

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS

SUPERIOR COURT

\* \* \* \* \*  
THE STATE OF NEW HAMPSHIRE  
V.  
GORDON MacRAE  
\* \* \* \* \*

93-S-0218, et. al.

TRIAL BY JURY

Volume 9

Pages 9-1 through 9-97

BEFORE

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

DATE:

Thursday, September 22, 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

1

2

INDEX

3

Page

4

Defendant's Closing Statement

9-5

5

State's Closing Statement

9-47

6

Judge's Instructions

9-79

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

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PROCEEDINGS

HEARING OUT OF THE PRESENCE OF THE JURY

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2  
3 THE COURT: Do you want to take a look at the instructions,  
4 Attorney Koch?

5 MR. KOCH: I'm here, your Honor. I was getting some water.

6 THE COURT: I did do some editing last night.

7 MR. KOCH: Yes, your Honor.

8 THE COURT: There shouldn't be any substantial changes, just  
9 basically so it's a little easier for me to read. If  
10 counsel would approach, I have a suggestion on the question  
11 of how these jurors can keep track of the indictments.  
12 What I have here are just, basically what it does is give  
13 the indictment number, the charge and the location because  
14 I think the first question they're going to have if we  
15 don't give them anything is, "How do we figure this out?"

16 MR. KOCH: I think that's fine, your Honor.

17 THE COURT: I think we'll just give that right along with the  
18 jury instructions.

19 MR. KOCH: Sure.

20 THE COURT: Okay. I also have kind of an outline of what my  
21 instructions to the foreperson will be and that sort of  
22 thing, and then we talked about the jurors' duty to  
23 deliberate, how to deliberate. I'm going to give this

1 instruction on that. Then the new statute on alternate  
2 jurors basically says if somebody gets sick during  
3 deliberations, an alternate juror will come in and begin.

4 MR. REYNOLDS: Start over.

5 THE COURT: Have you had a chance to go through the actual  
6 instructions?

7 MR. REYNOLDS: Yes, your Honor.

8 THE COURT: Are they acceptable?

9 MR. REYNOLDS: Acceptable to the State, your Honor.

10 MR. KOCH: Your Honor, they're acceptable, assuming that the  
11 Court is going to submit the matter to the jury for  
12 consideration. Obviously I have disagreement at the end of  
13 the case that it should be submitted so in that regard only  
14 do I have objection. The form and the instructions that  
15 are given, if the Court made that decision, are appropriate  
16 in the matter presented.

17 THE COURT: Okay. In that case, we had better make about 18  
18 copies. What we're going to do is this. We're going to  
19 give these instructions to the jurors before I give my  
20 charge and they will be able to sit there and read them.  
21 This was a suggestion of counsel, as I read the charge from  
22 up here, and you should have this too. We'll need 18 of  
23 those as well. So I guess the jury can come up. Does

1           counsel want the door locked during your final arguments?

2           Do you care one way or the other?

3   MR. KOCH:       I don't care, your Honor.

4   THE COURT:      Okay. We'll leave it open then, and the jury is  
5           on its way.

6                           HEARING BEFORE THE JURY

7   MR. KOCH:       Your Honor, can I approach on one--

8   THE COURT:      Sure.

9   MR. KOCH:       --query?

10                           (Discussion held off the record.)

11   THE COURT:      Good morning, ladies and gentlemen.

12   JURY:           Good morning, your Honor.

13   THE COURT:      The evidence is in in this case and now is the  
14           opportunity for counsel to provide you with their final  
15           arguments in the case. And as you know, and as I've  
16           explained to you before, the arguments of counsel in the  
17           case are not evidence.

18           I'll ask you now whether or not anyone has any problem  
19           that they want to raise with the Court, any issue that  
20           might have affected their impartiality in any way?

21                           (No response)

22           In that case, Attorney Koch?

23   MR. KOCH:       Thank you, your Honor. If it please the Court and

1       Mr. Reynolds, Mr. Gainor, Mr. Davis and Gordon, and ladies  
2       and gentlemen of the jury. I want to thank you for coming  
3       down and spending a couple of weeks with us. I know that  
4       this has been a very difficult case and we've had some good  
5       times where we've laughed but it's a very serious matter  
6       and a very difficult matter and in a couple of hours here,  
7       this is going to be turned into your hands to make the  
8       decision about the guilt or innocence of Gordon MacRae.  
9       When this case is over, we're going back to our offices.  
10      We go to the next case. It's our profession. And it's  
11      really going to come down to a decision between the 12 of  
12      you, who are fortunate enough to be chosen to sit in this  
13      process, and Gordon MacRae. That's what ultimately is  
14      going to matter in this case.

15           Now, these are supposed to be closing arguments. I  
16      hope they can be instructive. I'm not naive enough to  
17      think that you all don't already have kind of an idea or  
18      perception about how you think about this case. I mean,  
19      you've sat through it, you've listened, and human nature is  
20      such that you may have already formed an opinion of one  
21      sort or another as to about what you think of the  
22      evidence. Some of you may be sitting there thinking,  
23      "Well, they haven't proven a thing;" some may be thinking,

1 "Well, I think he's guilty." I don't know that these  
2 arguments are going to be that enlightening or that  
3 instructive in that regard. But a lot of times attorneys  
4 have sort of a method to the process that they go through  
5 when they ask questions, there's a reason for it and  
6 sometimes in these closing arguments, we may be able to  
7 shed a little light from our perspective as to why we were  
8 asking certain questions or why we were making certain  
9 inferences. I know that if you had an opportunity, you  
10 probably would have wanted to ask questions. We probably  
11 didn't ask all the questions you wanted to have answered.  
12 There's a lot that's left maybe unanswered, I don't know.

13 If I say anything during this closing process that  
14 disagrees with your memory, then put it off to human  
15 frailty or maybe being an advocate. I'm not trying to  
16 mislead or deceive you. I'm trying to relate testimony  
17 accurately based upon the way that I remember it. If it  
18 differs from what you heard, then you rely on your own  
19 memories. One of the things that's interesting about a  
20 trial is you don't get a chance to take notes, not like we  
21 do. We're sitting there scribbling furiously for two weeks  
22 but you have to have it all up here. But one of the  
23 reasons for that is that they found that between the 12 of

1       you people, you will almost be able to remember verbatim  
2       every word that came from that stand because there may be  
3       something a witness said that would strike you as being  
4       important or having some special meaning, and so when the  
5       12 of you get in there and you begin that process, I call  
6       it the crucible, the crucible of fire, and you begin  
7       talking, these facts will begin to develop.

8               Now, in this case, as you know, Mr. Reynolds and Mr.  
9       Gainor have the burden of proving Gordon MacRae's guilt  
10       beyond a reasonable doubt. That's one of the reasons why  
11       they get to follow me. It's the first time in the  
12       trial--. Usually it's the State first, then the defense.  
13       We've reversed it here. You see I'm going first to talk  
14       with you because they have the awesome and in this case  
15       insurmountable burden of proving Gordon MacRae's guilt to  
16       you beyond a reasonable doubt.

17              Now I'm not going to have an opportunity to get up and  
18       talk to you again. I'll just tell you the Judge has asked  
19       us to limit our argument to an hour. That may sound like a  
20       long time but I could talk for two days, as I'm sure the  
21       other attorneys could too. But we know that even going an  
22       hour is probably way too long in a case like this, but I  
23       hope you'll bear with me in that regard. But when Mr.



1 Reynolds gets back up and he starts talking to you, I can't  
2 get up and rebut what he says. I can't get up and say,  
3 "Wait a minute; think about this." But you all can say,  
4 "What would Mr. Koch have said about that? What does Mr.  
5 Koch think? How would Mr. Koch respond?" Because you know  
6 darn well I'd get back up with you and talk with you again  
7 if I could. So please, please, understand that that's the  
8 way that our process works.

9 And the reason that burden is that way is because they  
10 come in and they point the accusing finger at Gordon  
11 MacRae. It's so easy to point a finger at a man and say he  
12 committed a crime in today's society. That's all you've  
13 got to do is say it happened and you're brought into this  
14 process and put through this crucible. That's what we've  
15 got here, ladies and gentlemen. We have Tom Grover walking  
16 into a courtroom and saying, "This man committed a sexual  
17 act against me," and that's what this case is about.

18 I want you to consider where, where is the proof? What  
19 did the State prove in this case? What did they prove  
20 beyond a reasonable doubt? Does the mere fact that somebody  
21 walks into a courtroom and says something happened make it  
22 happen? That somehow sanctifies and anoints it so that it  
23 becomes a reality? Thank God we have a jury system. Thank

1 God that this process has been designed from our  
2 constitutions of the United States of America and the State  
3 of New Hampshire so that they have to use some type of a  
4 filtering device, they have to go through 12 people, people  
5 of reason, common sense, and fairness. Every one of you  
6 are selected for that reason based upon your questionnaires  
7 and your answers because you could be fair, you could be  
8 fair to the State of New Mexico, State of New Hampshire,  
9 and the prosecutors, and you could be fair to Gordon  
10 MacRae. And I can tell you this, when you come back with  
11 your verdict, whatever it may be, we accept that because we  
12 have confidence that you will be fair.

13 But, ladies and gentlemen, let's talk for a minute. If  
14 you were on trial and the State of New Hampshire had  
15 brought charges against you, is this the kind of evidence  
16 that you would want to come into a courtroom to have you  
17 proven guilty of a crime? Not based upon innuendo or  
18 speculation or conjecture or guessing or theories, but  
19 based upon facts, facts that came from that witness stand  
20 through the people that were called to testify in this  
21 case. Now, folks, it's easy to point that finger. It's  
22 easy to accuse. It's easy to bring an indictment. All you  
23 got to do is have somebody say something happened. And

1       because it's an allegation that there was abuse against a  
2       young man, against a teenager, given the milieu of the  
3       society today, given the impact that we have, because we're  
4       inundated on a constant daily basis now about issues of  
5       sexual abuse, that that somehow makes Gordon MacRae guilty  
6       because if Tom Grover walks into a courtroom and he says  
7       Gordon MacRae is guilty and he did it, by God, he's telling  
8       the truth and that's all there needs to be with it.

9       They've taken acts of Gordon MacRae, and I was somewhat  
10      struck by Pat Grover's testimony and I sat and listened to  
11      Pat Grover. I mean, here's a mother who poured her heart  
12      and soul out for eight children that she had adopted. She  
13      did her absolute best and worked her fingers to the bone to  
14      give those kids something, to try to raise them right, to  
15      try to raise them in the church, to try to give them a  
16      sense of morality, to try to give them a firm foundation,  
17      and she walks into the courtroom, ladies and gentlemen, and  
18      talks about Gordon MacRae and the entire time she talked  
19      about Gordon MacRae, she talked about the good things that  
20      Gordon MacRae had done, the beneficial things, how he was  
21      there and how he tried to help, and they've taken things  
22      like, well, he brought gifts to the family and they've  
23      turned it into some type of a perversion now.

1           You know, in today's society you cannot have done that  
2           any more with young people. Don't you dare be alone with a  
3           young person in any circumstance. Don't be a boy scout  
4           leader, don't be a priest. Don't be a pastor. Don't be an  
5           educator. Don't be a doctor. Don't do it. If you are  
6           going to do it, have somebody present. Don't hug a child.  
7           Don't be kind. Don't give gifts. Don't try to help a  
8           family because then that becomes some type of perversion,  
9           that becomes some sort of form of seductive manipulation.  
10          I don't know where charity went in this country but I  
11          wouldn't today be with any individual under 18 years of age  
12          by myself under any circumstances. I wouldn't go on a  
13          campout with them. You wouldn't have them spend the  
14          night. Just wouldn't do it.

15               How do you protect yourself against those kinds of  
16               accusations? What do you do? Tom Grover comes in here and  
17               he tells you, "I want Gordon MacRae to go to prison." He  
18               also sued him because he wants some money from him. If  
19               Gordon MacRae is acquitted, ladies and gentlemen, what does  
20               he go back to? What does he do about these allegations?  
21               What does he do about his life? What does he do about  
22               possible economic consequences? There's no redress for this  
23               man, except that he got his day in court before 12 tried

1           and true. That's the punishment for Gordon MacRae.

2           Now, folks, I know I'm going to hear partly this  
3           argument from Mr. Reynolds. I would expect it. Why? Why  
4           would Tom Grover come into a courtroom and put himself  
5           through the trauma of having to sit on a witness stand and  
6           people talking to him and asking him questions? I mean why  
7           would anybody do that if it wasn't true?

