letters, isn't it?" That is a direct connection. It
21 can't be any more clear. No speculation. It's there. The
22 connection is made.

23 The whole issue here is the prejudice versus the

1 probative analysis and I suggest to the Court that
2 unfortunately continuing the fiction that the law requires
3 us to create here in some cases, to excise those parts
4 which are highly prejudicial.

5 I would suggest to the Court that the initial letter
6 from Detective McLaughlin to Gordon MacRae come into
7 evidence and Detective McLaughlin can testify that it was
8 he who wrote the letter. I would suggest that for the
9 September 28th response from the defendant, that the
10 paragraph about two-thirds down in that, starting off with,
11 "Jon, you mentioned that you look back and have been
12 confused about things in our relationship," I suggest that
13 that whole paragraph come in. And I would suggest that the
14 October 5th letter from Detective McLaughlin come in but
15 only those parts where it reads, "the sex that we had was
16 very special too me. Was I just an object to you or did
17 you have sex with me because of love?" Then I would
18 suggest that the October 13th response from the defendant
19 come in where the defendant's says, "Now I'm wondering if
20 the person writing to me is really Jon Grover."

21 THE COURT: Excuse me, Attorney Gainor. I don't want you to
22 have to go on and on. I've made up my mind and it's not
23 going to favor your side so I don't want to just force you

1 to stand there and argue about what we need to redact.
2 I'll tell you what my reasoning is. Now if I thought from
3 what you've presented, what the State has presented to the
4 Court, that Gordon MacRae was aware from the beginning,
5 from receiving that first letter onward, that Tom Grover
6 was writing the letters, then I would not consider that to
7 be bad, any of this to be bad act evidence because that
8 would be evidence of Gordon MacRae's activities with Tom
9 Grover. I would consider them to be admissions, not only
10 the letters, not only his responses, but also the fact that
11 he said that he believed that Tom Grover wrote the
12 letters. I would treat that as an admission and that would
13 come in.

14 However, as I look at the total picture, all of the
15 letters here, I see a situation where we have Detective
16 McLaughlin writing letters to Mr. MacRae under a different
17 child's name, different than Tom Grover's. I see Mr.
18 MacRae responding and at some point, which is probably
19 unknown to all of us except Mr. MacRae, knowing that he is
20 being deceived. I don't think that any of this can assist
21 the trier of fact in making a decision in this case. If I
22 redact all of this information, it's 404(b) evidence even
23 under the State's theory, the jury is going to receive

1 these documents with statements left out, in a situation
2 where it is very difficult from these documents to
3 determine just who believed what about who. All I think it
4 will do is cause confusion and unfairness, and not
5 necessarily just to Mr. MacRae. It could run to Tom Grover
6 as well.

7 So for these reasons, and chiefly because I believe
8 that this is 404(b) evidence, I am not convinced that it is
9 not, I'm going to deny the State's request at this time.
10 Now, if we run into a situation where a door opens or a
11 rebuttal situation occurs, that's another question but I
12 don't think this evidence should come in. I don't think it
13 would be fair.

14 Thank you very much. I'll make a decision on the
15 question of Detective McLaughlin as an expert witness
16 during lunch. The jury will be back at 1:00 o'clock.

17 MR. KOCH: Your Honor, may I make one other comment about
18 Detective McLaughlin? And I have to apologize, I should be
19 more familiar with your rules than I am, but it seems to me
20 that there's a fundamental issue with regard to notice and
21 due process. If one is going to attempt to utilize any
22 witness as an expert and to, in the middle of questioning
23 to suddenly want to try to qualify someone without prior

1 notice to give us an opportunity to respond or deal with
2 that, I just think that's somewhat of an unfairness.

3 THE COURT: Let me ask you a question, Attorney Koch.

4 Attorney Reynolds, go ahead and sit down.

5 MR. KOCH: Yes, your Honor.

6 THE COURT: We've just had Detective McLaughlin testify about
7 all these hundreds of witnesses that he's interviewed.
8 What would be your objection if the State were to ask him
9 if there were ever any inconsistencies in the recollections
10 of these witnesses? And would you consider that answer to
11 be the answer of an expert? Standing here without your
12 argument, I don't think that's the answer of an expert. I
13 think that's an answer, that's direct evidence. The
14 question could be asked. How would you respond to that?

15 MR. KOCH: Your Honor, I think the Court's correct. I don't
16 think the knowledge that Detective McLaughlin has calls for
17 him being qualified as an expert. In other words, he may
18 have had situations where a person has given inconsistent
19 statements or has taken a long time to get a statement out,
20 and that in and of itself may have some benefit to the jury
21 so they may be able to relate it as to Tom Grover. But
22 when you cloak him with some kind of an aura, when you
23 sanctify him as an expert, then it gives undue emphasis to

1 that testimony even though, you know, I'm sure given an
2 instruction of some sort as to how they're supposed to view
3 expert testimony--. But I don't know. Just those magical
4 words. I think he can testify as a lay person for the very
5 things that Mr. Gainor wants him to testify to.

6 MR. GAINOR: Your Honor, the reason there was individually
7 sequestered voir dire here is because of, one of the
8 reasons is because of this issue. It is not within the
9 province of a normal, reasonable juror to know about
10 inconsistencies between recollections of sexual abuse.
11 Most people in the population don't know about that and I
12 think that it would be improper then to have him testify
13 under Rule 701 because that's not within the normal
14 province of a jury. It has to be 702 because most people
15 on the street don't know about how victims of child sexual
16 abuse recall and relate the abuse. It is typically,
17 commonly seen among the class of child sexual abuse victims
18 that they're inconsistent.

19 THE COURT: Let me ask you this, though, Attorney Gainor. You
20 have, have you not, a witness, an expert witness who is
21 going to testify about this?

22 MR. GAINOR: Yes, we do, your Honor.

23 THE COURT: What kind of credentials does this witness have?

1 MR. GAINOR: I believe he is a Ph.D.

2 MR. REYNOLDS: Yes, he has a doctorate and has been involved in
3 counseling over a number of years. He's familiar with the
4 basic circumstances of child sexual abuse accommodation
5 syndrome.

6 THE COURT: Well, let's do this. I don't know what's going to
7 happen with that expert. He may or may not be qualified.
8 But I'm tell you, at this point I don't think I can qualify
9 Detective McLaughlin as an expert. I think he can testify
10 as to his experience. But another aspect of this that
11 concerns me is that Detective McLaughlin is so close to
12 this case. He is prosecuting this case vigorously, which
13 is his job, as far as the Court's concerned, but to testify
14 as an expert witness, to present unbiased information for
15 the jury, I do not believe is appropriate for Detective
16 McLaughlin, and that is my decision.

17 MR. GAINOR: Thank you.

18 (Recess taken)

19 * * * * *

20 HEARING BEFORE THE JURY

21 THE COURT: I think the jury may be sending out some message.

22 JUROR: You're sorry.

23 JUROR: You apologize.

1 JUROR: It was him.

2 THE COURT: You again. He gets here late and leaves early,
3 right?

4 JUROR: Two hour lunch.

5 (Laughter)

6 THE COURT: All right, Attorney Gainor.

7 MR. GAINOR: Thank you, your Honor.

8 JAMES McLAUGHLIN

9 (Resumed)

10 CONTINUED DIRECT EXAMINATION

11 BY MR. GAINOR:

12 Q Please be seated. Detective McLaughlin, I remind you
13 you're still under oath.

14 A Yes.

15 Q Where we left off, I was asking you about the disclosure of
16 sexual abuse being a process rather than an event. Do you
17 recall that?

18 A Yes.

19 Q Can you elaborate on that concept?

20 A Most of the victims of--. Most of the adult victims who
21 are victimized as children sexually, when they finally come
22 to terms and are able to disclose that information,
23 especially to an authority, will basically give you a rough

1 outline of what happened to them, what occurred over a
2 length of time. And then on subsequent interviews, they
3 will come up with additional facts about their
4 victimization.

5 Q Is there a term "confabulation" that you're familiar with?

6 A Confabulation is sometimes the mind will take incidents of
7 abuse that occurred years ago, and let's say three
8 incidents happen during a given day. Their mind may
9 believe that those occurred on three separate days, or vice
10 versa, that three separate day's events happened all in one
11 day, and that can happen.

12 Q So if I understand, your disclosure sometimes comes in
13 pieces rather than in its totality?

14 A Yes, typically.

15 Q Your first meeting with Tom Grover, do you recall how long
16 that was? I believe it was in March 1993.

17 A It was about an hour, just over an hour.

18 Q And your second meeting I understand was in April of 1993?
19 If you need to refer to your notes to refresh--

20 A Yes. Let me give you accurate dates.

21 (Pause)

22 A (continuing) The second meeting was April 1st, 1993.

23 Q How long was that meeting, sir?

1 A That was about an hour as well.

2 Q Now, before the lunch break I was talking to you about the
3 number of child victims of sexual abuse that you've spoken
4 to. Do you remember that?

5 A Yes.

6 Q In fact, what I wanted to ask you was how many victims of
7 child sexual abuse have you talked to? Do you understand
8 the difference between those two questions?

9 A You're talking about adults who were disclosing sexual
10 abuse versus actual children that I've spoken to?

11 Q Yes.

12 A I've spoken probably to about a hundred adult survivors of
13 child sexual abuse.

14 Q How many times did Tom Grover relate to you that he was
15 fellated in the St. Bernard's rectory or in the offices of
16 the Rectory?

17 A That would be four or five times.

18 Q And how many times upstairs on the third floor?

19 A Once.

20 Q Have you reviewed the defendant's discovery in this case?

21 A Yes, I have.

22 Q I want to ask you some questions about that. Did the
23 defendant state in that discovery the date that he arrived

1 at St. Bernard's?

2 A Yes, he did.

3 Q And what was that date?

4 A That was June 15th, 1983.

5 Q In the defendant's discovery, did he provide you or provide
6 a date when he moved upstairs into the third floor of the
7 St. Bernard's Rectory?

8 A Yes, did he.

9 Q And what was that date?

10 (Pause)

11 A He said it occurred during August 1983.

12 Q In the defendant's discovery, did he state the year that he
13 was at St. Mary's in Baltimore?

14 A The seminary, he was there in 1978, '79, '80 and '81.

15 Q And did he state to you where he spent in the summer of
16 1980? Or rather let me more appropriately phrase that
17 question. Did he state in the discovery where he interned
18 in the summer of 1980?

19 A Yes, he did.

20 Q And where was that?

21 A That was at St. Margaret's here in Keene.

22 Q How about in 1981, did he state where he interned?

23 A Yes, he did.

1 Q Where was that?

2 A Groveton.

3 Q In the defendant's discovery that you've reviewed, did the
4 defendant make any statements about assisting Tom Grover in
5 getting into a program called Beech Hill?

6 A Yes, he did.

7 Q Why don't you relate to the jury what that was?

8 A Just that he assisted Tom in getting some treatment for
9 substance abuse at Beech Hill.

10 Q In the defendant's discovery, did he mention assisting Tom
11 Grover in regard to a treatment facility called Derby
12 Lodge?

13 A Yes, he did.

14 Q And what did he state about that?

15 A He stated that he brought Tom up to Derby Lodge and that he
16 spoke with staff at Derby Lodge about his substance abuse
17 problems.

18 Q Did he mention if he drove Tom Grover to Derby Lodge or
19 not?

20 A Yes, he did.

21 Q Did he drive him?

22 A Yes.

23 Q Did you assign Detective Brian Clark to interview a Debbie

1 Collett?

2 A Yes, I did.

3 Q And if you have knowledge, what date did Detective Clark
4 interview Debbie Collett?

5 A June 22nd of this year.

6 Q On what date did you review the defendant's discovery?

7 A That was in the spring, either late April or early May of
8 this year.

9 Q So it was before Detective Clark interviewed Debbie
10 Collett?

11 A Yes.

12 Q Did the defendant in his discovery make any statements
13 regarding giving Debbie Collett something?

14 A Yes, he did.

15 Q And what was that?

16 A In his discovery he stated he had given her police reports.

17 Q Relative to who?

18 A Relative to Tom.

19 Q Did Tom Grover ever mention to you that the defendant
20 threatened him about something?

21 A Yes, he did.

22 Q What was that?

23 A He told me that after having disclosed to Debbie Collett

1 A No, she did not.

2 Q And in the Derby Lodge reports, where there was a subpoena
3 for them to provide everything, did those reports contain a
4 police report relative to Tom Grover and the defendant?

5 A No, they did not.

6 MR. GAINOR: Pass the witness.

7 THE COURT: Thank you. Attorney Koch.

8 MR. KOCH: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. KOCH:

11 Q Detective McLaughlin, sir, when you interview someone who
12 has brought forth an allegation relating to sexual abuse,
13 you try to get enough information from them so that you're
14 relatively comfortable with what they're telling you; would
15 that be a fair statement?

16 A Over time, yes.

17 Q And sir, you have basically unlimited access to a
18 complainant, do you not, in terms of your ability to
19 interview them?

20 A Yes.

21 Q So for instance, with Tom Grover, if you had questions
22 about what he was relating to you, you could have talked to
23 him on any number of occasions?

1 A Yes.

2 Q And in this particular case, in this case, sir, I
3 understand from your testimony that you talked to Tom
4 Grover on two occasions.

5 A During the investigative phase?

6 Q Yes, sir.

7 A Yes.

8 Q And during that investigative phase that you spoke with Tom
9 Grover, on each occasion you prepared a police report to
10 memorialize the information that you received from Tom
11 Grover.

12 A Yes.

13 Q Okay. Now, sir, is that, for lack of a better word,
14 standard police process?

15 A Yes.

16 Q When you talk to somebody, do you as a routine habit tape
17 record them?

18 A No.

19 Q Okay. Is that by policy in your office, sir?

20 A We don't have a policy.

21 Q Okay. If you chose to record them from the first time they
22 walked into your door to tell you their version of events,
23 there's nothing to prevent you from doing that.