8           Well, folks, when we look back through history and we  
9           look back at every code of ethics and every code of law  
10          that has ever been written by any civilized people, and  
11          I'll use one as an example, not that religion can ever  
12          enter into a matter of state such as this, but let me talk  
13          with you for a minute about the Ten Commandments, only as  
14          an illustration. Remember one of those Commandments that  
15          says, "Thou shalt not bear false witness against thy  
16          neighbor"? Do you think that for some reason they just  
17          plucked that out of the heavens, it had no practical  
18          application or bearing in life, that it was just a  
19          statement that was made? Absolutely not. Because from the  
20          beginning of time, every person in every society has  
21          recognized and realized that people can bear false witness  
22          against their neighbors, that people can lie and people can  
23          walk into a courtroom and they can lie and they can

1       deceive. Now one never knows motivation, one never knows  
2       and is able to search the heart of an individual. But what  
3       you can do is look at what they say. What you can do is  
4       look at how they act. What you can do is look at how they  
5       respond. This is a foreign environment. Anybody walks  
6       into a courtroom that has to sit on that witness stand, I  
7       wouldn't want to do it. Even the little bit of process  
8       that you went through when we asked you some questions. I  
9       mean, it's not comfortable, it's a nervous kind of thing,  
10      but that's the way this system has come up. And by God,  
11      when you walk into a court of law and you point an accusing  
12      finger, then you better be able to back it up. You better  
13      be able to walk the walk and not talk the talk, and Tom  
14      Grover talks the talk, he doesn't walk the walk.

15           And I'm going to get into some specifics in a minute.  
16      I want to just briefly give you some reasons why there may  
17      be falsehood and why I'm saying that Tom Grover is lying.  
18      Two factors to consider. One is revenge because of the  
19      influence that Gordon MacRae had in the life of the Grover  
20      family. Another is monetary. It's his ticket to the  
21      lottery and a conviction by you helps him with that. A man  
22      who has hardly worked a day in his life, who has spent his  
23      life blaming his problems on everybody else. I mean, from

1 the kids in the school yard, to a mother who didn't care  
2 for him, to brothers and sisters that got more attention,  
3 to Gordon MacRae. Tom Grover has got an excuse for  
4 everything that ever happened to him in his life, not one  
5 shred or one ounce of responsibility for any decision that  
6 he has ever made. Everybody has put Tom Grover where he is  
7 today. Problems with alcohol abuse, drug abuse, not  
8 working, and my goodness, who does he find? Robert Upton.  
9 And I want you to think about that for a minute.

10 Robert Upton came into this courtroom, and you remember  
11 the sequence of events. Tom Grover comes forward in March  
12 of 1993 with the allegation against Gordon MacRae. It's  
13 that same month or maybe in April of that year, if you  
14 remember in Mr. Upton's testimony, that Tom Grover comes to  
15 his office. Tom Grover goes up to Concord. Now we're not  
16 real sure exactly how he got there but Mr. Upton says that  
17 he was referred there by the Keene Police Department. Who  
18 was he dealing with in the Keene Police Department? The  
19 only one I heard was Jim McLaughlin. I don't know. But  
20 why at the very outset when these allegations come forward  
21 would a member of a law enforcement agency refer an  
22 individual to an attorney to bring a cause of action for  
23 monetary damages? Now, Tom Grover told you, "Well, gosh,

1 the only reason I was considering filing suit was that I  
2 needed to pay for my counseling."

3 Folks, in my hour I've got here there is no way I can  
4 go through all the inconsistencies that were in this case.  
5 It would be humanly impossible but I'm going to hit on a  
6 few of them and I'm going to ask you to talk about the rest  
7 of them when you get in there because ultimately you're  
8 going to have to judge the credibility, and you've got an  
9 instruction that tells you how you're to do that. But in  
10 any rate, he came in here and told you, "Well, the only  
11 reason I really went to the lawyer was, to file a suit, was  
12 because I needed to pay for my counseling" Folks, he  
13 wasn't in counseling with anybody back in March 1993. In  
14 fact, if you remember what the testimony was, it was the  
15 lawyer who took Tom Grover and said, "You need to go over  
16 here to Pauline Goupil." Why? To build damages. To go  
17 into a civil court and say, "I needed therapy. I needed  
18 help." It wasn't Tom Grover that went to it and said,  
19 "I've been so victimized and so hurt and so humiliated and  
20 so embarrassed, et cetera, by Gordon MacRae that I can't  
21 deal with my life and I need counseling, I need help, I got  
22 to deal with this." Why did he go? Robert Upton sent  
23 him. I didn't see Pauleen Goupil or Dr. Yadati testify



1 here. I mean, the people that actually dealt with Tom  
2 Grover. I did see a psychologist, a qualified psychologist  
3 come in and talk about generalities, and I'll talk about  
4 Dr. Fleischer in a little while. But that's how this case  
5 essentially gets off the ground.

6 What does Robert Upton do? He contacts church  
7 officials. Why? Why? "Pay me." (Showing money to the  
8 jury). "Let's go ahead and take care of this right now."  
9 Tom comes into court and says no lawsuit had even been  
10 filed. He didn't want you to know that that entered in or  
11 factored in in any way into this case. You can't be in  
12 today's society and have any contact with the media and not  
13 know about these allegations that are coming forward  
14 accusing priests, accusing boy scout leaders, accusing  
15 educators.

16 Now folks, that's not to say that sexual abuse doesn't  
17 occur. It does, and my heart goes out to anyone who is  
18 truly victimized and abused. We all know that it happens.  
19 We all know that it has occurred. But the question is did  
20 it occur in this case? We also all know that people are  
21 falsely accused, that people do go to prison who have been  
22 accused wrongly sometimes years later. For instance, one  
23 of the most common is in cases where a person has been

1       accused of rape and they come in later with maybe some type  
2       of be it scientific tests like DNA, whether you believe in  
3       that or not, and it shows it couldn't have possibly been  
4       that person or there's an indication of mistaken  
5       identification or something of that nature, you know. In  
6       this case we don't have scientific evidence. We don't have  
7       blood spots. We don't have DNA. We don't have  
8       fingerprints. What we've got is one person's word who is  
9       accusing another. That's what we have.

10       Now that's how it essentially starts out. That's what  
11       the initial genesis of this case was, was going up to  
12       Concord and talking to a lawyer about suing the Church and  
13       hitting the lottery. Now, I came in and told you Mr.  
14       MacRae sort of being at the end of the punch. Why?  
15       Because they got together in the beginning or sometime in  
16       March or April to begin this process of getting money from  
17       the Church. Why go to the Church? But that's where they  
18       went and they went to the Church, asked for money, you  
19       know, and Gordon did something that's rather unusual. He  
20       fought back. I mean, "I've been indicted, I've got civil  
21       allegations against me to get money from me," and he  
22       counter sues. Then Attorney Upton says, "Well, I went  
23       ahead and filed my cause of action now because I thought

1 maybe the time period was going to run." A motive, ladies  
2 and gentlemen?

3 I want to talk with you about some of the  
4 inconsistencies and improbabilities in this case. Because  
5 doesn't this boil down to credibility? I mean, really when  
6 we pare it all down and there's nothing else left, aren't  
7 we talking about believability? I didn't see too much else  
8 in the case. You may. Now folks, there is a lot made to  
9 do with inconsistencies. Where I come from, as you know,  
10 in New Mexico out in the high desert country  
11 inconsistencies, unless they're properly explained away,  
12 are nothing more than lies. You tell somebody that  
13 something happened here and then you later change it and  
14 say it happened there, certainly that's an inconsistency  
15 and unless it's properly explained away, somebody is not  
16 telling the truth somewhere, and then you've got to explore  
17 the motivation for why did they change?

18 Now let me tell you what happened in this case. When  
19 Detective McLaughlin first talked to Tom Grover, Tom Grover  
20 related these incidents that we're here on, the  
21 indictments, and he basically tells a very simple, very  
22 basic generic story for each one of them, and we've gone  
23 through that before. "I went in," as he calls it, "to

1       counsel with Gordon. We started talking. Gordon begins to  
2       berate and belittle me. He humiliates me. He gets me  
3       emotional. I become emotional. I break down. He goes  
4       over, unzips my zipper and fellates me." That's it.  
5       That's the story. That's the detail. That provides the  
6       basis for these allegations.

7               Detective McLaughlin asks him, "Well, where did it  
8       happen?" He first tells Detective McLaughlin, "Well, it  
9       happened on the first floor of the rectory." Well,  
10      Detective McLaughlin goes back to him and he says, "Wait a  
11      minute. Where?" I mean, the first floor of the rectory is  
12      kind of a big place. We've got all kinds of rooms there.  
13      And he writes in his report that all four of those  
14      incidences happened in that southeast corner office.  
15      Nowhere was there any mention of any other place in that  
16      rectory. But let me tell you what happened, and it shows  
17      the kind of chameleon-like and amoeba like personality of  
18      Tom Grover. It comes from years of alcohol abuse, from  
19      getting very quick at adjusting on your feet to  
20      situations.

21             They discover through the process that Gordon MacRae  
22      didn't have that office when he came to Keene. He wasn't  
23      in that office. That office was occupied by another

1 priest. There were other offices he could have used. He  
2 could have used the office up in the left corner that was  
3 Gabriel Houle's. He could have used any place in that  
4 building, but they find out that that office was not  
5 available that first month he was there. Well, what does  
6 Tom Grover tell you? Not that he has any concept of time,  
7 absolutely no concept of time, years, dates or anything  
8 else. But he does say, "Well, those incidents happened  
9 that first month." Do you remember I finally got him  
10 pinned down to the summer months, the summer months between  
11 the time Gordon MacRae came June 15th of 1983 and Labor Day  
12 or right about there where school started? And he says the  
13 first month.

14 Well, you see the problem that put him in. The problem  
15 it put him in is that that doesn't make a lot of sense that  
16 it would be in that office. "I've got to move it to another  
17 office." So what he does then is he moves the location of  
18 this incident to the southwest office. When does he do  
19 that for the first time? During pretrial preparation when  
20 he's sitting down with Mr. Reynolds and going over his  
21 testimony, which I'm sure you remember was very skilled as  
22 he went through it. In fact, he got upset with me because  
23 I didn't ask him the questions in the same way that Mr.

1 Reynolds did. I didn't have him programmed in terms of  
2 what I expected in the answers and what I wanted him to  
3 say. He told you he knew what he was going to be asked,  
4 not the exact questions but certainly they'd gone through  
5 every possible area.

6 Well, that's the first time we see this change here in  
7 the offices. But see, then that change is rather unique  
8 because it creates some problems unto its own. First of  
9 all, it's not really even an office; it's kind of a general  
10 area that a lot of different people use for a lot of  
11 different things over the years. At that time, ladies and  
12 gentlemen, and you were there, there's glass on that  
13 window. When Tom Grover described it to you again in his  
14 script, well, there were blinds on that window. Well,  
15 there weren't blinds. Fred Laffond, who takes care of the  
16 cemetery and all the maintenance at the rectory, comes in  
17 and tells, you know, "Those blinds weren't put in till  
18 years after 1987. I can't tell you the exact date." Then  
19 Mr. Reynolds says, "Well couldn't there have been something  
20 on there? I mean, couldn't there have been maybe a sheer  
21 or, you know, or something like that? I mean, doesn't it  
22 make sense there would be something on that door?" And  
23 what Mr. Laffond said, "Well, you know, maybe. I don't

1       remember that. I remember installing the blinds."

2               Now, so you're sitting there in this area that if you  
3 think about the logic of it makes absolutely no sense.  
4 You're going to take somebody and your goal is to perform  
5 some type of secretive, hideous sexual act against them,  
6 it's not something you do in view of the whole world. It's  
7 not something you do where there's a real likely chance of  
8 being discovered. So what's Gordon MacRae supposed to do?  
9 He's supposed to have taken Tom into that office. There's  
10 people in and out. There's people outside at various  
11 times. There's a glass door. You were in there and you  
12 can remember that you can hear very basic conversation.  
13 Even through the wooden door in the southeast, much less  
14 the one where they've got the glass.

15              Locks. Tom Grover told you those doors are locked.  
16 There's not one person that ever walked into this courtroom  
17 that said those doors could be locked or were locked or  
18 have ever been locked but see, what he's doing is he's  
19 thinking, he's improvising on his feet. "How do I deal  
20 with these things that just don't really make any sense now  
21 that I move to the southwest office? I mean, I forgot  
22 about the glass door. I forgot about all these things but  
23 I've got to somehow explain them to you now." That's what

1 happens in this pretrial preparation. Doesn't make sense  
2 so let's talk about it. Let's see what's really going on  
3 here.