1 A Just our common practice not to.

2 Q Okay. You follow the practice, I think, sir, more like the
3 F.B.I., and that is that you take detailed interview notes?

4 A Yes.

5 Q And that again, sir, is accepted standard police procedure,
6 is it not?

7 A Yes.

8 Q Now when you're talking with someone and trying to
9 memorialized their information they're giving to you, it's
10 a process of a dialogue going on, isn't it, sir?

11 A Yes.

12 Q In other words, you are free to ask questions of that
13 individual?

14 A Yes.

15 Q At any point in time?

16 A Yes.

17 Q And sir, don't police officers, like lawyers, ask a lot of
18 questions?

19 A I don't care for the analogy.

20 (Laughter)

21 Q Can't say I blame you there.

22 A Yeah, we would ask questions during an interview.

23 Q And the reason you would ask questions is you want to

1 develop as much of a detailed version of events as you
2 can.

3 A Recognizing the pace of the person you're speaking to, the
4 pace of whatever these other variables. You have to be
5 cognizant of such as their emotional reactions. Like you
6 said, the fact that you will be able to talk to them a
7 second or a third time, if necessary.

8 Q And you, as a trained police officer, sir, could take
9 whatever time you felt was necessary to develop the
10 information that was important to you for your
11 investigation.

12 A Yes.

13 Q Now, I believe you told the jury that you met with Tom
14 Grover the first time on March 23rd of 1993.

15 A Yes.

16 Q And by my way of calculation, that would be about 18 months
17 ago?

18 A Okay.

19 Q Let me see, maybe I'm wrong. I think that's--. Would you
20 agree with that?

21 A Sure.

22 Q And then I think that you followed up with an interview
23 with him on, was it April 1st?

1 A Yes.

2 Q So it would have been about a week later.

3 A Sure.

4 Q Now, Detective McLaughlin, I had the impression from
5 reading your report that the reason you conducted the
6 second interview with Tom Grover was that you wanted to get
7 some answers to some questions that you had.

8 A Sure.

9 Q You wanted to kind of fill in detail?

10 A I also wanted the victim to have an opportunity to give me
11 further detail.

12 Q All right. And in fact, would you agree with me that that
13 second interview with Tom Grover was primarily for the
14 purpose of the kind of fleshing out or filling out more
15 detailed information?

16 A Yes.

17 Q Did you feel, sir, at the end of that second interview with
18 Tom Grover, that you pretty well had understood from Tom
19 Grover's perspective what he was claiming to have had
20 happened to him with Gordon MacRae?

21 A So far as what he had access to him at that time, yes.

22 Q And when you finished off with that second interview on
23 April 1st of 1993, did you feel that you had obtained

1 answers to questions that you wanted answers to?

2	A	Yes.
---	---	------

3 Q Now, one of the things, sir, was that when you first talked
4 to Tom Grover, he told you, did he not, where these alleged
5 instances had occurred in the Keene rectory?

6 A Yes. He told me on the first floor and also on the third.

7 Q Did you then go back to him, sir, at that second interview
8 on April 1st of 1993, to try to follow up on the exact
9 location?

10 A I have to check the notes.

11 Q Would you, please?

12 (Pause)

13 A It's unclear to me from my notes whether or not he
14 volunteered that or if I asked him.

15 | Q Okay.

16 A But that information is recorded. If I can, if you'd like
17 that read.

18 Q Sir, you were trying to find out where the assaults had
19 occurred, were you not?

20 A We already knew that.

21 Q Well, let me go back to your first summary of your
22 interview with Tom Grover, and you can correct me. I'm in
23 June of '83. I'll just pick that one as an illustration.

- 1 A When you say June, are you talking about an indictment date
2 or --
- 3 Q Sir, I'm looking at your police report where you have your
4 notation that says June and then you have a slash beside
5 it. It says 1983.
- 6 A Okay. In my report.
- 7 Q Yes, sir. I'm sorry.
- 8 A Yeah. Okay.
- 9 Q I didn't--
- 10 A Yes.
- 11 Q Okay. Let me come up there and make sure we're at the same
12 location. Yes, sir. Thank you.
- 13 A Okay.
- 14 Q In that, Tom was talking about counseling occurring on the
15 first floor of the St. Bernard's rectory --
- 16 A Yes.
- 17 Q -- is that correct?
- 18 A Yes.
- 19 Q And then Tom told you that each priest had an office on the
20 first floor --
- 21 A That's right.
- 22 Q -- did he not?
- 23 A Yes.

1 Q And then Tom went on to relate to you, sir, about this
2 alleged instance of being fellated --

3 A Yes.

4 Q -- is that right? Now, you then went in the next interview
5 to ask him about the location of that office, didn't you,
6 sir?

7 A Either I asked him or he volunteered it, one of the two.

8 Q And he told you that the office where these assaults had
9 occurred was located on the Main Street side and closest to
10 the church, and in parentheses, the southeast corner of the
11 building?

12 A Yes.

13 Q All right. Now sir, he never told, did he, that an assault
14 had occurred in any other office of the rectory, did he?

15 A Initially, like we just reviewed, he said the first floor,
16 first floor of St. Bernard's rectory, and then later this
17 information is that MacRae's first floor office is located
18 on the Main Street side closest to the southeast corner.

19 Q And you had been talking with him about where these
20 assaults had occurred?

21 A Yes.

22 Q Now, sir, anywhere in any of your notes does Tom Grover
23 make a claim that no, the assaults hadn't occurred in the

1 southeast rectory, actually the first ones were in the
2 office to the southwest?

3 A He didn't use the term "southwest."

4 Q And in reviewing your notes, sir, do you anywhere use that
5 term?

6 A Southwest?

7 Q Yes, sir.

8 A No.

9 Q Now, sir, in fact as the investigation went along in this
10 case, you learned that Gordon MacRae did not have an
11 office, that southeast corner office, for the first month
12 that he was in Keene, isn't that true?

13 A Assuming that that's true?

14 Q Yes, sir.

15 A No, he claims he didn't have an office until after Father
16 Dupuis left in August of the same year.

17 Q And if you bear with me for a minute, it's been indicated,
18 sir, that Father Dupuis left Keene, I believe it was July
19 15th of 1983. So in other words, that would have been a
20 month?

21 A That's not the date I understood it to be.

22 Q Oh, what date did you understand?

23 A Dupuis?

1 Q Yes.

2 A From your client's discovery?

3 Q From any source?

4 MR. GAINOR: Your Honor, can we approach, please?

5 CONFERENCE AT THE BENCH

6 MR. GAINOR: The reason I was able to ask Detective McLaughlin
7 what Gordon MacRae said in his discovery was because it's
8 an admission by a party opponent which the opposing party
9 can enter. It's not proper for the defense to be able to
10 use Detective McLaughlin to introduce statements made by
11 the defendant because he's not an opposing party to the
12 defendant. It's that simple, and I would object. Even
13 further, that's a hearsay objection to using Detective
14 McLaughlin to pick bits and pieces from other peoples'
15 statements.

16 MR. KOCH: Your Honor, Mr. Gainor went through that very
17 process this morning in terms of asking him about what Tom
18 told him at given points and times. I'm trying to find
19 what he knew and what he had been told at certain points in
20 time in the investigation because as you well know, part of
21 my argument in this case, from the beginning, is that when
22 it was discovered that these first assaults couldn't have
23 happened in that southeast corner office because it was

1 occupied by another priest, we then have the switching to
2 the southwest corner office, which came up, as I understand
3 it, during Mr. Reynolds' interviewing of Tom Grover. In
4 other words, that's when Tom first disclosed that to him.
5 I'm asking him what information he had available to him in
6 the course of his investigation.

7 MR. REYNOLDS: Your Honor, we're mixing apples and oranges. This
8 is not a factual issue; this is a question of
9 admissibility. What we've got is hearsay here. If it's
10 not an admission of a party opponent, it's hearsay. Now if
11 he chose not to object this morning, that's a decision that
12 he made but the fact that he didn't object now is no basis
13 to rule in his favor because we chose to object. He can
14 object or not, as the case may suit him, but I think the
15 focus here, we've got an admission by a party opponent but
16 that gets around the hearsay rule, okay? But non
17 admissions, or non admissions don't. If he wants to get in
18 that information with regard to what Father MacRae says and
19 it doesn't come in as an admission of a party opponent to
20 be used against him, which is what the rule of evidence is
21 about, then he's got to put the good Father on the stand to
22 testify. That's just the way the game is played.

23 MR. DAVIS: Your Honor, if I could just note that I don't

1 think that's the way, as Attorney Reynolds indicates, the
2 game is played. It's my understanding there's a long
3 accepted common rule of evidence and a rule of
4 admissibility that if one party offers evidence and the
5 other party does not object, but the same quality of
6 evidence and the same topic can come in-- correct me if I'm
7 wrong--. Gentlemen, please allow me to finish. They're
8 the ones that opened the door about what was it Detective
9 McLaughlin allegedly knew through hearsay statements from
10 the defendant. Attorney Koch did not specifically ask. He
11 said we've heard because the testimony we heard earlier
12 today, your Honor, made us aware that Mr. Dupuis said it
13 was July 15. This gentleman just said it was August 15.
14 We're just trying to follow up on whatever the date is.

15 But the fundamental issue that Attorney Koch is trying
16 to get into is the issue that at some time the State
17 learned there was an issue as to whether it was possible
18 for the incident to have occurred in the southeast office
19 and I believe on the cross-examination of Mr. Grover,
20 Attorney Koch had already started to lay the foundation
21 about, "Well, you may have told Detective McLaughlin one
22 thing and now we're hearing something different. That is,
23 you only told Detective McLaughlin about incidents

1 occurring in the southeast office. You're telling the
2 ladies and gentlemen of the jury that incidents occurred in
3 both the southwest and the southeast office," and I think
4 it's more than fair to allow him to be able to tie the
5 package up into a ball on that issue through Detective
6 McLaughlin.

7 THE COURT: Okay. You're not offering this for the truth;
8 you're offering it to show the State of mind of Tom Grover,
9 is that correct?

10 MR. DAVIS: Right. I mean, that is exactly--

11 THE COURT: Okay. So there's no objection to me just giving
12 an instruction that this evidence is not offered as truth
13 of whether or not Gordon MacRae occupied that office but
14 only to show the state of mind of Detective McLaughlin, or
15 whoever else he talked to, right?

16 MR. KOCH: Mmm-Hmm.

17 THE COURT: I'll give that instruction.

18 MR. GAINOR: Limited to the inquiry as to what the defendant
19 said in his work product about the offices.

20 THE COURT: That's right.

21 MR. GAINOR: Okay. Is the question going to be able to--

22 MR. KOCH: If I remember what it was. I can't.

23 MR. DAVIS: You never got the question out.

1 THE COURT: I'll allow the question as to the dates. You're
2 going to give a date, right.

3 MR. KOCH: Yes, sir.

4 THE COURT: Then what I'll do is instruct the jury that,
5 "You're not to consider the date necessarily as true."

6 MR. KOCH: I'm somewhat concerned with that, your Honor.
7 Father Dupuis testified this morning. This jury heard that
8 as to the date that he left, and if you're telling them not
9 to consider that date as true, it may be a comment on--

10 MR. REYNOLDS: The information is that Dupuis left on the 15th
11 and also Father Christian's testimony is that the date
12 Dupuis' assignment ended is the 15th of July.

13 THE COURT: So what problem were we having on that date?

14 MR. KOCH: I'm not sure.

15 MR. GAINOR: The only problem I had is the way I understood it
16 was coming, he was going to elicit information from
17 Detective McLaughlin as to what Gordon MacRae said.

18 THE COURT: Oh, continuing information.

19 MR. GAINOR: Continuing information and--

20 MR. KOCH: I wasn't going into what Gordon said.

21 MR. GAINOR: Okay. That's the reason I was up here.

22 MR. KOCH: I wasn't heading there at all.

23 THE COURT: Okay. We know where we are, I guess

1 (Conclusion of Conference at the Bench).

2 Q (by Mr. Koch) Detective, what I was asking you is did you,
3 during the course of your investigation, learn of a date
4 when Dan Dupuis left the Keene rectory?

5 A Yes.

6 Q All right. Did your office or anyone from your office
7 interview Dan Dupuis?

8 A I can't specifically--. If they did, I didn't review the
9 report.

10 Q Did you ever go back to question Tom Grover about whether
11 incidents had allegedly taken place in the southwest office
12 of the Keene rectory?

13 A During the investigative phase or any time at all?

14 Q Any time at all.

15 A I really don't recall.

16 Q Sir, at any point in time as a police officer, you would be
17 able to supplement and update your offense incident
18 reports, could you not?

19 A Yes.

20 Q In other words, your search for information is an ongoing
21 one?

22 A Yes.

23 Q Now, had you prepared any report relating to conversations

1 that you may have had with Tom Grover after the one that
2 was done in March and April of 1993?

3 A I can check.

4 Q Please, if that will help you refresh your recollection.

5 (Pause)

6 Q (continuing) Detective, let me help you for a minute. I
7 know you've got pages and pages to go through. December
8 7th of 1993, sir? At 0815 hundred hours. In the morning,
9 I'm assuming. Can you find that report, sir, in your --

10 A Okay. It's 0815 in the morning. It's 7 December of '93.
11 Yes, sir. A phone conversation, yes.

12 Q Okay. Let me ask you about that. I understand from your
13 report that on that day you called Tom Grover and you asked
14 him to write down some information?

15 A Yes.

16 Q In fact, more specifics about the four incidents of
17 counseling which resulted in the fellatio?

18 A Yes.

19 Q Okay. And in fact, you did that, sir, if I read your
20 report correctly, apparently to be able to give me that
21 information?

22 A Yes.

23 Q Okay. Did you get a written response from Tom Grover with

1 respect to that request?

2 A I'm sorry. Go ahead.

3 Q I'm sorry. Did you get a written response from Tom Grover
4 with respect to that request?

5 A No. He said he was unable to do that.

6 Q He was unable to write down specifics for you?

7 A Yeah. He couldn't come up with any further specifics.

8 Q And sir, would that have been about the incidents which are
9 the indictments in this case, the ones in the Keene rectory
10 there and supposedly in 1983?

11 A Yes.

12 Q Did he write anything for you based upon your request?

13 A No, he was unable to.

14 Q And sir, when Tom Grover gave his version of events to you
15 in the Keene rectory that are supposed to have occurred in
16 the summer of 1983, he wouldn't give you specifics when you
17 first talked to him, would he?

18 A I guess--

19 MR. GAINOR: Your Honor, I object to the form of the question.

20 I believe that Detective McLaughlin said that Tom Grover
21 was unable at that time.

22 THE COURT: Maybe you could phrase the question another way,
23 counsel.

1 Q Well, sir, you talked to him in March of '93.

2 A Yes.

3 Q And then again did some follow-up in April of '93.

4 A Yes.

5 Q And then you followed up again in December of '93 where you
6 asked him to please write you down some specific
7 information about those allegations.

8 A Yes.

9 Q And he responded that he couldn't do that.

10 A Yes.

11 Q Okay. Now, when I'm talking about specifics, wasn't what
12 Tom Grover basically said was that he had gone for some
13 type of counseling, that he became emotional during the
14 counseling session, that Gordon MacRae then unzipped his
15 pants and performed fellatio on him?

16 A Yes.

17 Q Isn't that basically as much detail as you got from Tom
18 Grover in your interviews with him, sir?

19 A And obviously the information about it happening
20 subsequently to the first incident.

21 Q Yes, sir.

22 A Right.

23 Q Which had I think four instances of fellatio that were

1 alleged to have occurred in the offices?

2 | A Four to five.

3 Q And then the instance that was supposed to have occurred on
4 the third floor of the rectory?

5 | A Yes.

6 Q Okay. And that is the four or five, sir?

7 | A Yes.

8 Q Okay. Now, did Tom Grover ever tell you, sir, that Gordon
9 MacRae began to berate and belittle and humiliate him
10 during these counseling sessions?

11 A I recall he told me that during one of the counseling
12 sessions, that as a result of the conversation he became
13 upset, started to cry. I'm not sure if he used the
14 specific terms that you just gave me in the question.

15 Q All right. Sir, would you look at your report and see if
16 there's any reference in your report to Tom Grover having
17 been berated or belittled or--

18 A You want those specific words?

19 Q Or anything that even remotely approaches that. And we'll
20 start with June of '83, that same --.

21 (Pause)

22 A His--. Is it okay to read from the report?

23	0	Yes.
----	---	------

1 A Yes. It says, "Tom reports at one point he became very
2 emotional and broke down crying," and then it goes on to
3 describe the act.

4 Q Yes. Then it says MacRae, Father MacRae, responded by
5 approaching him. Tom was seated at the time?

6 A Yes.

7 Q "MacRae unbuttoned his pants, took his penis out. MacRae
8 then performed fellatio on Tom for about 15 minutes"?

9 A Yes.

10 Q "Tom stated that he achieved an erection during this act
11 but did not ejaculate"?

12 A Correct.

13 Q That's what he told you had happened?

14 A Yes, but again, those are my notes. I don't want to
15 mislead people to think that I'm quoting him.

16 Q All right. Had you been told that what precipitated these
17 incidents of fellatio was that Gordon MacRae had so
18 belittled and so put down and so criticized this man that
19 he lost all control from that verbal attack and that that
20 then precipitated fellatio? Is that the kind of thing you
21 would note, sir?

22 A You're asking me did he specifically state that during one
23 of my two interviews?

1 Q Yes, sir.

2 A No, he didn't use that specific language, no.

3 Q Sir, did he describe to you that this process for each of
4 these four instances in the offices, the ones I just went
5 through, did he use those words with respect to any one of
6 those four instances?

7 A That he was belittled and berated?

8 Q Yes, sir.

9 A No.

10 Q How about, did he ever tell you, sir, that he had to go to
11 counseling with Gordon MacRae because his mother mandated
12 or ordered him to?

13 A Yes.

14 Q Can you show me where that is, sir?

15 (Pause)

16 A "Tom states he was coerced into counseling sessions by his
17 mother who wanted him to go. He went to appease her and to
18 help with their relationship."

19 Q And that, sir, would be in the April 1st follow-up where
20 you were trying to gain more clarification?

21 A Yes.

22 Q Now, did he tell you, sir, that during this process of
23 fellatio that had occurred, that he blacked out?

1 A The term "blacked out" wasn't used.

2 Q Did he use the term, sir, "out-of-body experience," that,
3 "I left my body and I was floating above or I was floating
4 and observing what was occurring"?

5 A No, he did not.

6 Q Did he tell you, sir, that he could hear people outside in
7 the offices?

8 (Pause)

9 A I don't recall that.

10 Q In the first report you prepared, sir, June of '83, maybe
11 this will help refresh your recollection, "After
12 approximately 15 minutes, Father MacRae stopped
13 performing. Tom speculates that although the door was
14 closed, that others could be heard on the first floor.
15 That may have been the reason Father MacRae stopped."

16 A Yes.

17 Q Have I got you on the right page?

18 A Yes. Yes, that's it.

19 Q Okay. Does that refresh your recollection, sir?

20 A Yeah. I had asked him what made the fellatio stop and that
21 was his response.

22 Q Now, sir, with respect to what Tom told you had happened
23 there that made him emotional, you asked him some specific

1 questions about that, didn't you?

2 A I don't believe so, no.

3 Q Okay. In your supplement--

4 A For some reason I want to believe it was because of family
5 relationship problems.

6 Q You asked him specifically, sir, and I'm referring to your
7 supplement. In fact, it would be just after the sentence
8 where you described that the office was the southeast
9 corner of the building.

10 A Okay.

11 Q "I asked Tom if he could recall the subject discussed that
12 resulted in him becoming emotional during the counseling
13 session"?

14 A Mmm-Hmm.

15 Q "He says it was about his drinking and his relationship
16 with his mother."

17 A Correct.

18 Q Were those, sir, your words or his words?

19 A Well, obviously those are my words in the report. I'm not
20 sure specifically at this time what his exact words were.

21 Q But did he tell you that the discussion that had occurred
22 was about his drinking and about his relationship with his
23 mother?

1 A Yes, he did say state that.

2 Q Did he mention, sir, to you anything about the fact that
3 his father had left the home and separated and that was a
4 subject of discussion?

5 A I can remember him discussing that part of the family
6 relationship. The reason for the counseling was the father
7 no longer being in the home and subsequently his
8 relationship with his mother. I can't recall specifically
9 if he later then repeated the issue about his father when I
10 asked him the specific question.

11 Q All right. Is that anywhere in your notes that you
12 remember, sir?

13 A About the father?

14 Q Yes, sir.

15 A The answer might violate the rules, the testimony.

16 MR. GAINOR: You want a sidebar at this point?

17 Q Can you show me what in your report you're referring to so
18 I can--

19 A No. I'm sure I can dig it out but I didn't want to--

20 THE COURT: Do you want to continue or do you want a sidebar?

21 MR. KOCH: Please. Sidebar.

22 THE COURT: I mean, I don't care.

23 MR. KOCH: Well, I'm not --. Do I want a sidebar?

1 MR. GAINOR: It depends.

2 MR. KOCH: Why not?

3 CONFERENCE AT THE BENCH

4 THE WITNESS: Throughout the interviews with the other victims,
5 we discussed the family dynamics and relationships between
6 all the people involved so I can't specifically remember if
7 it's something that Tom confirmed or that he brought up but
8 I know there's no record, there's nothing in the notes
9 about it.

10 MR. KOCH: But is there a way for you to verify if Tom told
11 you that? That was my question.

12 THE WITNESS: Through my notes?

13 MR. KOCH: Yeah.

14 THE COURT: No.

15 MR. KOCH: Well, then--

16 THE COURT: You can just give the answer, then.

17 THE WITNESS: Okay.

18 MR. REYNOLDS: Well, have you a specific recollection outside
19 your notes, though.

20 THE WITNESS: Yeah. We had him in to prepare for testimony and
21 he talked about the fact that the father had left the home
22 and it was part of the reason he was talking to MacRae, but
23 it's not during that first two interviews.

1 MR. KOCH: That's later when you're talking with--. Well,
2 maybe I'll leave it alone.

3 THE COURT: I think that's probably a good idea.

4 (Conclusion of Conference at the Bench)

5 MR. KOCH: I kind of like these side bars. I like to say
6 that word, "sidebar", and everybody jumps.

7 MR. REYNOLDS: We seem to be breaking new ground here all the
8 time.

9 JUROR: We're waiting for the clam bar.

10 Q (by Mr. Koch) Sir, by the way, going back to the
11 Marlborough rectory, the incident which was alleged to have
12 taken place in '79.

13 A Yes.

14 Q Did Tom Grover tell you that Father MacRae had pinned him
15 against the wall and then unzipped his pants and fondled
16 his penis, sir?

17 A Yes.

18 Q Sir, did Tom Grover ever tell you that the third
19 incident--. See my chart up there to your left or your
20 right, it would be? I used some numbers and I put 1, 2, 3,
21 4, as my way of having Tom identify the four instances of
22 fellatio that he alleges occurred in the Keene rectory
23 during the summer months of 1983. Are you with me, what

1 I'm trying to do?

2 A It's not much of a graphic.

3 Q Okay.

4 A You have a date.

5 Q I'm sorry. Those are really --. What I did, Detective
6 McLaughlin, is I essentially just said, because Tom
7 described four instances that occurred in the rectory
8 during the summer of 1983 where he was in an office and
9 Gordon MacRae performed fellatio on him.

10 A Yes.

11 Q And for me to try to get a sequence and make some
12 differentiation between those four, he was asked about each
13 of the four instances.

14 A I see.

15 Q On what I call number three, I think for his discussion, he
16 indicated that he had been playing chess with Gordon MacRae
17 and after he had captured several of Gordon's chess pieces,
18 this instance of fellatio occurred. Okay? What I want to
19 ask, sir, is there anything in your notes that would
20 reflect that Tom Grover identified to you, even after you'd
21 asked him for specifics, that he had been playing chess
22 with Father MacRae?

23 A I don't recall that, no.

1 Q Did you ever go over to the rectory to check locks out and
2 their operability?

3 A Did I?

4 Q Yes, sir.

5 A No.

6 Q Did Mr. Grover indicate to you, sir, on any of these
7 occasions that Gordon MacRae would lock the door?

8 (Pause)

9 A I recall that he specifically said the door was closed.
10 Yes, during the second interview, he said that MacRae would
11 usually lock the door of the office when he was counseling
12 him.

13 Q MacRae would usually lock the door of the office when he
14 was counseling Tom.

15 A Yes.

16 Q That's your note in your report.

17 A Yes.

18 Q Okay. Thank you, sir.

19 MR. KOCH: One moment, your Honor, for counsel.

20 THE COURT: That's fine.

21 (Pause)

22 Q Detective McLaughlin, I'm going way back to the very
23 beginning. When did you receive a degree in--. I think

1 you said you have a bachelors of arts in--

2 A Psychology?

3 Q Yes, sir.

4 A May of this year.

5 Q Okay. And then you had an associates of arts in--

6 A Law enforcement.

7 Q Okay. Thank you, sir. When was that received?

8 A I think it's the late '70s.

9 Q Long ago. Okay. Thank you, sir.

10 MR. KOCH: Pass the witness.

11 THE COURT: Attorney Gainor.

12 REDIRECT EXAMINATION

13 BY MR. GAINOR:

14 Q I'm going to cover some ground, Detective McLaughlin,
15 starting back to the beginning of the cross-examination.
16 Do you remember a question from Attorney Koch about you
17 understanding basically Tom Grover's allegations after the
18 second interview? Do you remember that question?

19 A No.

20 Q Well, after the second interview in April 1993 with Tom
21 Grover --

22 A Yes.

23 Q -- at that time, did you understand his allegations as to

1 what they were at that time?

2 A I understood them to be four to five incidents on the first
3 floor and one incident on the third.

4 Q And I understand on direct you described the disclosure
5 process as being just that, a process rather than an event?

6 A Yes.

7 Q Your last interview with Tom was actually December 1993?

8 A That was a phone call.

9 Q Okay, but your last in-person interview was back in April
10 of 1993?

11 A Yes.

12 Q And since then, Thomas has met with Attorney Reynolds on
13 this case, correct?

14 A A number of times.

15 Q And he's also been in therapy, to your knowledge?

16 A Yes.

17 Q Now, did Tom ever tell you exactly what office the abuse
18 occurred in St. Bernard's rectory?

19 A He told me the first floor office located on the Main
20 Street side closest to the church, and in parentheses I put
21 down southeast corner of the building. That's my
22 interpretation, of course, the parentheses.

23 Q Now, is exactly where the offense occurred an element of

1 the offense?

2 MR. KOCH: I'm going to object, your Honor. That calls for a
3 legal opinion.

4 THE COURT: Objection is sustained.

5 Q In the part of your report where you mark it June 1983, did
6 Tom Grover state that the defendant had an office at that
7 time?