4 He put the chair, if you remember, folks--. Look where  
5 he sets it. This chair that he was fellated, it's right  
6 by these doors. Do you remember the door that was coming  
7 through here and the door that was coming through here?  
8 Right in the corner? You walked into that office, every one  
9 of you. Where does Mr. Grover put the chair in? Right  
10 there. Right in front of the glass door (indicating).

11 Now, folks, when you're using manufactured memory, you  
12 make things up. When you're telling the truth, you know  
13 exactly where things happened. You may not remember every  
14 single, solitary detail of an event but I'll tell you what,  
15 every one of us has been through some type of traumatic  
16 event in our life. I remember the day my daughter died and  
17 I can tell you almost everything that happened that day,  
18 the most traumatic day I ever lived in my life, but I  
19 remember. Now I might not remember exactly what I was  
20 doing back in 1983 in the summer months but there are  
21 events in our lives that are so earthshaking that we tend  
22 to have pretty good memory of them; we tend to have a  
23 pretty good grasp. Ask a woman about her wedding day. Men



1 may not be as good on that but I'll tell you what, they're  
2 certainly going to remember almost bible chapter and verse  
3 because they're significant events in their lives. Not Tom  
4 Grover. Tom Grover can't tell you anything about what  
5 happened in the summer of 1983 but he can come in this  
6 courtroom and he can lie to you.

7 Why did they put it in the summer of '83 before his  
8 16th birthday? Because that makes it a crime, that's why.  
9 Why is there that magic date of November 17th? Because  
10 that's the last day Tom's 15 so for you to find a crime  
11 here, it has to occur before his 16th birthday and you will  
12 see that in the reports too.

13 Now, another thing he tells you, "Well, the floors were  
14 creaking, those wooden floors." There were no wooden  
15 floors. That's a tile floor that was there. He tells you  
16 when he's in there that he kind of goes off and it is  
17 something he hasn't said before but he has this out-of-body  
18 experience. Folks, I agree. Some things can be so  
19 traumatic that a person might dissociate. A tragic death  
20 or a horrible accident, some kind of monumental happening  
21 in a person's life. But see, what happened with Tom Grover  
22 is he began to learn to parrot, he began to become the  
23 chameleon, he began to become the amoeba, to absorb what he

1 was learning out there, learning out there in therapy,  
2 learning out there from talking to people. It's not stuff  
3 he ever expressed. It's not stuff he expressed because he  
4 needed to go into therapy because he was traumatized. It's  
5 stuff that he kind of learned, kind of learned the buzz  
6 words.

7 And I often wonder about the relationship between Dr.  
8 Fleischer and Tom Grover, and let me tell you what I mean.  
9 Dr. Fleischer came in, and I want to apologize, folks, to  
10 you. I have the utmost respect for anybody who has worked  
11 hard to get to where they are, who's gone through school,  
12 has dedicated himself to any profession. I don't care if  
13 you're a fireman or mechanic or a doctor or a lawyer, and I  
14 was a little bit condescending to Dr. Fleischer, maybe even  
15 rude, and as soon as I was done I felt bad about that. I  
16 shouldn't have acted to him in that manner. It's not his  
17 fault that he was called into this courtroom in that manner  
18 but he was made a dupe just like you.

19 What they did is they bring in Dr. Fleischer, whose got  
20 all the credentials in the world and he's talked to some  
21 people who said they were abused of sexual abuse, he's read  
22 some studies, and he found some categories that he said,  
23 well, these are some of the things that we can see in

1 somebody who says they were sexually abused. We never know  
2 if somebody is or is not sexually abused. You don't know  
3 unless you've got an eyewitness that's sitting there  
4 saying, "I saw it." But he comes up with certain  
5 categories of things that he describes generically. Well,  
6 you know, historically they don't report right away. In  
7 fact, most of the time they never report. He talks with  
8 you, I think he mentioned, well, sometimes people can have  
9 this dissociative state and he went through sort of a list  
10 of things that have been seen in people who say they're  
11 sexually abused.

12 Well, you know what the State was doing? They don't  
13 have any proof, there's no case here, but what they said  
14 is, "If we can get Tom Grover to kind of parrot some of  
15 these things and he comes in and then we get Dr. Fleischer  
16 to come in and say we got A, B, C, D, these are things that  
17 we see, now, folks, if you see A, B, C, D and you come over  
18 here to Tom Grover and see A, B, C, D, ergo he has to be  
19 abused." That's fallacious. It's not true. You want  
20 those kinds of assessments? Take the Doc, and excuse me,  
21 that's what I call him. Take Dr. Fleischer, have him see  
22 Tom Grover, talk to Tom Grover, interview Tom Grover, test  
23 Tom Grover, counsel Tom Grover, have some kind of contact

1 with Tom Grover and then parallel those experiences. Then  
2 come in and take specifics and maybe try to apply them to  
3 this generic. Why? Why weren't those therapists brought  
4 in to do that? I can't answer that. I don't know. Because  
5 it doesn't fit? It doesn't match? And if you actually go  
6 through, if you remember each of those characteristics that  
7 he talked about and then go across and start comparing to  
8 what Tom Grover said, you're going see a lot of  
9 mismatches. What does that mean? I mean, if you have a  
10 profile and you've got 10 or 15 characteristics and a bunch  
11 are missing, does that fit the profile?

12 But I apologize because I was, I mean, I was  
13 incredulous. I wasn't upset with Dr. Fleischer. It was  
14 just, good Lord, what do you do to point an accusing  
15 finger? Bring in somebody whose never even seen the man  
16 and is trying to render--. In fact, he said, "I wasn't  
17 asked. Could do that." Because he knew that it was a  
18 legitimate question for me. Would you come in and render  
19 those kinds of opinions and conclusions about people  
20 without ever having seen them or talked to them? And what  
21 did he know about the case? Well, he'd learned a little  
22 bit from Mr. Reynolds and where else did he learn? He read  
23 the paper. Why would a witness in a case, a psychologist,

1 be reading newspaper accounts about a case he was going to  
2 testify in? Maybe general interest. Maybe it's an honor  
3 to be called in a case that's kind of high profile and be  
4 allowed to testify. I don't know. Dr. Fleischer has good  
5 credentials. He's well educated. He's well trained. He's  
6 well experienced. But what he came in and said had no  
7 relationship to the evidence in this case.

8 Now, folks, when we talk about Tom Grover and his  
9 testimony, I want you to kind of remember, and if you would  
10 look at a jury instruction with me that you're going to  
11 hear later, the Judge is going to read to you. He's going  
12 to read you an instruction that tells you, well, how do you  
13 judge a witness? What kinds of things may you want to look  
14 for to decide whether or not you want to believe him or  
15 not? The first point is does the witness appear to be  
16 candid? Second, do they appear to be worthy of belief?  
17 Third, what is the appearance and demeanor of the witness?  
18 Fourth, does the witness have an interest in the outcome of  
19 the trial? Five, did what the witness said seem  
20 unreasonable or inconsistent with other evidence in the  
21 case or with prior statements that witness has made? And  
22 the last one, whether the witness had any friendship or  
23 animosity towards other people in the case. If you apply

1       that law and that instruction to Tom Grover, he's going to  
2       be left sorely and woefully lacking in this case.

3               Now, if we go back to the indictments that we're  
4       talking about in this case, what did Tom Grover tell you?  
5       Well, in that summer of '83, he'd been doing some drinking,  
6       doing some drugs, I guess just sort of everyday things that  
7       every normal 15 year old in society does today. I don't  
8       know. Kind of going along, and Gordon MacRae comes and Pat  
9       Grover asks Gordon, "Can you help a little bit? Would you  
10      talk with Tom, maybe deal with what we're beginning to see  
11      as a real problem in his life?" Tom tells you he was  
12      coerced, he was made, he was mandated and the only reason  
13      he went was out of respect for his mother. Well, folks, 15  
14      minutes later he's blasting his mother. I mean, the  
15      saintly woman who gave everything she could for this boy as  
16      for all of her kids, she abandoned him, she had nothing to  
17      do with him, she wasn't there for him. He was coerced? He  
18      was made? What were Pat Grover's words? "I mean, it  
19      wasn't like a trumpet lesson. Now if it had a trumpet  
20      lesson and he needed to go, I probably would have had him  
21      there." Why? Because Gordon was around, according to  
22      their testimony, all the time. Talked with him about his  
23      problems.

1           Tom didn't have a problem.--. Tom didn't have a  
2           problem when he went into Derby Lodge and he didn't have a  
3           problem when he went into Beech Hill and he didn't have a  
4           problem at all. It was everybody else that had the  
5           problems. You heard, "I didn't listen to what my mother  
6           said and I didn't listen to what Gordon MacRae said. I  
7           played them like they were fools. I manipulated them.  
8           Every once in a while I would act like I was listening to  
9           what they said but I did what I wanted to do." Willful?  
10          Angry? I don't know. At that time in his life, was he  
11          controllable? On the one hand, I heard his mother describe  
12          him as a pussy cat and about four sentences earlier I heard  
13          her describe him, when I asked her a question, her first  
14          descriptive term was angry. And I asked her why? Why did  
15          you choose angry as opposed to maybe depressed or confused  
16          or helpless or something? Why that word? I'll tell you  
17          why. Because there was no controlling Tom Grover. He did  
18          whatever he wanted to do whenever he wanted to do it and  
19          forget anybody else; especially forget anybody who was an  
20          authority figure.

21               Now, ladies and gentlemen, it doesn't make sense to me  
22               and maybe it doesn't make sense to you but let's assume for  
23               a moment Tom went in that first time and he was telling you

1 a hundred percent the truth about what had happened. Well,  
2 then I started asking, "Well, wait a minute. You went back  
3 the second, the third, the fourth? You slept in the  
4 rectory? You did all these things while the activity was  
5 going on?" When Tom would get cornered on something, he  
6 would just shift the playing fields. Now for the first  
7 time in this courtroom, "I didn't remember anything. I  
8 didn't remember anything about what was going on. I was  
9 walking around all summer in this daze. When I went for  
10 the second time that it happened, I couldn't remember the  
11 first and I when I went to the third, I didn't remember the  
12 second and I went to the fourth, I didn't remember the  
13 third, the second or the first. I didn't remember any of  
14 this, I was so out of my head."

15 But ladies and gentlemen, that's a lie. That's another  
16 con job to try to get himself out of a tight spot that he  
17 can't explain. I wasn't asking him for unreasonable  
18 details. I wasn't asking him for bible chapter and verse.  
19 "What were you wearing? What was the color of your  
20 buttons? What was Gordon wearing? Did he have a tie? Did  
21 he have a --." We didn't go into any of that or we'd have  
22 been here for a month. I went into just basic everyday  
23 questions that if you were asking those questions, you



1 would have asked. I want to know, I want to find out.  
2 It's what Detective McLaughlin tried to do, like Joe Friday  
3 on the police show. What are the facts? What are we  
4 dealing with here? What happened? But what he does, and  
5 it's interesting, he can't remember anything about that  
6 summer, can't remember anything about these events, can't  
7 even remember when he got home. That was his way out of  
8 trying to have to be called into account to explain these  
9 inconsistencies, these lies.

10 But what was going on that summer, folks? What was  
11 going on? He had a young woman in his life, Kathy. That  
12 every time he could be with her, he was spending time with  
13 her. It had developed into an obviously romantic  
14 relationship. They had a child, had a relationship going  
15 for about five years. This man who can't get close to  
16 anybody, this man with all these problems, this man who  
17 can't trust anybody today. Sure wasn't going on back then  
18 but it is when he walks into a courtroom, it's going on.  
19 You think back--. And you don't walk into this courtroom  
20 and throw away your reason and common sense. You come into  
21 the courtroom with your everyday life experiences. You  
22 think back to some of those first meetings with somebody  
23 that you developed an interest in, whether it be a

1 girlfriend or your husband or wife as you sit now. That's  
2 kind of an exciting time. It's a new thing, it's a  
3 friendship, and especially with the opposite sex. He  
4 remembers those but he wants you to believe that that whole  
5 summer he's in this daze, he's in this fog, doesn't know  
6 what is going on? Why? To explain why he kept going  
7 back.