8 A He said, he stated I believed that each priest had an
9 office on the first floor.

10 Q But he didn't state that--

11 A Oh, he didn't state specifically, I mean --. No, not using
12 the name, no.

13 Q But he said that each priest had an office on the first
14 floor, correct?

15 A Yes.

16 Q Now, were you ever able to corroborate which office the
17 defendant had on the first floor?

18 A Another officer dealt with those issues through some
19 additional work. I didn't personally do that.

20 Q I want to refer to your report again, June 1983?

21 A Yes.

22 Q You received a question about Tom Grover's response when he
23 was being assaulted. And could you read to the jury or

1 from your memory, whichever, what Tom relayed exactly his
2 emotional response was, to you, to the molestation?

3 A You're talking about physiological?

4 Q Yes, what he told you his emotional, physiological response
5 was?

6 A He talked about the fact during the fellatio he did become
7 erect, did not ejaculate during the first incident, that he
8 froze during the assault, lasted approximately 15 minutes.

9 Q Did he state anything emotionally about loss of control or
10 anything along those lines?

11 A I have to check.

12 (Pause)

13 A (continuing) He said he was confused over his personal
14 problems plus Father MacRae performing fellatio on him, you
15 know, confusing the fact that these were occurring.

16 Q Did he state anything about rigidity or anything along
17 those lines?

18 A He says he felt a loss of control, became rigid when
19 confronted by his priest performing a sex act on his
20 person.

21 Q And again, that's not Tom's direct words but your summary
22 of what he said.

23 A Yes.

1 Q Now, the December 7th, 1993 interview, that was over the
2 phone?

3 A Yes.

4 Q And you asked Tom to give you specifics of the abuse at
5 that time?

6 A I specifically wanted him to write down some facts in that
7 it's been my experience that having someone turn something
8 concrete by writing down information, a lot of times
9 additional information will come forward.

10 Q And I believe you testified that his response was he was
11 unable to do that at that time?

12 A Yes, yes.

13 Q And again, you define, through your extensive experience,
14 disclosure as a process rather than an event?

15 A Yes.

16 Q Now, when you met with Tom about these allegations, did Tom
17 state that they occurred in any one office in particular?
18 In other words, was he able to go to you and say it
19 happened in this office or it happened in that office?

20 A No. He gave me the floor.

21 Q He said it happened on the first floor?

22 A Yes.

23 Q And was Tom able to tell you which priest had what office?

1 A No.

2 Q Did Tom eventually describe Mr. MacRae's office, which
3 office it was, at any time in a subsequent interview?

4 A He did with--. Not during the two interviews I've
5 documented here but at a later contact he described the
6 office.

7 Q And who was that with, do you know?

8 A Mr. Reynolds.

9 MR. GAINOR: Nothing further, your Honor.

10 THE COURT: Attorney Koch.

11 MR. KOCH: Your Honor, I have no additional questions.

12 THE COURT: Thank you for your testimony, Detective.

13 Do we need a break before this next witness?

14 MR. REYNOLDS: I believe we decided that would be appropriate,
15 your Honor.

16 THE COURT: Okay. Ladies and gentlemen, it will probably be
17 about 20 minutes. Go ahead and take charge of the jury.

18 (Jury excused)

19

20

21

22

23

1 HEARING OUT OF THE PRESENCE OF THE JURY

2 THE COURT: Please be seated. Attorney Reynolds, do you have
3 your witness?

4 MR. REYNOLDS: Yes, I hope so.

5 LEONARD ELLIOTT FLEISCHER

6 who was called as a witness, and having been first duly sworn,
7 was examined and testified as follows:

8 VOIR DIRE EXAMINATION

9 BY MR. REYNOLDS:

10 Q Please be seated.

11 A Good afternoon.

12 Q I have a whole separate file for you. Would you state your
13 name for the record, spelling your last name, please?

14 A My name is Leonard Elliott Fleischer, F-l-e-i-s-c-h-e-r.

15 Q And what do you do for a living, sir?

16 A I'm a certified psychologist.

17 Q Can you relate to the court, please, your educational
18 training and background, beginning with your undergraduate
19 work?

20 A Sure. I have a bachelors degree in early childhood
21 education from Metropolitan State College in Denver, I have
22 a masters degree in applied early developmental psychology
23 from the University of Colorado, and I have a doctorate in

1 counselling psychology from Harvard University.

2 Q So the appropriate form of address would be Dr. Fleischer?

3 A That's correct.

4 Q Now, where did you do your predoctoral training?

5 A At Children's Hospital in Boston.

6 Q And what was the nature of your training there?

7 A The nature of the training was basically a 60 hour a week,
8 one year training in various aspects of child therapy and
9 treatment. Among the rotations that I did there included
10 neuropsychological assessment, family therapy, and I served
11 on the sexual abuse treatment team.

12 Q Did you deal with cases in child sexual abuse then?

13 A Frequently.

14 Q What sort of license and certifications have you had or do
15 you hold?

16 A I am certified by the State of New Hampshire as a certified
17 psychologist. In this State it's certification, not
18 licensure. I am a member of the National --. I'm sorry.
19 I'm blocked on the title right now.

20 Q National Register of Health Service?

21 A Thank you. National Register of Health Service Providers
22 in Psychology.

23 Q And what is that organization, please?

1 A That is an organization that essentially admits health
2 service providers, not only psychologists, to provide
3 services that are deemed in the realm of health to the
4 public; physicians, psychologists, psychiatrists are
5 involved in this organization.

6 Q I see. Now, my understanding is that in '88, '89, you were
7 a clinical fellow in psychology in the Department of
8 Psychiatry in the Harvard Medical School in Boston?

9 A Right. That was a concurrent appointment when I was an
10 intern at Children's Hospital. That is part of the
11 internship process where I was considered a fellow in the
12 Harvard system.

13 Q And my understanding is that you also do some teaching?

14 A Yes. I am an associate professor at Antioch New England
15 Graduate School here in Keene.

16 Q And I believe have been since 1990?

17 A That's right.

18 Q Now, I've left out some other areas. You were practicum
19 supervisor in the masters program, I guess, at Antioch here
20 in the early 80's. You were adjunct faculty in the doctoral
21 program, clinical psychology, here in Antioch as well?

22 A That's right.

23 Q Mid '80's. Can you outline for us what your work

1 experience has been in the area of psychology and
2 counseling?

3 A Well, since my masters degree in 1989, 15 years ago, I
4 worked in a number of positions, including as a consultant
5 to the local Head Start program. There used to be a
6 program called Project Follow Through, which is post Head
7 Start for children, kindergarten through the third grade.
8 I have served as a school psychologist in the Peterborough
9 and Jaffrey schools in New Hampshire. I have been in
10 private practice as a psychologist with Monadnock
11 Psychological Associates since 1986. In 1984 and 1985, I
12 was a consultant to a program for emotionally disturbed
13 children in Dublin. And I've also served in a number of
14 other consultation capacities with Monadnock Psychological
15 Associates. I'm sorry, with Monadnock Family Services.

16 Q In your experience as a practitioner in psychology from
17 1986 on, have you counseled victims of child sexual abuse?

18 A Yes, quite frequently. The majority of my practice is with
19 children and families, approximately two-thirds, and so I
20 see numbers of children and, I over the years I've seen a
21 number of victims of child sexual abuse. I've also been
22 involved in investigations of the same.

23 Q Now, has your practice included counseling with regard to

1 adult victims of child sexual abuse?

2 A Yes, it does.

3 Q Has that been since 1986 as well?

4 A That's right.

5 Q Now, is there a body of knowledge or accepted knowledge in
6 your profession known in the trade as Child Sexual Abuse
7 Accommodation Syndrome?

8 A Yes, there is.

9 Q Can you give the Court just a very brief outline of what
10 that is?

11 A Child Sexual Abuse Accommodation Syndrome is a pattern that
12 has been noted to have been consistently found in numbers
13 of victims, of individual children who have experienced
14 sexual abuse. There is a number of symptoms that have been
15 seen that have been fairly consistent. It was first
16 introduced as a syndrome by a professor in Los Angeles by
17 the name of Roland Summit. Over the past 13 I believe
18 years that it has been, 13 or 14 years that it has been
19 since it was introduced, it has been widely accepted within
20 the field as being something that is descriptive of the
21 experience of victims of sexual abuse.

22 Q Now, and in your own experience from 1986 on involving the
23 counseling of victims of child sexual abuse, have you had

1 an opportunity to observe people who have manifested this
2 syndrome and its symptomatology?

3 A Yes, I have.

4 Q And have you used your knowledge concerning what's
5 generally accepted as Child Sexual Abuse Accommodation
6 Syndrome, have you used your knowledge there in the
7 successful treatment of individuals who have manifested the
8 kind of symptomatology known to follow the pattern of Child
9 Sexual Abuse Accommodation Syndrome?

10 A Well, I think the best way I can answer your question is to
11 talk a little bit about what the pattern as described by
12 Summit and as seen by members of my profession might be.

13 Q Please do.

14 A There are a number of things and very briefly, there's a
15 pattern of secrecy, helplessness on the part of the victim,
16 a sense of dependency and accommodation to the perpetrator,
17 a sense that there is really no other thing for the victim
18 to do but to maintain the secret, to maintain the
19 dependency and, therefore, to not get into any trouble or
20 not to reveal any information that might bring them
21 difficulty or shame from others, and so I have seen that in
22 victims that I have worked with over the years quite
23 consistently. This is a pattern that, in terms of my own

1 experience, accurately describes what victims go through.

2 Q So your personal experience bears out what is widely
3 accepted in the psychiatric/psychological professions as
4 first indicated by Mr. Summit back about 13, 14 years ago?

5 A Right. My professional experience indicates it quite
6 clearly.

7 Q And are you aware that Dr. Summit's description of this
8 syndrome and its applicability insofar as your kind of
9 individuals continues to this day as used by professionals
10 like yourself?

11 A Well, Dr. Summit's work has been, as I read the research,
12 been corroborated by other leading researchers in the field
13 so it's not only been my experience but the research that I
14 have been reading in the field, which is pretty extensive,
15 has tended to corroborate this pattern as the Child Sexual
16 Abuse Accommodation Syndrome.

17 Q Are you comfortable then in saying that the Child Sexual
18 Abuse Accommodation Syndrome is an established norm in your
19 profession?

20 A In my opinion, it is.

21 Q And would that be the opinion of, say, most of the people
22 that you've come in contact with in your profession when
23 this subject of Child Sexual Abuse Accommodation Syndrome

1 has come up?

2 A Well, within my profession I think it's fairly well
3 accepted, rather I could say common knowledge that this is
4 a pattern that victims tend to go through. I mean, there
5 are actual variations but in terms of the helplessness, the
6 dependency, the secrecy, all those kinds of things are
7 features that one witnesses almost always with victims.

8 Q Now is this an area of specialized knowledge otherwise not
9 known to the community at large?

10 A Well, I think there's probably a gap between the knowledge
11 that professionals who work with individuals who are seen
12 to be victims and the general public's knowledge of that.
13 My impression is that there is a gap. Those of us in our
14 profession who work with victims make efforts to do
15 education around that.

16 Q So it's become necessary to educate the public in these
17 areas because it's not something of, say, common knowledge?

18 A Well, I think so in that I believe that the--. It's hard
19 for the public to understand why these kinds of secrets are
20 kept as such, why victims do not go to seek help. I think
21 there are sound psychological reasons why victims do not do
22 that but I think it's not entirely clear to the public so
23 we need to do a better job in terms of education.

1 Q And you have the knowledge of these, based on your training
2 and experience and education in the psychological field?

3 A Based on my background, my training, and my actual
4 practical experience with people, yes.

5 MR. REYNOLDS: Your Honor, I'm prepared for ask Dr. Fleischer
6 about the symptomatology and that sort of thing but
7 basically--

8 (Pause for sirens to stop).

9 MR. DAVIS: Patience is a virtue.

10 MR. REYNOLDS: Are you getting all that down? Basically what
11 I've done here, as I understand the purposes of this voir
12 dire, is simply to lay out the gentleman's qualifications,
13 label this particular body of knowledge as a specialized
14 knowledge, and I think for the purposes of this voir dire,
15 I think that's all we need to do. I'm prepared to go
16 further, if necessary, but I don't know if that would be
17 helpful to the Court at this stage.

18 THE COURT: That's fine. Let's see where the defense goes.

19 VOIR DIRE EXAMINATION

20 BY MR. KOCH:

21 Q Doctor, there's actually five components to the syndrome,
22 are there not?

23 A That's correct.

1 Q And you addressed three of them?

2 A Well, I mentioned three of them.

3 Q Well, would you tell the Court the five?

4 A Sure.

5 Q Tell the other two that you didn't relate?

6 A Sure. Secrecy, helplessness, entrapment and accommodation,
7 delayed or distorted reporting, and, finally, frequent
8 retraction.

9 Q Now, how many adult victims have you counseled, sir?

10 A I don't have a number. I would say a fair ballpark figure
11 over the years would be in excess of 50.

12 Q And how many of those were males, sir?

13 A I would say at least 20.

14 Q Sir, have you ever spoken with Tom Grover?

15 A No, I have not.

16 Q Performed any kind of diagnostic test on Tom Grover?

17 A No, I have had nothing to do with Tom Grover.

18 Q Would it be fair to say no contact absolutely of any sort,
19 form, or fashion with Tom Grover?

20 A Not to my awareness, no.

21 Q What you would purport to be testifying concerning would be
22 maybe some generalized pattern that someone has seen
23 statistically throughout a broad sampling of individuals

1 who may have claimed that they were victims of sexual
2 abuse?

3 A I think that's correct, yes.

4 Q Now, sir, is it true that Roland Summit is sort of
5 considered the Godfather of this syndrome?

6 A I wouldn't characterize it as Godfather but he introduced
7 the concept.

8 Q He's the one that brought it to the attention of the mental
9 health professionals?

10 A Well, I think he gave it a name. I don't think he invented
11 it.

12 Q Now, sir, you're saying that it's recognized in the mental
13 health profession as being fairly widely accepted, but the
14 courts have not been so kind with this kind of testimony,
15 have they?