8 Now it's interesting, he talked about some incidents  
9 when he was a young man preindictment, we call them. Do  
10 you remember the one he said about in the Marlborough  
11 rectory? Didn't he kind of describe that almost bible  
12 chapter and verse? I mean, "We were walking down the hall.  
13 He moved me over. He pushed me up against the wall. He  
14 pinned me against the wall". I mean, he's going just bam,  
15 bam, bam, bam, bam on those kinds of incidences. That's at  
16 11 year's of age when that supposedly happened. Now we  
17 find out some things that may call that somewhat into  
18 question. I mean, when he first tells Detective McLaughlin  
19 he says, "Yes, the good priest unzipped my pants and  
20 fondled my penis." That's what he says happened in that  
21 Marlborough rectory. But when he gets on the stand, you  
22 know, he's got his stories a little bit confused. He gets  
23 on the stand and tells you, "Well, he fondled me," you

1 know. Folks if it happens, that's something you remember.  
2 That's right to the heart of what we're talking about.  
3 It's not these incidental details.

4 He tells you that he's been in that rectory on several  
5 occasions and that he was invited in by Father Horan to  
6 have donuts and orange juice. He was somebody special. I  
7 don't know if he was or wasn't. Father Horan says he never  
8 remembers that. I don't know. He tells you about another  
9 time when he'd come back from having taken Chris to the  
10 airport. Well, we know that that did happen and Tom was in  
11 that car but was he molested then? I don't think so. Do  
12 you remember what his story was? We're--

13 MR. REYNOLDS: Objection, your Honor.

14 THE COURT: Yes. Why don't we approach.

15 CONFERENCE AT THE BENCH

16 MR. REYNOLDS: My understanding of the law in proper argument is  
17 that the jury does not care what Mr. Koch thinks. I ask  
18 for a curative instruction and admonishment, especially  
19 this late in the argument. He's been at it for 45 minutes  
20 and now he's rendering personal opinions and it's just not  
21 called for.

22 THE COURT: I'll just give an instruction that under New  
23 Hampshire law we can't state our own position as an

1 attorney.

2 MR. KOCH: Oh, okay.

3 MR. REYNOLDS: Is that the law in New Mexico, that you can give a  
4 personal opinion in closing argument?

5 MR. KOCH: Personal opinion?

6 MR. REYNOLDS: Yes, of the lawyer?

7 THE COURT: What did I say?

8 THE COURT: You said that, "I believe that."

9 MR. KOCH: Oh, that's not proper.

10 MR. REYNOLDS: All right. I'd ask it not be limited to New  
11 Hampshire law.

12 THE COURT: Okay. Well, I'll go ahead and give the  
13 instruction.

14 (Conclusion of Conference at the Bench)

15 THE COURT: Ladies and gentlemen of the jury, the State just  
16 objected to the part of Attorney Koch's final argument and  
17 their objection was that Attorney Koch was giving his  
18 personal opinion or stamp as to what he believed about the  
19 witness. That's a violation of the New Hampshire rules and  
20 also New Mexico rules, and Attorney Koch acknowledges  
21 that. Attorneys represent their clients to the best of  
22 their ability but it is not their job to make judgments  
23 about the evidence, witnesses, or their own clients and

1 convey that to the jury. That's why these arguments are  
2 not evidence in the case. So you may continue, Attorney  
3 Koch.

4 MR. KOCH: Thank you. And I apologize. Yes, what I believe  
5 doesn't matter; it's what you believe that matters and  
6 you're the ones that will make that decision.

7 Now what I was talking about is the time that they're  
8 supposed to be in the car. They're in the car and they're  
9 driving back and Tom says he falls asleep and he wakes up  
10 because Gordon MacRae is fondling him. Well now, when he  
11 tells the version of events, he has Gordon MacRae pinning  
12 him against the seat of the car, unzipping his pants and  
13 fondling him. Now, how is that possible, I ask you, if you  
14 accept Tom's story as being true? We're driving down a  
15 highway, he's got him pinned against the car and he unzips  
16 his pants.

17 MR. REYNOLDS: I object, your Honor. It's arguing facts not in  
18 evidence. There is no evidence at all that he was pinned  
19 against the seat of the car.

20 MR. KOCH: He put his arm up and held him back, your Honor,  
21 was the testimony that I heard.

22 MR. REYNOLDS: That was in the rectory.

23 THE COURT: I'll just instruct the jury here. I'm not going

1 to make a ruling on this because I think they just need an  
2 instruction on this. It's your recollection of the  
3 evidence that you will use in deliberating and deciding  
4 this case. Attorney Koch's recollection may not be the  
5 same as yours. Therefore, you are to use your own  
6 recollection of the evidence, as counsel does in their  
7 final argument. Now they may be wrong and most probably  
8 they maybe will be wrong on some things. We probably all  
9 will have a different viewpoint on things. But I want you  
10 to remember that what he's saying is not evidence in this  
11 case, and in your deliberations it's your recollection of  
12 the evidence that controls. You are the judges of the  
13 facts in this case and you must find the facts in this case  
14 independent of what these attorneys or this judge says  
15 about anything. You may continue, Attorney Koch.

16 MR. KOCH: Thank you. Absolutely correct. If I represent  
17 something to you you don't remember, you rely on your own  
18 memories as to what the testimony is. But as you begin to  
19 go through and look and really analyze carefully each of  
20 these versions of events, you're going to see just all  
21 kinds of problems, all kinds of inconsistencies, all kinds  
22 of errors.

23 Now, there was a situation that came up where Tom

1 Grover says that he told Debbie Collett that he had been  
2 abused by Gordon MacRae. You heard Debbie Collett  
3 testify. Debbie Collett said that Tom said two things.  
4 One, he said he'd been abused by a clergyman. The other  
5 was he said he had been abused by a foster parent. Well  
6 now, we all know that Tom was adopted at a very young age  
7 so it would hardly be likely for him to have been abused by  
8 a foster parent. But Tom's in a program where virtually  
9 all of the people in there have claimed that they have been  
10 sexually abused and he discloses these things in a group  
11 setting. He later says that Gordon MacRae threatened him  
12 because Debbie Collett told Gordon MacRae that Tom had made  
13 this allegation or had mentioned something to the effect  
14 that a clergyman had abused him. And then Tom reports that  
15 Gordon threatens him.

16 Now, for a moment let's think about the time frame  
17 there, folks. You remember when Tom was in the program in  
18 August of 1986, Derby Lodge? He stayed there for a month,  
19 then he comes out and he goes home for a month with his  
20 mother, this mother who has abandoned him, wanted nothing  
21 to do with him, will not help him, but he goes and stays  
22 there for a month. During that time period, he supposedly  
23 is having, according to his testimony, contact with Mr.

1 MacRae. He then goes into the Tirrell Halfway House and he  
2 stays in there until January of '87, so we move forward  
3 approximately six months in time now. Sometime after that  
4 Gordon is supposed to have come to him and threatened him.

5 Now, ladies and gentlemen, if you learn that you've  
6 somehow been discovered, you're doing something that's  
7 illegal, common sense tells us that there's a fear there.  
8 The last thing in the world one wants to do is be  
9 discovered for doing something improper. So if somebody is  
10 revealing these deep, dark secrets, you want to stop them  
11 and you want to stop them immediately and you want to  
12 control them. In fact, you tell them the very first time,  
13 if you listen to Dr. Fleischer, the very first time  
14 something happens, you threaten them and you tell them,  
15 "Don't tell. This is our secret." And you control and  
16 manipulate them like that. Never any kind of testimony in  
17 this case of that regard, despite these incidents  
18 supposedly occurring of Gordon MacRae telling Tom Grover,  
19 "Don't say anything; this is our secret," threatening  
20 him. But what Tom has you now or wants you to believe is  
21 that six months later, long after he's out of Derby Lodge,  
22 that Gordon MacRae comes forward and threatens him, tells  
23 him not to tell because nobody is going to believe him and



1 he'll do something to him if he does, and that's all he  
2 says. Nothing else. That does not make sense. If  
3 somebody came to any person in this room who had been doing  
4 something improper and tells them, "You've been  
5 discovered," there's damage control that takes place  
6 immediately because you don't want to be found out. But  
7 once again, we've got this gap in the time frame.

8 We talk about details. Even Detective McLaughlin was a  
9 little bit bothered about it. Why? Because in December of  
10 1993, this is after he's interviewed twice, he calls Tom up  
11 on the phone and he tells Tom, "I need more details. I  
12 need you to basically flesh this thing out so I can get  
13 some questions answered. Can you? Would you write down  
14 more information about theses incidents that you're saying  
15 happened so we can differentiate them so it's not just,  
16 'Well, these four incidents happened and the four  
17 incidents happened all at the same time.'" What does Tom  
18 Grover do? I think the words were, "I'm unable to do that.  
19 I can't do it." Why?

20 Now there's no requirement if somebody is under a  
21 sexual assault that they resist and there's no requirement  
22 then if somebody is under a sexual assault that they say  
23 anything. There's no requirement that they step back.

1       There's no requirements of any sort of that kind. But what  
2       he's tried to do in this courtroom is say that he was  
3       mesmerized, he was hypnotized by the power of the cloth, by  
4       the power of the robe. This man that he'd known, by his  
5       own testimony, for years, didn't even think of him as a  
6       priest, in fact, thought he was kind of a joke, didn't  
7       listen to him, but that's why he explains to you that he  
8       was in that particular situation and then kept going back  
9       time after time after time and each time without a clue as  
10      to what was happening as though the prior experience had  
11      never even occurred. So he goes back into the exact same  
12      situation and now, folks, I think common sense and reason  
13      tells you if you're being belittled, if you're being put  
14      down, if you're being criticized, and we all hate that  
15      because it makes us feel bad, and we don't like the person  
16      that's doing it to us, whether it's a teacher or our  
17      parents, we may listen, we may not say a lot, but there's  
18      an animosity there, there's a dislike or even a hate for  
19      that person, there's a contempt.

20         Tom Grover more than anyone, ladies and gentlemen, was  
21         sensitive to that kind of thing. I mean, he thought that  
22         the kids in grade school were racist. He's a young man who  
23         was born to maybe the most noble race that ever existed in

1 the history of mankind and today it's glorified in Dances  
2 with Wolves and all kinds of things. We've known that the  
3 Native American has been treated wrongly in this country.  
4 We all recognize that. But from the time he was little, he  
5 was very, and maybe justifiably so, but he didn't like  
6 people that did that kind of thing to him but he couldn't  
7 explain how this could possibly occur and he didn't tell  
8 Detective McLaughlin that. So what's he come up with?  
9 Well, I mean, "He started attacking me, he started  
10 belittling me, he started accusing me, he started making me  
11 feel bad," to where he was sobbing uncontrollably. Now  
12 again, ladies and gentlemen, that's in a public rectory in  
13 that southwest office, according to his testimony.  
14 Controlling the volume of his pitch? I don't know. Seems  
15 to me that, you know, the times I cried were where I've  
16 really been through a traumatic experience, I've shed a few  
17 tears and I don't have the ability to control the volume of  
18 my crying when I'm upset. Or when I've gone through a  
19 horrible tragedy, I'm not thinking about who can or cannot  
20 hear me. It doesn't add up. These things don't make  
21 sense.

22 Now, ladies and gentlemen, I'm going to close in a  
23 second. I've gone maybe a little bit more than I thought

1       and I haven't said all I wanted to say. I want to talk  
2       about the burden of proof very quickly. Under our  
3       constitutions, all defendants in criminal cases are  
4       presumed to be innocent until proven guilty beyond a  
5       reasonable doubt. The burden is on the State. The  
6       defendant does not have to prove his innocence. The  
7       defendant enters the courtroom as an innocent person. He's  
8       considered an innocent person unless the State convinces  
9       you beyond a reasonable doubt that he's guilty of every  
10      element of the alleged offense. If, after all the evidence  
11      and arguments, you have a reasonable doubt as to the  
12      defendant having committed any one or more of the elements  
13      of the offense with which he's charged, then you must find  
14      him not guilty.

15           What is this reasonable doubt? What does it mean?  
16      Proof beyond a reasonable doubt is proof that leaves you  
17      firmly convinced of the defendant's guilt. If you're  
18      firmly convinced that he committed those acts and that they  
19      were done during that time frame, then that's beyond a  
20      reasonable doubt, that firm conviction, that abiding  
21      certainty. They go on to say there are very few things in  
22      this world that we know with absolute certainty and in  
23      criminal cases, the law does not require proof that

1       overcomes every possible doubt. That would be humanly  
2       impossible. There's always maybe some little question.  
3       It's that "firmly convinced." If, based on your  
4       consideration of the evidence, you are firmly convinced  
5       that the defendant is guilty, then find him guilty. If, on  
6       the other hand, if you think there is a real possibility  
7       that he is not guilty, you must give him the benefit of the  
8       doubt and find him not guilty. That's the cornerstone on  
9       which this entire system of justice rests.