16 A That's my understanding in certain situations.

17 Q In fact, in most situations the courts have excluded this
18 type of testimony, haven't they?

19 A I'm not aware--

20 MR. REYNOLDS: Objection. I object to the characterization.

21 When he says "most," I guess I don't know where that's
22 going and what that basis is. I don't know that Dr.
23 Fleischer is privy to all the courts in the country.

1 MR. KOCH: Well, maybe I'll withdraw that question.

2 Q (by MR. Koch) Sir, are you familiar with an article called
3 "Abuse of the Child Sexual Abuse Accommodation Syndrome"
4 by Roland C Summit?

5 A Yes, I am.

6 Q Published in the Journal of Child Sexual Abuse, Volume
7 Number 1(4) of 1992?

8 A I've read it.

9 Q Isn't part of his critique about the Child Sexual Abuse
10 Accommodation Syndrome that the courts have been rejecting
11 it in terms of evidence and where it has been allowed, for
12 instance, in Kentucky, it has resulted in five reversals of
13 cases?

14 A I have read the article. He has cited certain situations
15 where the courts have made those kinds of rulings. I don't
16 know anything about a general trend.

17 Q All right. In fact, in the article, sir, he was rather
18 displeased with the approach of the judiciary and the
19 courts having dealt with this syndrome that he placed a
20 name to.

21 A Yes, that's correct.

22 Q Do you know why, sir, the courts have been rejecting that
23 kind of testimony?

1 A Well, I'm not a legal expert but my best understanding is
2 that there are problems with misunderstanding regarding
3 this so-called syndrome. "Syndrome" is typically
4 associated with medical kinds of phenomena. This is not a
5 medical phenomena; this is a psychological phenomena and
6 Summit himself indicated he wished he had given it a
7 different name, like "pattern," which is more accurate than
8 "syndrome." And there is no recognized assessment device,
9 in other words, a standardized test or a medical test, that
10 would verify this syndrome, and I think that may be part of
11 the problem here.

12 Q What you're saying is there's no way to quantify or qualify
13 or codify this syndrome?

14 A No, that's not what I'm saying.

15 Q All right. What type of diagnostic techniques are used to
16 diagnose this syndrome?

17 A Well, there are standard interview techniques. There are
18 patterns of observation of symptomatology that the victim
19 may be going through. There are, of course, direct or
20 indirect information provided by the client, the victim,
21 that may fit a pattern of recollection of abuse,
22 particularly if the disclosure had been delayed.

23 Q In this particular case as it relates to one Tom Grover,

1 you know nothing about Tom Grover and how he may or may not
2 fit into what you're calling this syndrome?

3 A That's not what I've been asked to do.

4 Q Okay. You've just been asked to come in and talk as sort
5 of what the accepted theory is now in your field?

6 A That's right.

7 Q About what pattern may fit some victims of sexual abuse?

8 A That's correct.

9 Q Why is there this problem, sir, with an inability to
10 diagnose this syndrome? I mean, why is it your
11 understanding that that creates a problem?

12 A Because if I understand your question correctly, we're not
13 dealing with something that shows a visible wound, that is
14 diagnosable in terms of a medical syndrome. What we are
15 looking at is an individual whose major psychological
16 effort is to keep the internal wound hidden and secret and,
17 therefore, the great majority of victims, in my experience
18 and most of my colleagues' experience, the victims are
19 attempting not to disclose, not to talk about what their
20 experience has been. Therefore, it's very hard to
21 diagnose.

22 Q In fact, sir, in the same article they talked about how the
23 expert tried to get around what seemed to be the pattern

1 the Kentucky court was utilizing and they had the expert
2 get on the stand and not refer to this syndrome. Do you
3 remember that?

4 A Not to use the actual name?

5 Q Yes.

6 A I believe so, yes.

7 Q But still talk about all the same things; well, there's a
8 feeling that there's secrecy, there's a feeling of
9 helplessness, there's a feeling of accommodation, there may
10 be retraction?

11 A Right.

12 Q There may be delayed disclosure?

13 A Right.

14 Q And despite that, sir, and in that the expert in that case
15 I believe was Lane Veltkamp, a full professor of psychiatry
16 and director of the University of Kentucky Child Abuse
17 Center and in 23 years he'd evaluated and treated over a
18 thousand children --

19 A Mmm-Hmm.

20 Q -- he avoided any reference to CSAAS, which is the acronym
21 for the syndrome?

22 A An acronym.

23 Q But he was asked to comment on the silence and he testified

1 that in his experience, delayed disclosure was common among
2 sexually abused children, is that correct?

3 A That's absolutely correct.

4 Q And in that one case, sir, he only referred to one of the
5 five major pattern things that one might find under this
6 syndrome. He just picked the one related to delayed
7 disclosure?

8 A Right.

9 Q The professor, I call him the Godfather, you call him the I
10 guess originator who first put a name to this idea --

11 A Yes.

12 Q -- was upset in his article, from my interpretation, that
13 the entire testimony was nullified and his syndrome was
14 scapegoated in absentia because the expert's credentials
15 were judged inadequate to address what the court insisted
16 was medical evidence, that being a syndrome?

17 A That's right. That's what I was referring to earlier.

18 Q And the professor here was indignant because he said
19 Professor Veltcamp,, medical educator, and this guy was a
20 psychiatrist, by the way, I mean, he has medical training
21 and experience, this Veltcamp?

22 A Mmm-Hmm.

23 Q Somewhat different from your credentials, would you agree?

1 A I'm a psychologist.

2 Q You are not a psychiatrist.

3 A I am not.

4 Q And you're not a trained medical doctor?

5 A I am not.

6 Q It goes on to state that Professor Veltcamp, medical
7 educator and sexual abuse expert par excellence, was not
8 allowed to educate the jury. The Supreme Court reversed
9 the conviction because he wasn't a doctor of medicine, is
10 that correct?

11 A I read that same article, yes.

12 Q All right, sir. And in all fairness, Dr. Summit, the
13 psychologist, felt that that just was not fair for the
14 Supreme Court of Kentucky to employ those kinds of
15 standards when dealing with a syndrome, is that correct?

16 A Yes. I think that has to do with a good deal of public
17 ignorance about this situation that has been described with
18 this acronym.

19 Q So now what they're trying to do is say, "Maybe we
20 shouldn't have named it a syndrome so it doesn't have these
21 connotations of medical foundational requirements. Maybe
22 we should call it," as you said, "a pattern. Maybe somehow
23 that would get around the fundamental problems that the

1 court was seeing"?

2 A Well, I don't know, but it might be less confusing.

3 Q Sir, these techniques that you're employing, and for lack
4 of a better word, are all subjective, are they not?

5 A Depends on your definition of subjective.

6 Q Well, you're relying primarily on an interview process.

7 A Primarily, yes.

8 Q And in other words, a reported history?

9 A There are also psychological assessments that can be done
10 I'm trained in psychological and neuropsychological and so
11 I do standardized tests as well.

12 Q I see. And is there a recognized syndrome in the DSM IV
13 for this CSAAS?

14 A No, there isn't.

15 Q I know, his Honor knows and probably everyone in this
16 courtroom knows, but for our record, sir, would you please
17 relate what the DSM IV's function is?

18 A The DSM is the Diagnostic and Statistics Manual of the
19 American Psychiatric Association, the fourth revision, and
20 it contains various psychological disorders that are
21 codable and, therefore, recognized for treatment in terms
22 of various classes of psychological disorders, anxiety,
23 depression and so on and so forth. I might say that there

1 are a number of disorders within the DSM IV that subsume
2 the experience of a sexual abuse victim. For example, post
3 traumatic stress disorder.

4 Q Yes, sir. Would you find as a general rule, sir, that
5 anyone who's a victim of sexual abuse has probably had a
6 PTSD diagnosis?

7 A Not necessarily. Frequently but not always.

8 Q That is a diagnosis that is frequently applied to victims
9 of some type of trauma?

10 A Yes.

11 Q Including victims of sexual abuse?

12 A Yes, it is.

13 Q Now, do you have an explanation for the Court as to why
14 this syndrome that you want to come in here and testify to
15 enlighten the jury is not contained in the DSM IV?

16 A I don't have an explanation for that, no.

17 Q Now, sir, when you do your evaluations, you rely on those
18 diagnostic manuals to make a diagnosis, do you not?

19 A I do, yes.

20 Q And in fact, I think you'll have several different
21 exercises that you will normally fill out based upon what
22 you're seeing in the DSM IV?

23 A Correct.

1 Q But if you were to put down a diagnosis of this syndrome,
2 CSAAS, that would not be as a result of any recognized
3 diagnosis by the American Psychiatric Association?

4 A That's right.

5 Q They, sir, for lack of a better word, sort of become the
6 bible against which many of these things are measured in
7 terms of diagnosis to be placed on an individual?

8 A Well, if I understand your question correctly, the fact
9 that a particular pattern of symptomatology is not
10 contained with a name such as Child Sexual Abuse
11 Accommodation Syndrome within the DSM IV, the fact that
12 it's not in there does not suggest that there are not
13 individuals who experience symptomatology similar to what's
14 described in this article.

15 Q Well, with respect to just common knowledge, in this
16 particular case we sent a questionnaire to every juror who
17 was a proposed juror to sit and one of those questions was,
18 sir, whether there would be a tendency to somehow
19 disbelieve an individual who maybe didn't timely report.
20 That's my paraphrasing.

21 A Mmm-Hmm.

22 Q Without question, those jurors on their own came up with
23 many different answers for why that could happen. Some

1 said fear, some said wouldn't be believed, some said
2 embarrassed. In other words, they went through many of the
3 what I would call lay terminology for the very kinds of
4 things that you're talking about. All right?

5 A Mmm-Hmm.

6 Q But you've put sort of a specialized meaning to that
7 knowledge with this Child Abuse Accommodation Syndrome.

8 A I don't think so. It's just giving a name to something
9 that's quite recognized within the field.

10 Q As I understand it, your testimony would be you could help
11 the jury maybe understand more of what they are already
12 aware of, if you're assuming that my representations to you
13 about their responses on the questionnaire is accurate?

14 A Yes, and my efforts to be, hopefully to provide some
15 information that the jury can use to make its decision. I
16 think the name of the syndrome is irrelevant.

17 Q Now when you talk about the Child Sexual Abuse
18 Accommodation Syndrome, and not being in the DSM IV, you
19 said, well, there are many categories that subsume or are
20 subsumed, and I think you mentioned one was PTSD?

21 A Right.

22 Q What are some of those others?

23 A Depression, anxiety disorder, adjustment reaction, history

1 on things, personality disorder, are among some of them,
2 all of which would contain some of the symptomatology that
3 we're talking about today.

4 Q Now sir, if we go to the other end of the spectrum, there's
5 the false memory, false accusations. Are you aware of
6 that?

7 A I don't recognize that as a syndrome.

8 Q Okay. So there are diagnostic DSM IV categories that
9 essentially could diagnose these very same areas that
10 you're talking about?

11 A That's correct, yes.

12 Q Now, sir, in fact, in the article written by Dr. Summit, if
13 I'm reading correctly, the first sentence in that article
14 was, "The Child Sexual Abuse Accommodation Syndrome," and
15 then it's in parentheses, the acronym, and then he puts
16 Summit, his name, 198b, "is a clinical observation that has
17 become both elevated as gospel and denounced as dangerous
18 pseudoscience."

19 A I recall reading that.

20 Q Are you aware of that?

21 A Yes.

22 Q Now those who have elevated this as gospel, sir, is it your
23 understanding he's referring to people in his, in your

1 profession?

2 A I don't know who he was referring to. I certainly wouldn't
3 think of it as gospel.

4 Q Okay. Do you have any idea what he is referring to when he
5 says "denounced as dangerous pseudoscience"?

6 A Well, I think it may reflect some of the things he was
7 talking about in the second article regarding the way the
8 legal system has in some cases responded to the usage of
9 this acronym.

10 Q The controversy "has been generated by false claims
11 advanced by prosecutors as well as a primary effort by
12 defense interests to strip the paper of any worth or
13 relevance."

14 A I remember reading that.

15 Q What he was doing is he'd written this article that
16 basically sets this whole thing out and ever since that
17 happened, it been like World War III with respect to the
18 syndrome in the courts.

19 A Well, I don't know. That's your characterization. But
20 again, I think the title of the syndrome is irrelevant.
21 The fact of the matter in terms of what victims go through
22 is really what we're talking about.

23 Q Then he relates the background. "Appeal decisions have

1 groped for a definition of the intent and purpose of CSAAS,
2 assuming sometimes that it is intended for diagnosis or for
3 substantiation of complaints. It has been presumed at
4 times to be both an instrument and an opinion. I would
5 propose that the answers to such questions can be found not
6 in adversarial debate but in an examination of the origins
7 of how I sort of came up with this name." Is that a fair
8 reading of what he's saying, sir?

9 A You've read it correctly.

10 Q Thank you. "It was only when I began reviewing courtroom
11 opinions during the late 70's that it became apparent that
12 prevailing clinical experience was at odds with forensic
13 demands. From the viewpoint of a community psychiatrist
14 specializing in sexual abuse consultation, it had become
15 axiomatic that children were reluctant to disclose sexual
16 victimization and that potentially protective adults were
17 often incredulous and threatened by the implications of a
18 child's complaint. I was surprised to discover that
19 lawyers tended to discredit delayed and inconsistent
20 reports." That sort of the way he begins this?

21 A Yes.

22 MR. KOCH: Your Honor, for lack of time, I would like to show
23 the Court these articles. I could go on for hours reading

1 the pages.