10       Now, folks, Tom went through a period of time in his  
11       life where the drug use was incredible. I mean, cocaine,  
12       hashish, marijuana, speed, hallucinogens. He had blackouts,  
13       he hallucinated, delusions, all those kinds of things.  
14       It's the history. What does Gordon MacRae do about all  
15       that? Finally when Tom is so out of control that nothing  
16       more can be done with him and Pat Grover wants some help,  
17       Gordon goes to bat and he gets him, he helps him get into  
18       Beech Hill, he helps him get into Derby Lodge, he helps him  
19       get into these programs where there can be some real  
20       introspection and analysis, where you can talk, where you  
21       can wear your emotions on your sleeve, where they can try  
22       to find out what's going on in your life.

23       Tom, when he's in one of his moments of really kind of

1 looking at his life, he's introspecting, he's thinking  
2 about everything that's gone on, and he writes these  
3 words: "I lied a lot to get what I wanted, sometimes out of  
4 fear. I lied and then I would make alibis to convince  
5 others because I had lost their trust." Now I don't know  
6 for sure what he was thinking then, ladies and gentlemen,  
7 but we know he has lied and he is capable of lying and he  
8 is capable of manipulation and he's capable of being  
9 untruthful and he is every bit capable of pointing an  
10 accusing finger if it meets his purposes.

11 I want to thank you. I've enjoyed being here. I  
12 apologize for any errors that I may have committed or  
13 anything that I've done that might reflect adversely on my  
14 client. You have a sacred duty. You're a good jury and we  
15 will accept whatever verdicts you return. I am asking you  
16 in good conscience, and it's a verdict you can be proud of,  
17 to return a verdict of not guilty of all charges. Thank  
18 you. Thank you, your Honor.

19 THE COURT: Thank you, Attorney Koch. I'll tell you, we're  
20 going to take a ten minute recess and then we'll come back  
21 and the State will give its final argument and I'll give  
22 the charge. Bailiff, take care of the jury.

23 (Recess taken)

\* \* \* \* \*

THE COURT: Attorney Reynolds.

MR. REYNOLDS: May it please the Court. Ladies and gentlemen of the jury. There's an author far greater than I will ever be, especially since I'm not an author, who starts out by saying, "It was the best of times; it was the worst of times." Then he went on, and I'll paraphrase, "It was a time of joy; it was a time of sorrow. It was a time of trust; it was a time of distrust." Those things all apply in this case and many more things.

I disagree with Mr. Koch who said he's enjoyed being here and doing this. I haven't enjoyed one single thing about it. I haven't enjoyed it professionally, I haven't enjoyed it personally, and Tom Grover has not enjoyed anything about this either. Church and State do not come together and they don't come together in this trial.

Mr. Koch went on to talk about the burden of proof. It's that you've got to be firmly convinced the defendant is guilty beyond a reasonable doubt. That is not an absolute. But there are some absolutes and one of those absolutes is that in holy Mother Church, you shall not be molested by your priest. That is an absolute.

Another thing I would ask you to keep in mind in this

1 case is not about what happened to Mr. Koch's little girl.  
2 As traumatizing as that must be for a parent, as horrible  
3 as that experience must be, it must indeed pale behind the  
4 experience of having the person you are to trust the most  
5 in the world to abuse you and to victimize you. That must  
6 be far worse and that's why we're here in this courtroom  
7 because of exactly that.

8 If this case teaches us anything, it teaches us how  
9 gut-wrenching this kind of abuse can be and it also teaches  
10 us something about the resiliency of the human spirit.  
11 There are people in the world that I suppose we all know  
12 who would kill themselves rather than sit in that chair for  
13 five or six days straight to talk about their being  
14 victimized when they were a teenager. There are people in  
15 this world, many of them, without that kind of courage,  
16 without that kind of resilience. Tom Grover is not one of  
17 those people without that kind of courage, without that  
18 kind of resiliency. He has those qualities. Tom Grover  
19 may be flawed, Gordon MacRae may not be the one who was  
20 responsible for all of Toms problems, but on the basis of  
21 this evidence as you have seen, Gordon MacRae is indeed  
22 responsible for a lot of them.

23 I'd like to run over with you very briefly some notes



1 I've made concerning the evidence in the case. Let's talk  
2 about the defendant's case. He called a number of  
3 witnesses. Now he's not obligated to do so but he did call  
4 them. He called his sister. What did she say? She put  
5 Tom Grover and the defendant at her house in Lynn,  
6 Massachusetts basically after Chris Grover was delivered to  
7 the airport. She indicates they were there about 40  
8 minutes, they were sitting down to eat or something like  
9 that at the time. Now Tom didn't remember everybody who  
10 was there but he remembered Gordon's sister and when they  
11 left, obviously, they left alone, the defendant and Tom.  
12 The sister's testimony corroborates that portion of Tom's  
13 story that is corroboratable. It is consistent with what  
14 Tom has told you.

15 The defendant's brother-in-law put the defendant on the  
16 third floor of the rectory apartment probably sometime that  
17 summer in 1983. On the 23rd of July when the children were  
18 baptized was a time he was over there. He was not upstairs  
19 in the rectory, and sometime after that he was up there in  
20 the rectory in the defendant's rooms, in his apartment.  
21 That is consistent with what Mr. Dupuis told you, that he  
22 left on the 15th of July and when he left, as you'll see by  
23 State's Exhibit 6, the third floor diagram, rooms were left

1       vacant. Those rooms are then available for Father MacRae  
2       to use. The defendant's brother-in-law has corroborated  
3       parts of the story.

4             You know, the interesting thing about the church  
5       personnel who took the stand here, Mr. Laffond, Mr.  
6       Rocheport, was how certain, how dead certain they all were  
7       on direct examination. I don't regard myself as a  
8       particularly skill cross-examiner but even I realized that  
9       it took about half a dozen questions from me for those  
10      individuals, and all of a sudden all certainty just kind of  
11      flew away. Certainty on direct examination and a half a  
12      dozen not terribly pointed questions and all of a sudden  
13      Mr. Laffond is having memory problems. He doesn't know if  
14      he put those blinds on four, four and a half years ago,  
15      seven, seven and a half years ago. It was Mr. Laffond who  
16      mentioned, "Gee, maybe there might have been something on  
17      that door back in '83 that was sheer. I don't remember."  
18      He basically said, "I don't remember if there was something  
19      on that door covering the glass or not." He doesn't  
20      remember. Father Biron said he didn't know, it's not the  
21      sort of thing he would have noticed or paid attention to.  
22      None of that goes anywhere to refute what Tom has said,  
23      which was that when you close that door, you have privacy

1           in that office.

2           Fred Laffond says he doesn't know about locks. Now,  
3           you were in that rectory and I walked around during the  
4           course of the thing and I'm sure some or all of you saw me  
5           turn locks. There are locks with keys in them throughout  
6           that rectory and some of those locks work. There is no one  
7           you heard from to counter Tom's assertions that on at least  
8           one of those occasions the door was locked, the lock  
9           obviously worked. No one can say otherwise. No one has  
10          told you that those locks are non functional. Now, for all  
11          we know they may be non functional today, maybe not, but no  
12          one has told you contrary.

13          Now, there was no key in the lock when you went to the  
14          rectory 11 years after the criminal offenses. But what  
15          does that mean? It's an old building. Those are skeleton  
16          keys. You've probably all seen skeleton key locks and they  
17          are interchangeable. So the fact that there's no key in  
18          the lock now 11 years later means nothing. Mr. Laffond  
19          basically admitted under cross-examination that his memory  
20          was failing him concerning the circumstances of the  
21          defendant in the rectory and that he admits that he spent  
22          little or no time with the defendant there, and he also  
23          indicated back in '83 he used an office down in the

1 counting room in the basement, or he used the counting room  
2 for his office. So of course he's not familiar with the  
3 comings and goings of the defendant in the southeast  
4 office, the place with the glass door. He couldn't help  
5 you at all with that. He couldn't provide you any helpful  
6 information other than to say he doesn't know.

7 Father Biron admits that while they found some checks  
8 paying Tom Grover in 1986 and '87 from rectory funds, they  
9 went through boxes and boxes of checks and they could have  
10 missed some. It's possible, but he also admitted that it  
11 was possible that Tom could have been paid out of petty  
12 cash in the rectory or could have been paid by funds out of  
13 the defendant's pocket for work done in the premises.  
14 Nothing Father Biron says refutes any of that. And he also  
15 notes that 1981 through '87, he wasn't there. That, of  
16 course, is during the time period when these crimes are  
17 alleged.

18 Father Rochefort was interesting. He says the  
19 defendant bought a marble chess set in 1986 on a trip to  
20 Bar Harbor and then maybe the next year, the year after, he  
21 bought a piece, or something like that, perhaps to go with  
22 that set or replace a lost piece. But nowhere did Father  
23 Rochefort indicate that that set that was purchased in 1986

1 in Bar Harbor, nowhere did he indicate that that set was or  
2 was not the one in the southwest office or the southeast  
3 office of the rectory. Didn't say it. The defendant wants  
4 you to make that link but you can't make the link if  
5 there's no evidence to say it's one or the other. A  
6 completely plausible explanation could be someone could  
7 have admired a chess set, marble chess set in the  
8 defendant's office sometime in '83, '84, '85, and because  
9 of that the defendant bought somebody a chess set like the  
10 one he had. We don't know that that happened but that is a  
11 perfectly plausible explanation because there is no  
12 evidence connecting that 1986 purchase to the chess set to  
13 the office at any time. It's non existent. We know a set  
14 was purchased, if you accept what Mr. Rochefort said, but  
15 we don't know it ever got to the rectory.

16 Jon Grover testified that the Marlborough chess set was  
17 in the office the entire time the defendant was on the  
18 premises. The defendant came there, it is uncontested, on  
19 June 15th, 1983 and he was there until 1987. It's not  
20 contested. David Grover had contact with the office or  
21 offices in 1983, from about the time he got out of high  
22 school until he joined the army in 1984. The chess set was  
23 there when he left for the army in 1984. Rochefort

1 attempts to imply that a visit with Chris Grover having to  
2 do with the Air Force put him going to Montreal with Father  
3 MacRae and Father Rochefort, obviously trying to get you to  
4 imply that Tom is way off in terms of years of taking Chris  
5 to the airport, trying to imply it. Nobody ever said that,  
6 but Pat Grover indicates that Chris Grover went into the  
7 air force in 1981 on his adoption day, which is a special  
8 day for them in the Grover family, and he was in the air  
9 force for over ten years so he could easily have come back  
10 on leave any number of times and on one of those occasions,  
11 goes to Montreal with the defendant and Rochefort, being a  
12 friend of the defendant during a good portion of that  
13 period from 1981--. Well, all that period beginning in  
14 1981 on until about 1987 or '88. They want you to imply  
15 that but they don't provide you with sufficient materials  
16 to support the implication that they want from you. Beware  
17 of trickery.

18 I talked as I started about the quality of the  
19 defendant's witnesses on the stand. Those are people who  
20 came in with great certainty to blow smoke, and very  
21 quickly under cross-examination that smoke was blown away.  
22 They don't help the defendant's case, none of the  
23 witnesses.

1           You might recall from your view of the rectory that  
2           this hallway, this hallway which connects the southeast  
3           office down toward the southwest office, this hallway is  
4           wooden. It's a wooden floor. When you were in there you  
5           were on the wooden floor. This is tile; this is wooden  
6           (indicating). Someone walking down the hallway could  
7           potentially be heard creaking in either of these two  
8           offices. You'll remember there's a small door in the  
9           southwest office in that area that opens directly onto that  
10          hallway.

11          The Judge will read you in his instructions, and you'll  
12          get copies of that during your deliberations, "Bear in mind  
13          that the testimony of a victim is not required to be  
14          corroborated in prosecutions for sexual assault cases. As  
15          a matter of law, if you believe Tom Grover, you need not  
16          have corroboration of anything. You can find the defendant  
17          guilty beyond a reasonable doubt based solely upon Tom  
18          Grover's word." That's the law of this state.

19          The defendant's cross-examination of Robert Upton would  
20          indicate that a person who has been a lawyer in one of the  
21          most respected firms in the State of New Hampshire since  
22          1968 would put his professional livelihood at risk by  
23          bringing a false civil suit. Think about that. Think

1 about that. One of best lawyers in the state would put his  
2 livelihood at risk, his profession at risk, what he does on  
3 a day-to-day basis, by bringing a false suit. Now, a  
4 reasonable explanation by a reasonable lawyer about waiting  
5 too long to file suit is to do just what the lawyer did, to  
6 engage the Catholic Church in conversation with the hopes  
7 of getting some money to pay for the counseling that Tom  
8 Grover desperately needs. Didn't run to the courthouse.  
9 Didn't file suit immediately. He waited, tried to work it  
10 out, tried to schmooze with the Church, which evidently was  
11 not having any of it, and then with the statute of  
12 limitations running and the time limitations for filing a  
13 suit about to run out, Rob Upton files the suit. He did  
14 what any good lawyer would do.

15 This case is about faith and it's about loss of faith.  
16 It's about power and it's about the abuse of power. It's  
17 about a sacred trust and it's about a rape of that sacred  
18 trust. Remember Tom Grover's background. Tom Grover was a  
19 devout Catholic, devout Catholic kid raised in a devout  
20 Catholic family. Now, all of us in this room may differ  
21 about our religions and may differ about how tenaciously we  
22 hold on to our personal faiths but there are people in the  
23 world, and you've met them, all of you, who cling to their



1       faith as their ballast and their life, and devout Catholics  
2       do that. Catholics who leave the Church and come back  
3       years later, come back for the peace that the Church can  
4       give them because they know holy Mother Church will be  
5       there for them in the guise of a priest.

6               Holy Mother Church was not there for Tom Grover in the  
7       guise of a priest. So in spite of being taught to revere  
8       priests and the Church beyond all parallel being raised in  
9       that family, in spite of that, Tom was molested. As Pat  
10      Grover told you when she testified on the stand, how he was  
11      taught to feel about priests. Priests are chosen by God.  
12      One doesn't simply become a priest in the eyes of the  
13      family in which Tom Grover was raised. It was imbued in  
14      Tom from the get-go in that family, from the age of one  
15      year on, that priests are holy people and they are chosen  
16      by God Almighty to do the work that they do and it makes no  
17      difference what the color of your collar is, it makes  
18      absolutely no difference if the priest wears Levis from  
19      time to time. That person who takes holy orders and who is  
20      going to take holy orders is sanctified by God in the eyes  
21      of the Grover family, in the eyes of a ten year old boy who  
22      gave up Christmas morning to serve Mass with the Bishop of  
23      the Diocese of New Hampshire. Now I've never met I think a

1       ten year old in my life who was willing to give up  
2       Christmas morning. They're very few and far between, but  
3       it certainly shows you the depth of his faith and his  
4       commitment to the Church in which he was brought up, the  
5       depth of commitment enforced by his family, enforced by his  
6       mother.

7               Mr. Koch is very big on talking about logic. Logic is  
8       part of what you will be doing here. You are trying to be  
9       applying logic to the evidence and determine what the facts  
10      are. But the human experience is more than logic. It's  
11      also about common sense. It's about things that we know as  
12      well as things that we perceive. Faith is not something  
13      that you can look at. Faith is not something that you can  
14      hold in your hand. Nonetheless, it exists and it exists to  
15      give people comfort. It existed in the Grover family. It  
16      existed in the souls of those family members and it existed  
17      at one time in Tom Grover.

18             Sure, hindsight is 20-20. We can all sit back and say,  
19      "Oh my God, if we'd only known. If we'd only known what  
20      the defendant was going to do, then Tom wouldn't have gone  
21      to the rectory," you know. Now as an adult, Tom would not  
22      have gone to the rectory. When he was 15--. Keep in mind  
23      throughout this whole proceeding here the Tom Grover that

1       you saw on the stand and the Tom Grover who sits back there  
2       in that courtroom is not the person who was sexually  
3       abused. The Tom Grover that you saw is the result of the  
4       person who was sexually abused by the defendant. He was 15  
5       years old. He was not a man. He was a boy. He was  
6       dependent on his mother. He was dependent ultimately on  
7       Father MacRae for his support and for his safety.

8       This case, most of all, is about perceptions. Not  
9       about what we want to believe but about the perceptions or  
10      perhaps about what Tom Grover and his family wanted to  
11      believe back in 1983 and before. The only way you can  
12      effectively judge Tom's credibility on that stand in this  
13      courtroom is by putting your mindset in a position to think  
14      back of what it's like for a 15 year old.

15      Now as adults we spend our entire lives trying to get  
16      away from childhood. Dr. Fleischer spoke about this, that  
17      as we grow up, we learn to differentiate, we learn to  
18      individualize, we learn to become individual people. But  
19      15 year olds don't know how to do that yet. That's one of  
20      the reasons they cannot consent legally to sex with an  
21      adult, because we know that most 15 year olds don't have  
22      the ability to do that. They are not fully formed as  
23      thinking people in the adult sense of the term. They

1 understand logic but they're not very good with  
2 consequences. How many teenagers do you have to know to  
3 realize that kids may understand the abstract ideal but  
4 when it comes to the practical effect when 13 or 14 or 15  
5 of carrying out those things, it's difficult for  
6 teenagers. They are not fully formed yet as moral  
7 critters. They are not fully formed yet as adult thinking  
8 creatures the way you all behave.

9 I had a conversation with a woman recently who was very  
10 specific. She had to have a date, had to have a date, even  
11 an 11 year old date, in order to be able to believe a  
12 victim in a case. Without a date, how could we do that?  
13 Why wouldn't the victim know a date? Well, I'll tell you  
14 why. I asked her, I said, "Take yourself back to when you  
15 were 15 years old. Give me a memory from when you were 15  
16 years old, something that you did." And her response was,  
17 "My dad taught me to drive a car at the age of 15. He  
18 would take me out driving." "Aha," I said, "Give me a  
19 date." She couldn't. Now she knows damn well she drove  
20 many times when she was 15. It's a fact. But she couldn't  
21 sit there at the age of 40, or whatever it was, and look  
22 back and give a specific date when she drove that car with  
23 her dad when she was 15 years old, even though she'd done

1       it several times. As everybody knows, you don't learn to  
2       drive a car one time only. And dates are not an element of  
3       this offense, so don't be surprised that your heard no  
4       dates here other than a ballpark figure.

5       If you're going to make an effective judgment of Tom  
6       Grover's testimony on that stand, I suggest you look at Dr.  
7       Fleischer's testimony and you look at the parallels to be  
8       drawn between Dr. Fleischer's testimony and Tom Grover's  
9       testimony. As you might expect, I have some modest  
10      examples here. The first thing is, is kids don't disclose  
11      abuse for years, if they do at all, and males are more  
12      reluctant to disclose. That's what Dr. Fleischer said. He  
13      said that's a given in their profession. That's just the  
14      way it is. And he went into lots of reasons for that but  
15      that's a given. Kids don't disclose and if they do, a  
16      minority of kids do and only very reluctantly.

17      Well, what's the parallel? Tom, like every other kid  
18      almost, didn't disclose the abuse for years. Didn't  
19      disclose it to anybody. Some of the things that work  
20      against disclosure is, as Fleischer said, the dependency of  
21      the kids on their abuser and the amount of authority the  
22      abuser has over the kid and the restrictions that that  
23      places on the child's ability to disclose. Because of

1 Tom's upbringing, because of what Tom is as a human being  
2 brought up in Marlborough and then Keene, New Hampshire,  
3 there was no more authoritative figure in his life than the  
4 man who sits there between his two lawyers. He was not  
5 just a priest; he was a father substitute, he was a friend  
6 of the family, and he was a person Tom, being no dullard, a  
7 person that Tom's mother, who he loved very much, insisted  
8 that Tom engage with, insisted that Tom--. Tom knew what  
9 the understanding was. He knew that he was to have contact  
10 with this individual and he knew how disappointed his  
11 mother would be if he didn't spend the time with Gordon  
12 MacRae. He would let his mother down who he loves dearly  
13 if he didn't spend the time with Gordon MacRae.

14 Dr. Fleischer said the closer the child is to the  
15 abuser, the harder it is for the victim to disclose. From  
16 1983 on, the defendant basically did everything he could to  
17 become Tom Grover's absolute authority figure, his closest  
18 being in the world, and he worked on that and he worked on  
19 that and he worked on that. Tom's only control in this  
20 situation as a 15 year old boy was to go along with the  
21 abuse. That's an illusory control, and you know that. It  
22 was the defendant who had all the control, not Tom. And  
23 remember what it was about here.

1           As Dr. Fleischer pointed out, except for sex there are  
2 lots of good things that happen in an abusive  
3 relationship. And what happened with Tom? Except for the  
4 sex, Tom was taken places, to movies, out to eat, he was  
5 given small sums of money, and he was permitted to be seen  
6 in the company of the most authoritative figure Tom had  
7 ever known, his surrogate father, his priest. Think to  
8 when Tom was 15 years of age. Think of what it would have  
9 done to his mother had he disclosed the sexual abuse.  
10 Think of the response of his mother. And think if Tom would  
11 be capable of dealing with that at age 15. Obviously he  
12 couldn't. He can barely deal with it now as he sits there  
13 on that stand. Disclosure would hurt Tom's mother and Tom,  
14 as he could, as best he could as a 15 year old, was someone  
15 who tried to protect his mother. Tom is not a forthcoming  
16 kid, never had been. He's more close to the vest than  
17 other members of the family.

18           If you have any question at all about the impact of  
19 Gordon MacRae on the Grover family and upon Tom, you need  
20 but to look at these two exhibits, these two photographs I  
21 hold in my hand. Thanksgiving 1983, there's Tom in the  
22 front row. At the head of the table, the position of the  
23 utmost respect that Thanksgiving that year sits Gordon

1 MacRae. The next year, Thanksgiving '84, different house,  
2 Gordon MacRae, again head of the table. The supreme  
3 position of authority. That's where he is. That's what he  
4 was. And the closer Tom got to him, the farther Tom got  
5 away from his family and the farther Tom got away from  
6 being able to disclose. Ultimately and probably very  
7 quickly there was simply no one left to tell for Tom. It  
8 wasn't safe to disclose to anyone.

9 Finally perhaps in a position of being at wit's end, in  
10 a private conference with Deborah Collett, he discloses,  
11 and what happened? What happened? Well, I've kind of put  
12 a separate section in my notation here for Deborah Collett  
13 because I think that witness was so bizarrely remarkable  
14 she deserves special and honorable mention. Well, perhaps  
15 not honorable mention.

16 What about her credibility? Well, first the defendant  
17 sent her the police reports concerning Tom's disclosure  
18 about Derby Lodge. Second, after she's got them, then the  
19 police, unbeknownst to them, go up and interview her. So  
20 she knows what the issues are when she's up there, when the  
21 police are up there. To the police, she said only one  
22 abuser, a clergyman. Doesn't identify him. That's what  
23 she tells the police. That's what's in that transcript,



1 portions of which were read to you. She testified at trial  
2 that there was some other abuser, a foster parent or  
3 something like that. Well, there is no evidence anywhere  
4 else in this case at all that Tom ever could have had a  
5 foster parent beyond the age of one year and I don't know  
6 about you guys, but I don't remember a whole lot from the  
7 time I was one. Most people don't remember a whole lot  
8 from the time they're one. Active memory doesn't begin  
9 until around the age of three or so. So she pulls that  
10 out. Either she pulls it out of air for your listening  
11 pleasure here in the courtroom. Her excuse for the  
12 difference was, this was fascinating, dinner was going to  
13 be late. "Gosh, I didn't tell, I said he was abused, he  
14 was abused by a clergyman. I didn't say he was abused by a  
15 clergyman and a foster parent because I was upset about  
16 dinner." Well, you saw the performance. You saw there was  
17 not the most balanced human being, I think, who has ever  
18 walked into a courtroom.

19 Collett says, and this is the bizarre thing and I  
20 watched, I watched your faces part of the time she was  
21 testifying and I saw some of your faces when she said that  
22 people basically don't medicate themselves with booze and  
23 drugs to cover up traumatic events in their lives. What in

1 the world happened to all those Bob Newhart shows when he  
2 walks in and Emily is standing there and he walks over to  
3 the liquor cabinet and says, "I've had a rough day. I need  
4 a drink"? That's self-medication because Bob Newhart had a  
5 rough day. Self-medication to cover the trauma of child  
6 abuse isn't a one drink or a one day occurrence. It goes  
7 on in your mind and on and on and on. It doesn't stop. It  
8 doesn't let up. It continues. It is part of you.  
9 Collett's comment is preposterous. It was rubbish. For  
10 some reason or another, Collett is a liar. When she got up  
11 there, the way she behaved on the stand demonstrates that  
12 she is not a believable human being. There was no  
13 disclosure in group therapy.