2 THE COURT: I'm sure you could. So could Attorney Reynolds.

3 MR. REYNOLDS: I'm about to.

4 THE COURT: No, you're not.

5 MR. KOCH: Your Honor, that's all I have at this juncture.

6 THE COURT: I'll tell you--

7 MR. REYNOLDS: If I may, your Honor.

8 THE COURT: It's going to be short, Attorney Reynolds.

9 MR. REYNOLDS: I'll be as brief as I possibly can be.

10 THE COURT: It's going to be real brief, like five minutes

11 VOIR DIRE EXAMINATION

12 BY MR. REYNOLDS:

13 Q With regards to Summit's article, which I so graciously
14 provided to Mr. Koch which he's been reading from at
15 length, he's articulated some of the abuses that Roland
16 Summit has recognized, I believe as you've pointed out in
17 the article?

18 A Yes.

19 Q He went on to say that, In terms of children who evidence
20 this pattern, "these are normal children making normal
21 adjustments to an abnormal environment. The focus is not
22 on the effects of sexual abuse itself but on the conflict
23 between the child's experience and the perverse

1 indifference of the outer adult world. If there is
2 pathology, it is in the denial and paradoxical demands of
3 adults, not in the survival options found by the child." Do
4 you recall that?

5 A Yes, I do.

6 Q That leads Dr. Summit to go on to say, with regard to the
7 appropriate use of Child Sexual Abuse Accommodation
8 Syndrome, if you recall there, "is used appropriately in
9 court testimony not to prove a child was molested," which
10 of course, you know we're not asking to you do here.

11 A That's right.

12 Q "But to rebut the myths which prejudice endorsement of
13 delayed or inconsistent disclosure." Fair statement?

14 A Yes, a fair statement.

15 Q Summit quotes, I think, someone else, goes on to say, and
16 he refers to the Kelly-Fry test which is the standard test
17 for use of admissibility in the courts of law, going on to
18 say, "Expert testimony may play a particularly useful role
19 by disabusing the jury of some widely held misconceptions
20 about child sexual abuse and its victims so that it may
21 evaluate the evidence free of the constraints of popular
22 myths." Is that a fair assessment of what you believe your
23 testimony is about?

1 A Exactly. I've not been necessarily asked to talk about the
2 syndrome or its history as set out by Summit but rather,
3 based on my experience and my training, the typical kinds
4 of reactions that victims of sexual abuse do go through; in
5 particular, the phenomenon of delayed disclosure.

6 MR. REYNOLDS: Thanks very much.

7 THE COURT: Well done, Mr. Reynolds. Anything further?

8 MR. KOCH: No.

9 THE COURT: I'll tell you, any time I hear anything like Child
10 Sexual Abuse Accommodation Syndrome, all my lights go out
11 because I don't understand what you're talking about. And
12 then when I hear the five points, I'm always suspicious
13 about any five points to any sort of a syndrome or anything
14 else. And it's probably because of a lack of education and
15 experience on my own part but, you know, the whole idea of
16 expert testimony, basically the question is does this man
17 know more than the rest of us about victims of sexual
18 abuse, victims in this case that may or may not have been
19 abused as children and now are talking about it as adults.

20 He has years of experience. He's talked about that.
21 He has education. And that's more than any of us have.
22 And although the jury did use its common sense in answering
23 the questions about what they thought about somebody

1 disclosing evidence later, they did give different answers,
2 and here is a person that I think can help them in deciding
3 one way or the other whether to believe that the alleged
4 victim in this case is giving accurate testimony about the
5 alleged events.

6 So I think that Dr. Fleischer is qualified to give just
7 the kind of evidence that he said he could give in the last
8 sentence of his testimony, and that is the sort of evidence
9 that he has gained from experience and education about what
10 can happen, whether somebody can end up not remembering
11 things accurately or things can come back to a person,
12 those basic questions that have come up in this case about
13 Mr. Grover's testimony. So I find him to be an expert for
14 those purposes.

15 I don't think using this syndrome, this label, is going
16 to assist us at all and I think just more or less common
17 sense answers using your experience, personal experience
18 and education is what we're looking for and that's what we
19 expect and those will be the limits of your testimony. I
20 don't want you to go into this syndrome at all. I don't
21 want you to go into any of the five points. I just want
22 you to tell us what your experience has been and respond
23 honestly to these questions from both counsel, Attorney

1 Reynolds and Attorney Koch.

2 MR. DAVIS: Your Honor, for the record, could we note our
3 exception and in particular for the record we would be
4 relying upon the standards in Cressey which we discussed
5 earlier this morning and also In re: Gina D., regarding
6 reliability, predictability and the ability to effectively
7 challenge and cross-examine.

8 THE COURT: Okay, I'll note that. I don't see how those cases
9 have anything to do with this situation but it's nice that
10 you remember the case names. I think I'm going to advise
11 the witness now that you cannot testify as to what your
12 opinion is about this particular witness. You can only
13 talk about-.

14 THE WITNESS: All right, sir.

15 THE COURT: -- what your experience has been with other
16 witnesses who may have gone through similar situations and
17 other people who may have gone through similar situations.

18 THE WITNESS: That's fine.

19 MR. REYNOLDS: I guess I'm not quite certain I understand the
20 Court's order. He can talk about his other experience but
21 not his training.

22 THE COURT: He's not talking about this syndrome. He can talk
23 about his experience and use his education to talk about

1 characteristics of victims in situations like this.

2 MR. REYNOLDS: Okay. I wasn't going to try to lay out a label
3 for the jury of a syndrome or something like that.

4 THE COURT: But I don't want anything about the syndrome. It
5 has not been established and I do believe that it has not
6 yet reached such acceptance that this Court can consider it
7 as a syndrome. If you don't understand that, I'm sorry,
8 but you're going to have to ask questions, he's going to
9 have to answer them. I'm sure Attorney Koch will object
10 if--

11 MR. REYNOLDS: No, no. As I say, the focus of the State was
12 never, never to deal with this as a syndrome, as a
13 diagnostic phenomenon, and that is, as I understand Dr.
14 Summit's article, where he differentiates and says that
15 that should never have been how it was used.

16 THE COURT: Okay. Okay. I don't want to discuss it now.

17 MR. REYNOLDS: I'm sorry.

18 THE COURT: I've made the decision.

19 MR. REYNOLDS: I beg your pardon.

20 THE COURT: Maybe the fact that he brought this up made more
21 out of it than should have been made as something that he'd
22 been testifying about but at any rate, I think it's clear
23 to everybody we're not going to rely on the syndrome, we're

1 going to rely on education and experience.

2 THE WITNESS: That's fine. That's the way I would prefer, your
3 Honor.

4 THE COURT: Okay. Let's take ten minutes. Thank you.

5 (Recess taken)

6 * * * * *

7 HEARING BEFORE THE JURY

8 THE COURT: Please be seated. Attorney Reynolds.

9 MR. REYNOLDS: May it please the Court, Leonard Fleischer, please
10 LEONARD ELLIOTT FLEISCHER

11 who was called as a witness, and having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. REYNOLDS:

15 Q Please be seated. Please state your name for the record,
16 spelling your last name?

17 A My name is Leonard Elliott Fleischer F-l-e-i-s-c-h-e-r.

18 Q Where do you reside, sir?

19 A I live in Keene, New Hampshire.

20 Q How are you employed?

21 A I am a certified psychologist in the State of New
22 Hampshire.

23 Q Can you give the jury, please, an explanation of your

1 training, your educational experience, beginning with your
2 undergraduate work?

3 A Sure. I have a bachelors degree in early childhood
4 education from Metropolitan State College in Denver, I have
5 a masters degree in applied early developmental psychology
6 from the University of Colorado, I have a masters degree
7 from Harvard University in counseling psychology, and a
8 doctorate in counseling psychology also from Harvard
9 University.

10 Q And how long have you been in your present employ as a
11 psychologist?

12 A As a doctoral level psychologist since 1989. As a masters
13 level psychologist, and I have to differentiate that, since
14 1979.

15 Q I see. Now, what licenses or certifications do you
16 presently hold?

17 A I'm a certified psychologist in the State of New Hampshire.

18 Q Are you a member of any national organizations in your
19 field?

20 A I am a member of the American Psychological Association and
21 the National Council of Health Service Providers in
22 Psychology.

23 Q Can you tell us, please, some of your background? For

1 example, I believe you were a clinical fellow in psychology
2 with the Department of Psychiatry at the Harvard Medical
3 School in Boston?

4 A That's right. That's while I was working as an intern at
5 Children's Hospital. I did a number of things there,
6 including working on the Neuropsychological Assessment Unit
7 and also the Sexual Abuse Treatment Team. I have also had
8 experience during that year working with numbers of child
9 victims of various kinds of abuse.

10 Q So you have exposure to victims of child sexual abuse with
11 regard to your training?

12 A Both in terms of my training and my experience in
13 psychology as a private practitioner, yes.

14 Q And let me ask you, have you taught in the various areas of
15 your expertise at all?

16 A Yes, I have. I'm an Associate Professor at Antioch New
17 England Graduate School here in Keene.

18 Q And are you, based on your training and experience,
19 familiar with patterns of behavior that are consistent with
20 child sexual abuse?

21 A Well, the great majority of my work over the years has been
22 with children. I have worked with adults but not quite as
23 much as I have with children. And over the years, in

1 various capacities in private practice working as a school
2 psychologist, working for Project Head Start as a
3 consultant and doing a number of other things, I have
4 worked with a great number of victims of child sexual
5 abuse.

6 Q That includes adult victims, you said?

7 A That includes adult victims, yes.

8 Q How many adult victims would you say you've worked with
9 concerning child sexual abuse issues?

10 A Probably in excess of 50.

11 Q And how many of those were males?

12 A At least 20.

13 Q I take it, are there not some similarities between males
14 and females, based on your training and experience,
15 involving sexual abuse issues?

16 A There's some similarities and there's some differences.

17 Q And you're experienced in both the similarities and the
18 differences, based on your training and experience?

19 A Yes.

20 MR. REYNOLDS: Your Honor, at this time I'd ask that the witness
21 be qualified as an expert with regard to his training and
22 experience and what he can tell us about his knowledge
23 concerning the similarities and differences and impact of

1 child sexual abuse on individuals in the community.

2 MR. KOCH: Your Honor, I'm not quite sure what that's being
3 qualified in, as a psychologist or, I mean, asking that he
4 be made an expert or--

5 MR. REYNOLDS: I'm asking him to be qualified as a psychologist
6 with experience and training in treatment of issues
7 surrounding child sexual abuse.

8 THE COURT: I find the witness is qualified as an expert to
9 testify about the characteristics of adults who are victims
10 of child sexual abuse.

11 MR. REYNOLDS: Thank you, your Honor.

12 Q (by Mr. Reynolds) Have you found, based on your training
13 and experience, that there --. Well, let me ask you about
14 some of the similarities of characteristics that men and
15 women survivors of child sexual abuse have and ask if you
16 can go into that for the jury, and warn you that that was
17 Keene water you're drinking (laughter).

18 A Okay. Thanks.

19 Q Well, let me be more specific about that.

20 A Yeah.

21 Q Are there issues you recognize in your training and
22 experience concerning characteristics of victims concerning
23 when reports or disclosure of child sexual abuse is made

1 and the amount of time or length of time things go
2 unreported?

3 A In my experience both in terms of working with victims,
4 working with other colleagues, as well as my reading of the
5 research about what happens to victims of child sexual
6 abuse, it is the norm, it is the average situation that
7 this is not reported for long periods of time, if at all.
8 It is the exception that child sexual abuse is reported
9 immediately after the actual assault, pattern of assaults.

10 Q And do you understand, as a trained psychologist, some of
11 the reasons behind the failure to report immediately or
12 close in time to the actual sexual abuse?

13 A Well, yes, I think so. There are a number of factors.
14 First of all, we may have a situation where the person who
15 has conducted the assault of the individual child has asked
16 them to keep it a secret. Often there are threats made.
17 "If you don't keep this a secret, you'll be in trouble.
18 I'll hurt you. I'll hurt your mother. I'll kill your
19 dog." I mean, there are any number of things that are
20 said, and I've heard quite a number of them.

21 Secondly, the child often has, and actually I want to
22 say more than often, I want to say typically is involved in
23 a kind of dependency relationship with the perpetrator in

1 that, particularly with boys, research has indicated that
2 the perpetrator is more often than not a trusted, known
3 individual as opposed to a stranger who is abusing the
4 child. And because of that relationship, there is often a
5 number of favors that are done for the child. Sometimes
6 the child receives gifts, gets money, gets special kinds of
7 things that a close relationship might bring to that young
8 person. And so it's hard to give up that dependency, that
9 pattern of dependency that has developed.

10 Another aspect of it is the sense of shame that the
11 child carries that they don't want anybody else to know,
12 particularly since in this situation where we're talking,
13 I'm talking about male victims here, there's male on male
14 sexual contact which is not something that, would tend to
15 get less sympathy than my experience with female victims of
16 male perpetrators.

17 So there are sound reasons from my perspective, when
18 you think of it in terms of a young person's developing
19 mind and psychology, to keep such a thing that has happened
20 to them as a secret and not disclose until later on, if at
21 all.

22 Q Now you've mentioned figures that are close to the victim,
23 threats, treats, whatever you want to call it. Is the

1 ability to disclose further compounded if that person
2 abusing the victim is an authority figure?

3 A Well, very much so. The child tends to, as I said, develop
4 a dependency relationship on this authority figure. The
5 authority figure is seen as a kind of substitute or quasi
6 parent. It's very hard, if you remember when you were a
7 child, it's very hard to go against authority figures, be
8 they parents, members of the clergy, or whatever. So if
9 it's a trusted figure with whom there is a prior
10 relationship, it is that much more difficult. The research
11 that I've read indicates that the more the victim knows the
12 perpetrator, the less likely they are to report the abuse.

13 Q In these relationships where you've got an authority figure
14 or a pseudoparent or that sort of thing, the minor, does he
15 have some semblance of control in that relationship or is
16 that a facade?