14 You heard Dr. Fleischer. He's done work with  
15 alcoholics at Beech Hill. Virtually a hundred percent of  
16 female patients up there had sexual abuse in their  
17 background. 70 to 80 percent of the male patients,  
18 alcoholics, had sexual abuse in the background. And when  
19 those people disclosed at Beech Hill, they disclosed in  
20 private one-on-one sessions, not in front of groups. Never  
21 in front of groups. Doesn't happen, and it didn't happened  
22 in a group with Deborah Collett involved. Remember that  
23 Tom was referred to Derby Lodge by Moe Rochefort, the

1       defendant's friend. He is still the defendant's friend.  
2       He's the one who gave you the spurious testimony about that  
3       chess set suggesting, but never coming right out and  
4       saying, that that presumably is the one that was seen in  
5       the office. Couldn't go that far. Why? Because they  
6       couldn't prove it.

7               When you look at Collett's testimony and you think of  
8       the threats that Gordon made to withdraw his support from  
9       Tom Grover, to indicate that no one will believe him if you  
10      come out and tell and to threaten him with violence,  
11      remember, we don't know when Collett told Gordon MacRae  
12      that the sexual abuse had been disclosed. Gordon MacRae  
13      didn't take Tom back from Derby Lodge, he took a bus and  
14      then his father picked him up. It is perfectly reasonable  
15      that as soon as that disclosure was made, perhaps as much  
16      as six months later, a disclosure to Gordon MacRae, that he  
17      very rapidly made those threats necessary to keep Tom  
18      quiet. One of the reasons kids don't disclose is out of  
19      fear. I asked Tom Grover on the stand how he felt about  
20      the defendant and he indicated that he feared him, he was  
21      terrified of him. He sat there and he was terrified. Dr.  
22      Fleischer talked about a 30 year old sexual abuse victim  
23      who was still terrified by his 70 year old molester. This

1 is baggage that child victims carry from their childhood.  
2 It is not a rational fear. Tom could probably break this  
3 guy in half right now at the age of 26. We're not dealing  
4 with a rational fear here. You are dealing with a fear  
5 that has been inculcated into the very fiber of Tom  
6 Grover's being and so he carries it with him even as an  
7 adult and as an adult, he needs the counseling, he needs  
8 the therapy to make things right for him. He needs to try  
9 to become a whole person and he needs counseling probably  
10 for years to get there.

11 Keep in mind that males are more vulnerable than  
12 girls. When males are children, we give them more freedom  
13 than girls. We shouldn't but we do because it doesn't  
14 occur to us as much that males can be victims of sexual  
15 abuse as girls do. It's about victimization and we've got  
16 a cultural bias against believing that males are sexually  
17 lie abused. You need just to suspend that cultural bias.  
18 To look at this case fairly, you need to realize that  
19 pedophiles prey on kids because they like sex with kids,  
20 not because of the gender of the kid. When somebody preys,  
21 when a male preys on a 15 year old or a 12 year old girl,  
22 we don't say it's a bloody heterosexual. So why do we say,  
23 when a male preys on a 14 or 15 boy, he's a homosexual?

1       It's not about homosexuality. It's not about gender. It's  
2       about child abuse. It's about child molestation.

3       Tom is ultimately an example of one of the most  
4       vulnerable people that you will ever see, the victim of  
5       child abuse. Tom is a classic case. Molested at an early  
6       age, 1979. '81, '82, '83, he attempts to hide his pain by  
7       resorting to alcohol and drugs which he discovers as he's  
8       growing up. First time he took a drink, it wasn't to cover  
9       up; it was experimentation. All kids experiment with  
10      booze, or almost all, when they're young. Some of them  
11      start drinking at the age of 13, 14. Tom was a little  
12      younger but he had some older brothers and turned him on to  
13      the bottle. But it was years, as booze became available,  
14      years later when he became dependent on it, when he became  
15      dependent on the bottle, dependent on mind-altering  
16      substances. And why did he become dependent on  
17      mind-altering substances? To deaden the pain and the  
18      confusion that results from being victimized by the person  
19      you are closest to. What kind of baggage is that for a 14  
20      year old or 15 year old kid to carry?

21      Dr. Fleischer testified that one of the things that  
22      alcohol does, that drugs do, is it suspends your emotional  
23      development. It stops you dead. When Tom was in a

1 position where he should be growing up, where he should be  
2 learning how to think like an adult, where he should be  
3 learning how to differentiate between kid values and adult  
4 values, he was drinking, and drinking heavily. What did  
5 Dr. Fleischer say about what sexual abuse does with kids?  
6 It halts their emotional development. It prevents them  
7 from maintaining and developing a healthy sense of self.  
8 Tom had a double whammy. The very things he used to  
9 medicate himself, the alcohol, lowered his self-esteem and  
10 also kept him on hold in terms of development through his  
11 adolescent period, just like the sex abuse did. He's the  
12 ultimate perfect victim. He had no place to turn. Zip.  
13 The bottle compounded the sex abuse which compounded the  
14 bottle which compounded Tom Grover's life perhaps  
15 irreparably. Nature of the experience.

16 Dr. Fleischer testified that there's this thing called  
17 dissociation when you're in a very traumatic or  
18 life-threatening event. That you're kind of outside  
19 yourself watching the trauma happen. You don't pick out  
20 all the details, yet you remember the event. He said a  
21 life-threatening event like a car accident, and I asked him  
22 further, I said, "How is sex abuse perceived?" Well, if  
23 we're to look at the damage to Tom Grover, then you've got

1 to conclude that in terms of his emotional life, his sense  
2 of self, this molestation was a life-threatening injury,  
3 not in the physical sense but in the emotional sense, in  
4 the sense he needs to get up in the morning and do all  
5 those things that people do when they get up in the  
6 morning, go to work, express love for other people, all  
7 those sorts of things. Tom needs that but doesn't have  
8 it. He doesn't have that portion of his life because it's  
9 been taken away by that man. Now, the dissociation shows  
10 the extremeness to which the emotional damage is that Tom  
11 has suffered. And no wonder when he went out to California  
12 he was thinking his life was over and he'd reached bottom  
13 and he was going to kill himself out there away from his  
14 family because he had no place else to go, nothing left to  
15 do.

16 Mr. Koch harps on the idea that, geez, he's missing  
17 lots of details and he's confused. I submit to you that  
18 that wasn't confusion in terms of disclosing. Fleischer  
19 and Detective McLaughlin, who has interviewed over a  
20 thousand victims of child sexual abuse, over a thousand,  
21 Fleischer and McLaughlin both tell you that disclosure is a  
22 process, not an event. You don't snap your fingers and  
23 immediately remember, regurgitate everything that happened

1 to you in a traumatic event like child abuse. It comes out  
2 over time. McLaughlin interviews Tom March 23rd of 1993.  
3 Indictment returned in April of 1983 (sic). When Tom  
4 Grover finally sits down prior to trial to discuss the  
5 abuse and provide those details that he provided to you on  
6 the stand, he'd had a year and a half to try to pull those  
7 bits and pieces together. Each and every time he spoke  
8 with someone he was able to provide a little more detail  
9 than the time before. A little more detail about these  
10 highly traumatizing events in his life. He's able as he  
11 can to come forward a bit or two at a time. He can't come  
12 forward all at once because it's too painful for him to  
13 come forward all at once. And remember, he was an  
14 alcoholic for years, still is an alcoholic, but on the  
15 bottle for years. Dr. Fleischer says one of the things  
16 that alcohol and substance abuse does is it plays tricks  
17 with the memory in terms of you can't remember as much.  
18 Once you get off the bottle, more stuff comes out.

19 In short, Tom found a way to accommodate his sexual  
20 abuse and that was through drugs. He found a way to get  
21 through his day-to-day existence by drinking because  
22 drinking dulls the pain just as when Bob Newhart comes home  
23 and says, "Emily, I need a drink." But the pain was so



1 great that he didn't need just one drink, he needed drink  
2 after drink after drink, day after day after day. He  
3 needed to block it out of his mind by doing something that  
4 was pleasurable, by drinking.

5 When Tom Grover took the stand, you saw a man  
6 absolutely devoid of self-esteem, absolutely devoid of  
7 self-respect. It wasn't there. He doesn't have it. He  
8 hasn't been able to grow into it. It's been taken from him  
9 by the sex abuse and by his attempts to drink it away,  
10 drink the pain away. What you saw was a person who was  
11 angry but where was his anger directed? It was anger  
12 directed at self-contempt. Tom is the person who holds  
13 himself in contempt. He is blaming himself for his  
14 victimization. Why didn't he know when he was 15? Why  
15 didn't he do something? Why, for God's sake? When the  
16 defendant was fellating him on one occasion, as he said,  
17 and he wept in front of you, he felt pleasure and it  
18 confused him. That young man was in anguish on that stand  
19 because he was describing to you things that happened to  
20 his person. Tom as an adult is still trying to place  
21 responsibility for these actions on himself as a 15 year  
22 old, and Mr. Koch is trying to get you to place the  
23 responsibility on Tom for what happened to him as a 15 year

1 old. Mr. Koch is suggesting to you this guy is nothing but  
2 a drunk, and a greedy drunk to boot, and Tom is the cause  
3 of all his problems.

4 Well, Tom never said the defendant was responsible for  
5 all his problems and he never said the defendant was all  
6 bad or all good. When the defendant saved the life of Tom  
7 Grover's younger brother, the defendant was very, very good  
8 indeed, and also became very, very trusted by the family.  
9 That was an act of selflessness. He didn't have to come  
10 forward and save that little boy's life, but he did. The  
11 defendant in this case is not Adolph Hitler and even Hitler  
12 liked children and dogs. Not Jewish children. So there's  
13 good and bad in everyone, just like there can be criminals  
14 and decent people in everyone.

15 But what we're here today for is because of the  
16 criminal in Gordon MacRae. That's why we're here today,  
17 for those things that he did, and he attempts to blame Tom  
18 for many of the problems that he has caused. He attempts  
19 to blame Tom for Tom's self-medicating to dull the pain of  
20 the abuse. He attempts to make Tom responsible for what he  
21 is truthfully responsible for. So when you judge Tom's  
22 credibility, when you judge him sitting there on that  
23 stand, if he's got credibility problems, who created the

1       credibility problems? Who created the lapses in Tom's  
2       memory? Who created the delay in disclosure? Who played  
3       the good cop, giving him money that enabled him to buy  
4       booze when he told Tom's mother don't give him money, it  
5       just enables him? Mom was bad cop at the behest of the  
6       defendant. It was the defendant who created the problems  
7       that the defendant would now have you use to deny Tom the  
8       credibility he must have as a victim. It is the defendant  
9       who created this vicious cycle, not Tom Grover.

10       Keep in mind, with regard to specificity, when those  
11       indictments were returned last April, they did not say and  
12       it is not an element of these offenses that the assaults  
13       occurred in the defendant's rectory office. The  
14       indictments read, "In a rectory office." There's no  
15       possessory interest here in that sort of thing.

16       I am very nearly finished. Mr. Koch talked about Dr.  
17       Fleischer's opinion and why didn't he spend his time  
18       talking with Tom and why didn't he analyze Tom and all that  
19       sort of stuff. And if Dr. Fleischer had spent that time  
20       with Tom and gone through all those psychological workups  
21       and everything else, isn't it Mr. Koch who would be saying,  
22       "Well, it was the Doctor who put words in his mouth,"  
23       trying to have it both ways? Now the impact and the

1 strength of Dr. Fleischer's testimony for you to use it in  
2 assessing the credibility of Tom Grover is that Fleischer  
3 has never met Tom Grover. He doesn't know Tom Grover.  
4 He's never talked with him, never been with him, and yet  
5 this educated professional with years of experiences and  
6 education, training, and dealing with adult victims and  
7 child victims of sexual abuse, gave you pretty well  
8 verbatim the scientific or the professional explanations of  
9 what people in his profession recognize as being symptoms  
10 of people with child abuse.

11 Keep in mind also, Mr. Koch indicated well, why didn't  
12 they call him to prove the sexual abuse? Well, I'll tell  
13 you why. The law in this state prohibits us from using a  
14 doctor or psychologist to testify that a person has been  
15 sexually abused. You can't do it under the laws of this  
16 state because of a Supreme Court decision on that. That's  
17 why Dr. Fleischer didn't exam Tom. That's why Dr.  
18 Fleischer had no contact with him. Because he would not  
19 have been permitted in court to testify that Tom was  
20 sexually abused, he wasn't asked to testify to that. He  
21 didn't testify to that. That was why. What he told you,  
22 what he as a professional recognizes in general terms, and  
23 now I ask you to take what the professional has recognized

1 and I ask you to put that, to overlay that, to lay that  
2 over the testimony of Tom Grover as you think about his  
3 testimony.