17 A Well, I'm not sure I know what you mean by control but it's
18 hard for me to imagine, at least based on my experience
19 working with children and talking to them and also working
20 with adults who are recollecting their experiences as
21 children, that they have any sense of control. They feel
22 like once the abuse starts and it's not reported right
23 away, there tends to be a pattern, there tends to be

1 multiple acts. It tends to go on over a period of time, it
2 tends to get reinforced by the perpetrator that this is
3 really important that you keep it a secret and we can't let
4 anybody know. The favors continue and sometimes get
5 increased in terms of gifts or money, whatever the case may
6 be. And so, you know, I don't think --. The only control
7 that the child may have is to continue to accommodate to
8 what the perpetrator is asking so that he or she will not
9 get hurt or will not get in trouble. That's the only
10 control I see them having.

11 Q Basically to go along.

12 A Exactly.

13 Q You mentioned that, I think you put this as a societal
14 characteristic that you recognize in your treatment, that
15 there's more sympathy for female victims versus male
16 victims of child sexual abuse? Could you comment on that?

17 A Well, that is my impression and also from the research that
18 I've read. The victim, the male victim of child sexual
19 abuse invariably, not always but almost always, is abused
20 by an adult male. And males in our culture are thought to
21 be more, or less vulnerable, should be able to fend off an
22 assault, should be able to be able to not be as easily
23 victimized as females. And because of that, boys are less

1 likely, according to the research that I've read and also
2 through my own experience, are less likely to tell because
3 it's been my experience, and the research again indicates,
4 that girls are going to have a more sympathetic set of ears
5 out there if they tell that they've been sexually abused.
6 Boys are less believed. Males are in general less believed
7 because it's homosexual contact almost always and because
8 males are thought to be capable of fending off attacks.
9 They're not as helpless. They're not as vulnerable in our
10 culture.

11 Q But that's a cultural view. It doesn't really take into
12 account the helplessness of a child in a relationship when
13 the child is a kid?

14 A It's a cultural expectation. The reality of a boy victim
15 is that they're in a very helpless position but they don't
16 know where to go with their helplessness because they are
17 expected, or they understand at a fairly early age that
18 boys, when they have this sort of thing happen to them,
19 shouldn't tell anybody because they won't be believed or
20 they're a sissy or that they're considered, you know,
21 perhaps homosexual or something like that and so it creates
22 that much more of a barrier a boy victim, that a male
23 victim has to leap over.

1 Q Are you familiar with the --. Well, at what ages, if you
2 know, when such disclosures of child sexual abuse are made,
3 what ages do those tend to come out for males?

4 A Well, understanding that for many males it never comes out
5 so there's a portion of the population of abuse victims who
6 never tell, I think. But those that do tell, I looked at
7 some research that indicated that children who tell, who
8 tend to tell in their late teens, tend to tell their
9 parents first. Those who tell friends or partners or
10 spouses tend to tell in their early 20s and those who tell
11 therapists or counselors tend to tell in their mid 20s and
12 later. But typically, and I think this is because of
13 typical development, most children do not tell until
14 they're adults and the reason for that is because they're
15 not fully developed as psychological beings. What we mean
16 by that, in psychology we talk about individuation which
17 basically means growing up to be an adult with a mind of
18 your own and an ego of your own and the ability to take
19 care of yourself. In our society, roughly speaking,
20 children are dependent on adult figures, on parents and
21 others until they're 18 or so. And the task of getting to
22 18 and all that it involves in terms of independence I
23 think gets in the way of children taking their very

1 independent step of saying, "This happened to me," because
2 they understand at some level that there may be significant
3 consequences if they tell when it happens. When they're
4 older and in their 20s and 30s is when they tend to tell
5 because they know they're not in any danger at all in terms
6 of the specific threats that they might have gotten from
7 the abuser.

8 Q You still have, though, I expect, the very real threat of
9 shame, embarrassment and that sort of thing in a culture
10 that doesn't want males to be looked upon as potentially
11 having been helpless or powerless?

12 A Yes. I mean, it's not to say that when they're adults it's
13 easy for them. I have as a therapist, as a psychologist,
14 I've sat with people for long periods of time where they
15 agonized over whether to --. And these are 30 year old men
16 who are agonizing about whether to confront their 75 year
17 old abuser because they're still afraid of that abuser
18 doing something bad to them. And these are, you know, men
19 who are 6 foot 3 and their abuser is an elderly person
20 who--. The psychological power is still pretty strong as
21 an adult but it's nothing like it was when they were
22 children.

23 Q Can you perhaps, to help us put this in a proper context,

1 compare say the response or ability to come forward and
2 disclose of say an adult victim of a forced rape as opposed
3 to a child victim who was molested by a trusted friend or
4 associate?

5 A Well, it's hypothetical and I certainly wouldn't want to in
6 any way suggest that it's not extremely painful for an
7 adult victim of forced rape to be a victim of that, but at
8 least they are an adult and they have let's assume a
9 relatively solid ego and ability to take care of
10 themselves, they have a network of friends, people who may
11 be able to support them, help them out. They know that
12 they can perhaps go for help, they can see a therapist,
13 they can do a number of things that will help them on the
14 road to recovery. A child who is a victim more often than
15 not, in my experience, does not have the same capacity;
16 one, because they're children and they haven't fully
17 developed but, two, because they tend to be less believed.
18 I can't tell you the number of times I have spoken with
19 adult victims who told me they dropped hints, who told me
20 that their parents should have known or could have known,
21 they looked the other way, they disbelieved them. They
22 might have said something that might have suggested that
23 something wrong was going on. They didn't want to go visit

1 some person. They didn't want that person to come over the
2 house. They didn't say anything directly. Their parents
3 ignored it or didn't understand it. And so children I think
4 are in a much more helpless position than the typical adult
5 victim of a sexual assault.

6 Q What function, in your experience and training, does child
7 sexual abuse have or cause concerning the development of
8 this individuation of a person as he's growing up?

9 A Well, in my experience and from what I've, my training,
10 research that I've looked at, what it tends to do is keep
11 children in terms of their maturity more or less where they
12 are. In other words, their maturity kind of gets stuck,
13 their psychological maturation. In other words, they are
14 in a situation where this event or events that are
15 happening to them really stops them kind of in their
16 tracks. Their emotional development gets stilted, they tend
17 to develop all kinds of symptoms that are related typically
18 to the experience of sexual abuse. They tend to turn to
19 various things for relief. Sometimes sexual promiscuity,
20 sometimes the use of alcohol and drugs, the use of various
21 kinds of thing essentially to deaden their pain and their
22 experience. And those kinds of activities tend to get in
23 the way of normal psychological development for the child

1 or for the adolescent, and so they tend to stay kind of
2 immature.

3 Q You mentioned--. Well, does substance abuse then for a
4 child who's undergoing child abuse, does that help to
5 provide some temporary relief from the pain or the
6 emotional turmoil the abuse has caused?

7 A That's my understanding from talking to many victims, yes.

8 Q At the same time, does the substance abuse at that age
9 allow the child to gain perspective of what's happening and
10 be able to come forward?

11 A I don't think it enables them to gain perspective. If
12 anything, it kind of gets in the way.

13 Q Is substance abuse then a safety valve for a child, a way
14 to continue to be able to tolerate an abuse that's ongoing?

15 A Well, in the sense that using alcohol or drugs can deaden
16 one's emotions or keep a person kind of insulated from
17 feeling pain, it can serve to make it easier for the child
18 to accommodate to the ongoing abuse, I think.

19 Q Do you have any experience, based on your occupation, with
20 individuals self-medicating themselves with regard to drugs
21 and alcohol?

22 A Well, as I understand what you're asking, self-medication
23 is a way of, you know, if you have a toothache or something

1 painful and your dentist gives you, you know, some pills to
2 help with the pain. Drugs, in my experience, which is
3 fairly extensive with substance abusing youths and adults,
4 drugs are seen as a way of deadening pain, as a way of sort
5 of dealing with psychological stuff that is very difficult
6 for people to handle. They have a drink, they take some
7 drugs, and for at least a brief period of time they feel a
8 little better.

9 Q Of course, I imagine if you're under a lot of pain or
10 something and you're constantly using drugs or alcohol to
11 deaden the pain, you can form an addiction to these
12 substances that you're using to self-medicate with?

13 A Yes, you can.

14 Q Do you have any experience with people who have been in a
15 situation like that and become addicted to various
16 intoxicants because they use them at least in part to dull
17 the pain of their experiences, being sexually abused as
18 children?

19 A Yes. Actually another piece of my experience that I didn't
20 mention is that I worked as a staff psychologist at Beech
21 Hill Hospital in Dublin, New Hampshire and did a number of
22 individual and group counseling sessions with male and
23 female patients there who--. There was an extremely high

1 incidence of sexual abuse in the backgrounds of those
2 people. Our survey in the year that I was there at Beech
3 Hill Hospital indicated that a hundred percent of female
4 patients at Beech Hill Hospital had been sexually abused
5 and somewhere between 70 and 80 percent of male victims, of
6 male patients who were there for alcohol or drug abuse had
7 also been sexually abused.

8 Q What year were you at Beech Hill?

9 A In 1989 to 1990.

10 Q When it comes to actually disclosing the child sexual abuse
11 in later years, does the person, for example who's an
12 alcoholic, is that person able to make consistent or
13 detailed disclosures, in your experience and training?

14 A No, because another one of the effects of drug and alcohol
15 abuse over time is that it tends to create mental
16 confusion. Your memory tends to be less sharp and less
17 focused. Your general functioning is less sharp and less
18 focused when you're under the influence and it can get in
19 the way of recalling things that happened over a period of
20 time.

21 Q Does the typical child victim who's disclosing, was the
22 person able to remember in detail, if you know?

23 A In my experience, they are able to remember the basic fact

1 of the abuse or the abuse incident, what has essentially
2 happened. They tend to, particularly over a period of
3 time, tend to get a little fuzzy about the specifics of
4 what the room looked like or what the color of the
5 clothing, that sort of thing, but they tend to know what
6 happened and how it happened and in general where it
7 happened and what their experience was but they will
8 sometimes over a period of time lose some details.

9 Q Now, are most victims, when they're disclosing this
10 incident of child sexual abuse, in a position to describe
11 to you in whatever detail they have everything that
12 happened the first time they talk about it?

13 A Rarely. Not in my experience. My experience is that
14 details tend to come out over a period of time,
15 particularly if they're sober and if they have a period of
16 sobriety, it helps with the memory, just on a physical,
17 chemical level. But also once the general memory is
18 disclosed, the other kinds of details related to that
19 memory tend to be filled in over time. I've had victims
20 that I've worked with who two years after they've disclosed
21 to me the fact of their abuse are able to remember specific
22 details about the clothing and the nature of the room and
23 the time and so on, so it's not unusual in my experience.

1 Q And those are details they may not have recalled the first
2 two, three times they disclose?

3 A That's right.

4 Q Or even in the first year, for that matter?

5 A That's right.

6 Q Would it be fair then, a term that's been used elsewhere in
7 the court, to determine disclosure of child sexual abuse by
8 adults as a process rather than as an event?

9 A Process in the sense of thinking about where we--. Well,
10 maybe let me stop and ask you exactly what you're meaning
11 by process as opposed to event?

12 Q Process, that is, being able to relate the event supposedly
13 in total over time but not at a single instance, not at a
14 single interview, for example?

15 A Right. Victims of trauma, whether it been sexual abuse or
16 car crashes, frequently, as a matter of fact more often
17 than not, do not remember specific details. If any of you
18 have ever been in a car crash, I know I have, there are
19 lots of facts about that car crash that I still don't
20 remember. It was fairly serious. It's part of the mind's
21 kind of protective mechanism to allow into memory only what
22 the individual can handle and when they develop some
23 distance and some perspective and some years away from the

1 event, it's easier for them to remember. But often we see
2 the phenomenon of, after a traumatic event, after a truly
3 scary, life-threatening event, that people forget important
4 details. They don't forget the event; they just forget
5 important details.

6 Q And I think you mentioned that the interplay of alcohol or
7 drugs can prevent getting that perspective sometimes for
8 years?

9 A Yes, it gets in the way.

10 Q I was in a car accident a few years ago. As you've
11 described here, it was not fairly serious but I remember
12 for my own part there are certain things I don't remember
13 that I think I should and things that seem of no
14 significance that I do remember and I wonder why on earth.
15 But I also get the sense, as I look back at that, as I was
16 getting into the accident that I was somehow in slow motion
17 or on the outside looking in to what I knew was about to
18 happen or what was happening. Is there some sort of
19 terminology for that?

20 A I believe what you're talking about is called
21 disassociation which essentially means that when you're in
22 an event that you perceive to be truly dangerous or
23 life-threatening, the mind has the ability essentially to

1 separate from itself. I know it's hard to really describe
2 exactly what happens but where you're able to kind of see
3 yourself going through it but you're somewhere else and
4 you're watching it happen. Victims have described this to
5 me. As I was about to have my head-on crash a few years
6 ago, I remember that experience of like being at the wheel
7 but also being on the roof of my car watching it happen.
8 That's called disassociation and it's not an unusual
9 psychological mechanism that the mind provides to us to
10 help us get through very difficult events like that. And
11 many, many victims that I've worked with have described
12 some kind of disassociation as part of their experience
13 when they're being abused.

14 Q That includes child sexual abuse victims?

15 A Yes.

16 Q Well then, are you saying that for the victim, as the
17 person's being victimized, that the victim perceives this
18 as to be a kind of dangerous or even life-threatening event
19 that, say, a head-on collision would be?

20 A Well, it can, yes, particularly if they're being threatened
21 with physical harm as it's happening, which is often the
22 case.

23 Q Or the withdrawal of all support?

1 A Or, you know, "I won't be able to give you that money or
2 that present I promised you," or "I'll tell your teachers,"
3 "I'll tell your mother," you know, "that you caused all
4 this," or, I mean, there are any number of threats that are
5 made that children take seriously and so instead of
6 resisting, they tend to go along.

7 Q So whether or not these threats are in fact real, it has to
8 do with the perception of the child as to the reality of
9 the threats?

10 A Yes, and the perception is because children are less
11 powerful than adults and so they have to believe that they
12 can't take action on their own and be okay, they have to
13 depend on that adult to keep them safe.

14 Q Then in some cases the very adult that's abusing them is
15 the one keeping them safe?

16 A That's the ironic thing in that their abuser is also their
17 protector, and that was part of why the dependency happens,
18 because the abuser is in a situation to help the child be
19 okay by making sure that secrecy is maintained through
20 either threats or favors or whatever the case may be. And
21 so the child ironically depends on that abuser to continue
22 to not get in trouble and not, no one to find out and
23 consider them a bad person or a shameful person or any of

1 those kinds of things. And what happens for children,
2 particularly in late childhood, early adolescence, they
3 tend to consider good that which they're praised for and
4 bad that which they're punished for. That's different from
5 adults. The children, if they're getting praised for what
6 they're doing, have a way of thinking, "Well, this must be
7 all right." If they're getting negative reactions for what
8 they're doing, "This must be bad." Well, in almost all the
9 cases that I'm aware of of child sexual abuse, they're
10 being praised for their part in the sexual interaction.

11 Q If not by words, by deeds or further contact; nice things
12 happen to them?

13 A Right.

14 Q What you're talking about here, then, if I equate this
15 properly, is you're talking about a child, you're talking
16 about moral development here?

17 A Yes.

18 Q And a different concept, a child who was unformed,
19 different concept of moral development that a child has as
20 opposed to an adult?

21 A Yes. I don't want to bore you with lots of theory but
22 basically it's fairly well accepted that children until
23 they're at the level of 13, 14, 15, 16, somewhere in there,

1 develop what's called adult logic or formal operation, is
2 the psychological term, and what that means basically is
3 they think about what's right and wrong in terms of making
4 a moral decision, not about what they're going to be
5 praised for or punished for but based on what's right.
6 What children tend to do is what I already mentioned, that
7 they have not developed that kind of adult logic and they
8 are still operating on the level of if it pleases this
9 adult figure, if it pleases Mom or Dad or this trusted
10 adult, then I'm a good person and I'm a moral person, I'm
11 doing the right thing.

12 Q And is this ability to come to these decisions, to form
13 these decisions, to complete this moral development as a
14 child, say, in the mid teens, is that hampered as a
15 response to child sexual abuse?

16 A I think so because what happens is the energy of the normal
17 child growing up, you know, and doing all the kinds of
18 normal things that adolescents do is diverted into things
19 like nightmares, things like sexual acting out, sexual
20 promiscuity, things like anxiety, depression, drug and
21 alcohol abuse, and in the case of boys often they tend to
22 take their discomfort outward and get, and frequently
23 you'll see boy victims, male victims get involved in

1 aggression and antisocial kinds of behavior. That's more
2 accepted for boys as a way of dealing with internal pain
3 and you'll also see victims involved in that sort of
4 activity, and that would get in the way of normal moral
5 development.

6 Q Have you had experience and training concerning disclosure
7 in therapy concerning child sexual abuse, disclosure by
8 adults, and particularly in group therapy?

9 A Yes, I have had training. I'm trying to understand your
10 question.

11 Q Well--

12 A Have I had training about disclosures within the context of
13 group therapy?

14 Q Yes, training or experience.

15 A Well, my experience as well as my training is that it's
16 very rare for sexual abuse to be disclosed within a group
17 setting. It's much more common in an individual one-on-one
18 kind of setting.

19 MR. REYNOLDS: If I may have just a moment, your Honor.

20 THE COURT: That's fine.

21 (Pause)

22 Q (by Mr. Reynolds) Is there anything else that I haven't
23 asked you that you think it's important for the jury to

1 know in being able to make an assessment about how these
2 disclosures are made and the circumstances underlying child
3 sexual abuse such that disclosure is difficult and may be
4 delayed?

5 A Well, only that to basically underline the point that we've
6 been talking about that not disclosing is normal.
7 Disclosing right away is abnormal, is unusual, and that
8 there are good psychological reasons, based on our
9 understanding of how people develop into adulthood, why
10 that would be kept a secret and that the victim carries a
11 burden of secrecy but it's considered to be better, a
12 better kind of thing than actually saying something to an
13 adult for the number of reasons that I've already
14 mentioned.

15 Q So for the victim at whatever age, it's generally safer not
16 to disclose than to disclose?

17 A In my experience, yes.

18 Q At least insofar as the victim has perceived the offense?

19 A Yes.

20 Q Is it fair to say that disclosure of child sexual abuse at
21 any age is fraught with anxiety for the victim?

22 A I've never seen it be easy for anyone. People go through
23 all kinds of agony in deciding to say something because

1 they feel deeply ashamed of what happened. Twenty years
2 later they still feel responsible at some level; they feel
3 like they caused it; if they only had done this or that
4 this never would have happened. They feel like they're
5 somehow soiled or tainted and a bad person. They carry
6 deep shame and extremely low self-concept typically along
7 with a great deal of depression.

8 Q And just to tie in, isn't that what you're talking about,
9 is they're really second-guessing their behavior when they
10 were children when they couldn't have made those decisions
11 and that's why they're fraught with anxiety and fear and
12 shame and those sorts of things even when they disclose as
13 an adult?

14 A Yes. Over a period of time they actually begin to see
15 themselves as having been capable and as we look at it when
16 I sit with them and talk about it, they recognize that it
17 couldn't be the case. But they develop this idea in their
18 minds, "If only I had done this, if only I had done that,
19 then it wouldn't have happened to me." And we go over it
20 and talk about it and they realize that in fact they were
21 helpless to do anything else. They were in a much less
22 powerful position as a child and they had to go along and
23 so I know of--. In my experience, I can't think of any

1 children who successfully resisted a sexual assault. I
2 can't think of one.

3 Q Thanks very much.

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

5 MR. KOCH: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. KOCH:

8 Q Doc, you've got a lot of degrees and credentials that you
9 earned over the years from going to Harvard and sitting on
10 panels and commissions and those kind of things; would that
11 be a fair statement?

12 A Yes.

13 Q And what you're talking about with us here is theories, are
14 you not?

15 A No, I'm talking about experience.

16 Q Your personal experience.

17 A My work with victims, yes.

18 Q And a lot of what you told us to me just seems kind of like
19 basic, common, everyday, ordinary everyday sense?

20 A I'm not so sure because I think my experience has been that
21 there's a large gap between what members of my profession
22 and myself have come to see in working with victims and
23 what the general public often understands about what

1 happens to victims so I think there's still a gap in
2 knowledge.

3 Q I see. So it's your impression that what you just related
4 to the jury here and to all the people in this room is
5 somehow outside of the realm of our common, everyday
6 experience?

7 A No, just that I think there's more details because those of
8 us who work with it every day and also have studied
9 development have tended to see a pattern of symptoms that
10 victims of abuse tend to experience.

11 Q I see. Now, Doc, let me ask you this. How much time--

12 MR. REYNOLDS: Your Honor, I object to the "Doc" I mean, this is
13 an informal attempt to I think subtly belittle the witness
14 on the stand.

15 THE COURT: I don't know. It's probably a New Mexico
16 colloquialism.

17 MR. KOCH: I've still got horse manure on my boots, Judge.

18 MR. REYNOLDS: And I'm sure he would have called Doc Holiday
19 "Doctor."

20 THE COURT: Refer to him, please, to the doctor as "Doctor."

21 MR. KOCH: I'm sorry.

22 Q (by Mr. Koch) Excuse me, Doctor--. Dr. Fleischer?

23 A Fleischer.

1 Q Fleischer?

2 A Right.

3 Q Dr. Fleischer, you know we're here about a case involving
4 State of New Hampshire and Tom Grover. You understand
5 that, sir?

6 A I understand that.

7 Q How much time have you talked to Tom Grover on the phone?

8 A Never.

9 Q How much time have you sat in an interview process with Tom
10 Grover?

11 A I have not.

12 Q How much time have you spent with Tom Grover, sir, in any
13 type of a diagnostic setting or scenario?

14 A I've never spent any time with Tom Grover. I've never met
15 the man.

16 Q Would you know Tom Grover if he walked through the door?

17 A I don't think so.

18 Q Did you, sir, avail yourself of the opportunity to maybe
19 sit in during testimony in this case and maybe observe Tom
20 Grover as he went through the direct examination and
21 cross-examination over a four day period?

22 A I did not, no.

23 Q Do you have any knowledge as you sit here today about the

1 specific facts in this case?

2 A I have general knowledge but I don't think I have knowledge
3 of the specific facts in this case.

4 Q And sir, where did you obtain that general knowledge?

5 A From reading the newspapers and from having conversations
6 with Mr. Reynolds and Mr. Gainor.

7 Q That would be the extent of your knowledge about Tom
8 Grover.

9 A Yes.

10 Q And as I understand your testimony, what you've done is
11 come in here and said, "Well, here are some of the kinds of
12 things that I have seen in people who have come forward and
13 said they had been victims of sexual abuse"?

14 A That's correct. That's what I was asked to do, to serve in
15 that capacity.

16 Q Not to do any kind of an evaluation of Mr. Grover and how
17 your particular expertise may or may not apply to --

18 A That's right.

19 Q -- his specific case?

20 A Right.

21 Q Now, did you send over a questionnaire, sir? I guess I
22 want to use that term, to maybe try to find out specific
23 information about Mr. Grover?

1 A Did I send over a questionnaire?

2 Q I mean maybe a letter or questionnaire or asking, you know,
3 "I'd like to know about this evidence or that evidence"?

4 A No, I didn't.

5 Q Now, sir, you're also not in a position, are you, as a
6 psychologist to judge one's credibility or believability?

7 A In this case?

8 Q Yes, sir.

9 A Well, no, of course not, but in general I believe I have
10 that capacity.

11 Q Thank you.

12 MR. KOCH: That's all the questions I have, your Honor.

13 THE COURT: Thank you, Attorney Koch. Anything further?

14 REDIRECT EXAMINATION

15 BY MR. REYNOLDS:

16 Q You were called here to testify about patterns of behavior
17 recognized in groups of people who have suffered from child
18 sexual abuse, isn't that right?

19 A That's correct.

20 Q And that's what you've done?

21 A That's right.

22 Q Thank you.

23 THE COURT: Thank you very much for your testimony. We do

1 appreciate it.

2 THE WITNESS: Thank you.

3 MR. REYNOLDS: Thanks very much. Your Honor, the State rests.

4 THE COURT: Thank you. Ladies and gentlemen of the jury,
5 we'll see you tomorrow morning at 9:00 o'clock. I want to
6 remind you not to discuss anything about the case with each
7 other, with anybody else, and to stay away from the
8 newspapers, radio, television, that sort of thing. Thanks
9 a lot for your patience today. I know it was probably not
10 pleasant but we've gotten through another day. See you
11 tomorrow

12 (Jury excused)

13 THE COURT: Is there anything further?

14 MR. KOCH: Your Honor, at this juncture the Court obviously
15 recalls the evidence and is aware of the standard and I'm
16 not going to spend a lot of time in oratory but for
17 purposes of the record, certainly, we'd make the
18 appropriate motion at this time.

19 THE COURT: Yes, why don't you do that.

20 MR. KOCH: I just did, your Honor.

21 THE COURT: Oh, that's it.

22 MR. KOCH: Yes.

23 MR. REYNOLDS: And your Honor, the State objects.

1 THE COURT: Okay. Well--

2 MR. GAINOR: Your Honor, you're not going to praise Attorney
3 Reynolds for his brevity in that response?

4 THE COURT: Yes, that was remarkable.

5 MR. REYNOLDS: I beg the Court's pardon.

6 THE COURT: Let me say I apologize if I got a little--. It's
7 awfully easy to sit up here and not be the attorneys down
8 on the ground, I know that, and you're thinking quickly and
9 you're working hard and you're representing your clients to
10 the best of your ability, and I realize it and sometimes I
11 get a little testy, and if I did today, I apologize to both
12 of you because I do realize the difference between sitting
13 here and observing and relaxing and then ducking back here
14 and being able to take a look at the law, and I realize
15 that.

16 MR. REYNOLDS: You got mad at me, not at him.

17 THE COURT: Well--

18 MR. KOCH: We do--

19 THE COURT: Anyway.

20 MR. KOCH: We do call them "Doc."

21 THE COURT: I'm sure you do.

22 MR. REYNOLDS: I still say I'd call him "Doctor."

23 THE COURT: Of course I've thought about the evidence that the

1 State has presented in its case and I of course anticipated
2 your motion, Attorney Koch, but taking that evidence that's
3 been presented by the State in this case on each of the
4 indictments and all the reasonable inferences from that
5 evidence in the light most favorable to the State, I cannot
6 find that a reasonable juror could not find the defendant
7 guilty beyond a reasonable doubt of each of the indicted
8 offenses and so for that reason, your motion to dismiss or
9 your motion for a directed verdict is denied. Thank you.

10 MR. KOCH: Yes, sir.

11 THE COURT: Is there anything further from counsel?

12 MR. REYNOLDS: Again, no, thank you.

13 THE COURT: We'll see you tomorrow morning at 9:00 o'clock.

14 MR. KOCH: Your Honor, in terms of scheduling, I don't
15 know--. Can we approach?

16 THE COURT: Sure

17 (Discussion held off the record.)

18 (Hearing suspended until Wednesday, September 21,
19 1994 at 9:00 o'clock a.m.)
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21
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23