4 I'm happy for Mr. Koch that when he cries, he's able to  
5 do it outwardly and he's able to sob and make lots of noise  
6 and go into hysterics. I'm happy for him. But we're all  
7 different human beings and we're all different people and  
8 we all have vastly different baggage, some more than many  
9 others. And Tom's a quiet kid and if he sits there as he  
10 talks to you and hyperventilates throughout his testimony  
11 on direct and sobs quietly, well, then perhaps that was Tom  
12 Grover's way of being absolutely gut-wrenching miserable.  
13 Maybe not your way, maybe not my way, certainly not Mr.  
14 Koch's way, but just maybe that Tom Grover, that's the way  
15 he does it. And the explanation that he provided is that  
16 he'd been medicating himself for some years, that he just  
17 wanted to stop so that you people would hear that from him,  
18 so that you could see what had been done to him, so that  
19 you could see the pain and you could see that sense of  
20 anguish that he carries with him.

21 Ask yourselves if anyone would put himself through that  
22 kind of display and that kind of cross-examination for six  
23 days, a good portion of the six days, just for money. Tom

1 Grover was here because he has a need. He has a need that  
2 only you people can perform. His first need was to tell  
3 you, get it off his chest for the first time in his life.  
4 His next need is to see that you folks do justice.

5 I forgot to mention, thank Mr. Gainor for this, that  
6 Father Dupuis and Father Biron both testified concerning  
7 the expectation of privacy in those church offices, those  
8 rectory offices. In general, doors were closed. Those  
9 things were used, those places were used for counseling and  
10 the priests sanctified the privacy and allowed other  
11 offices to be used as need be. Biron himself said if he  
12 found a door closed, he wouldn't knock on the door even,  
13 he'd make a telephone call from someplace else to see if he  
14 was disturbing somebody. So there doesn't even need to be  
15 a lock on the door. If it's closed, that's sufficient  
16 because that's the guarantee of privacy in that building.

17 Kathy Hall provided access and opportunity to the  
18 defendant. She took him to that rectory many times  
19 beginning in the summer of 1983, and continued to do that  
20 for some time. She corroborates that.

21 I remind you as you think about the evidence in this  
22 case, to think once again about the appearance of Tom  
23 Grover on that stand in direct testimony when he was not

1        medicated and then Thursday afternoon as it got to be late  
2        and Tom continued to testify under the relentless  
3        cross-examination of Mr. Koch and the drugs began to wear  
4        off and before the Judge dismissed us that day, you saw  
5        that slow change taking place in Tom. He's losing control  
6        again. He's losing control because the drug is wearing  
7        off. He is going back. He had revisited what that man did  
8        to him in a Catholic church rectory.

9        What you saw here was genuine pain. What you saw here  
10       was genuine anguish. This man bared his soul before you  
11       people to talk about what that criminal defendant did to  
12       him and it is this man, Tom Grover, who comes to you and  
13       asks for justice. He comes to you and asks you to find the  
14       defendant guilty beyond a reasonable doubt of each of these  
15       charges. That way you will do justice and that way Tom  
16       Grover can begin to begin to have the peace that has been  
17       denied him for some years. I ask you to give Tom Grover  
18       peace. I ask you to listen, to look at what happened to  
19       his life through the eyes of the 15 year old boy he once  
20       was, the child who was victimized. I ask you please find  
21       the defendant guilty beyond a reasonable doubt. Find him  
22       guilty. Thank you.

23       THE COURT:       Thank you, Attorney Reynolds. Ladies and

1 gentlemen of the jury, I'm going to pass out these jury  
2 instructions for you, unless you want to have a break now.  
3 Otherwise we will go ahead and start. Is there anyone that  
4 needs a break? Okay.

5 (Documents passed to the jury)

6 Before I begin the instructions, you can either read  
7 along with me or you can not read along with me, whatever  
8 you want to do, and you can take these instructions, of  
9 course, with you when you go down to deliberate and work  
10 with each other using the instructions.

11 Now, I want to explain what we're going to do here  
12 after I give the instructions. I have a cup here with 15  
13 names, 15 numbers. The first number I pick is going to be  
14 the foreperson of the jury and the next three numbers that  
15 I pick will be the alternates. The alternates will not go  
16 down and deliberate with the other members of the jury and  
17 they cannot deliberate with themselves about the case.  
18 Don't discuss the case or anything, if you happen to be an  
19 alternate. But if something happens during deliberations,  
20 and sometimes deliberations can take a period of days, and  
21 someone is injured or becomes ill or for some reason cannot  
22 continue to deliberate, then the alternate, an alternate  
23 will be picked by lot to go down and you will begin



1 deliberations again and eventually reach a verdict. It is  
2 essential that the alternates and, of course, all of the  
3 jurors stick to the rules we've established; that is, that  
4 you not discuss anything about the case with anybody else  
5 outside of here and that you only discuss the case among  
6 yourselves, among the deliberating jurors.

7 One point of law. It is true that an expert such as  
8 Dr. Fleischer cannot give an opinion as to whether or not a  
9 person is a victim of a sexual assault to the jury. That  
10 is the law. It is only the jurors that can decide whether  
11 or not the person is a victim and no expert is allowed in  
12 court to express an opinion as to whether or not the person  
13 is a victim. Now we will begin the instructions.

14 Members of the jury, the evidence and the arguments in  
15 this case have been completed. Now I will instruct you on  
16 the law that applies to this case. Then you will retire to  
17 decide a verdict in the case.

18 As you have been instructed earlier, in order to reach  
19 a verdict in this case, whether your verdict is guilty or  
20 not guilty, it must be unanimous. In order to reach a fair  
21 and just verdict, you must understand and follow the law as  
22 I explain it to you. For example, you must understand the  
23 definition of the crimes with which the defendant is

1 charged. You must understand how convinced one way or the  
2 other you should be before you reach a verdict. You must  
3 understand what to consider in order to decide whether or  
4 not to believe a particular witness. These instructions  
5 will explain the law as to these and other matters so that  
6 you can arrive at a just verdict.

7 It is your duty as jurors to follow all of the  
8 instructions I'm about to give you. Regardless of any  
9 opinion you may have as to what the law is or ought to be,  
10 the law as I explain it to you is the law that you must  
11 follow in reaching your verdict.

12 It is up to you to decide the facts in this case. You  
13 must decide the facts solely from the evidence that has  
14 been presented in this trial. You must apply the law I  
15 give you in these instructions to the facts as you find  
16 them and in that way reach a fair and just verdict.

17 You should decide the facts in this case without  
18 prejudice, without fear, and without sympathy. You should  
19 decide this case based solely on the evidence presented and  
20 the law as I explain it to you.

21 Before this trial began, I was asked to give permission  
22 for cameras to be used during the trial and I did indeed  
23 permit cameras during the trial. The fact that there are

1 cameras present during this particular trial does not make  
2 this trial any more important than any other trial. All  
3 criminal trials are equally important to each defendant and  
4 to the community. You should not draw any inferences or  
5 any conclusions from the fact that during this trial  
6 cameras are present.

7 Indictments are not evidence. The fact that the  
8 defendant has been arrested and indicted is not evidence of  
9 guilt. The indictments are simply a way of giving the  
10 defendant notice of the charges against him. Indictments  
11 are simply a formal way of accusing the defendant of the  
12 crimes in order to bring him to trial. You must not  
13 consider the indictments as evidence of his guilt.

14 Punishment is not relevant. The possible punishment if  
15 you render a verdict of guilty should not influence your  
16 decision. The duty of issuing a sentence is for the  
17 judge. You should consider the evidence presented and base  
18 your verdict only on the evidence without considering the  
19 issue of punishment.

20 Lawyers' statements are not evidence. Follow your own  
21 memory. You have heard the lawyers argue the facts and the  
22 law in their final arguments to you. These arguments, as  
23 well as the preview statements, the comments at the view

1 and the opening statements, are not evidence. Their  
2 purpose is to help you to understand the evidence and the  
3 law. If the lawyers have stated the law differently from  
4 the law as I explain it to you, then you must follow my  
5 instructions and disregard the statements of the lawyers.  
6 If the lawyers have stated the evidence differently from  
7 the way in which you recall it, then you should follow your  
8 own memory of the evidence.

9 Evidence in the case. During your deliberations, you  
10 should consider only the evidence in the case. The  
11 evidence consists of the testimony under oath of the  
12 witnesses, the exhibits which have been admitted into  
13 evidence, the view and the stipulations regarding certain  
14 facts.

15 Election of the defendant not to testify. A person  
16 accused of a crime has an absolute right not to take the  
17 witness stand to testify. The fact that the defendant did  
18 not testify must not be considered by you in any way in  
19 deciding this case. The burden of proof is on the State to  
20 prove the defendant guilty beyond a reasonable doubt. The  
21 defendant has no obligation to present any evidence or  
22 prove his innocence.

23 Stipulations. A stipulation is evidence. It is an

1       agreement between the prosecution and the defense that  
2       certain facts are true. You must accept these facts as  
3       true. In this case, it has been stipulated that Thomas A.  
4       Grover and Gordon J. MacRae were never legally married  
5       spouses and that Thomas A. Grover's dates of birth is  
6       November 18th, 1967.

7               Judge decides the admissibility of evidence.  
8       Testimony, writings, objects, and other things presented  
9       during the trial are evidence only if the judge accepts  
10      them as evidence. As you know, throughout the trial I  
11      ruled on whether certain evidence was admissible or not  
12      admissible. These were legal decisions which do not  
13      concern you, because it is the responsibility of the judge  
14      to determine the admissibility of the evidence.

15             During the trial, the lawyers made objections. The  
16      lawyers are supposed to object when they believe that  
17      certain evidence is not admissible. If I sustained an  
18      objection or excluded any evidence, you must not guess as  
19      to what the answer or evidence would have been. If I  
20      ordered that a question and answer be stricken from the  
21      record, you are to ignore this information and must not  
22      consider either the question or the answer as evidence. In  
23      addition, if I allowed some information to be entered as

1 evidence after hearing objections by one of the lawyers,  
2 you are not to give such evidence any special importance as  
3 a result of my ruling. It is not my duty and I certainly  
4 did not try to determine whether evidence was important or  
5 significant when I made my rulings regarding admissibility.

6 Judge is impartial. If you believe that I have  
7 expressed or suggested an opinion as to the facts in my  
8 rulings, you should ignore such an opinion. It is up to  
9 you alone to decide the facts in this case.

10 Consider only evidence from the trial and the view. In  
11 the event that you have inadvertently heard, seen, or  
12 learned anything whatsoever about this case outside of the  
13 sworn testimony in this case, for instance, from the  
14 newspaper, television or radio or from family or friends,  
15 then you must not consider any such information in any way  
16 whatsoever in your deliberations or in reaching your  
17 verdict. Your decision in this case must be based solely  
18 upon the evidence presented at trial.

19 In short, you should consider only the legally  
20 admissible evidence in deciding this case; that is, the  
21 testimony under oath of the witnesses, the exhibits which  
22 have been admitted into evidence, the view, and the  
23 stipulations regarding certain facts.

1           Quality not quantity. In reviewing the evidence, you  
2           should consider the quality of the evidence and not the  
3           quantity. It is not the number of witnesses or the  
4           quantity of the evidence that is important, but it is the  
5           quality of the evidence that is important.

6           Burden of proof. Presumption of innocence. Under our  
7           constitutions, all defendants in criminal cases are  
8           presumed to be innocent until proven guilty beyond a  
9           reasonable doubt. The burden of proving guilt is entirely  
10          on the State. The defendant does not have to prove his  
11          innocence. The defendant enters this courtroom as an  
12          innocent person, and you must consider him to be an  
13          innocent person unless the State convinces you beyond a  
14          reasonable doubt that he is guilty of every element of the  
15          alleged offense. If, after all the evidence and arguments,  
16          you have a reasonable doubt as to the defendant's having  
17          committed any one or more elements of the offense with  
18          which he is charged, then you must find him not guilty.

19          Reasonable doubt. Proof beyond a reasonable doubt is  
20          proof that leaves you firmly convinced of the defendant's  
21          guilt. There are very few things in this world that we  
22          know with absolute certainty and in criminal cases, the law  
23          does not require proof that overcomes every possible

1       doubt. If, based on your consideration of the evidence,  
2       you are firmly convinced the defendant is guilty of the  
3       crime charged, you should find him guilty. If, on the  
4       other hand, you think there is a real possibility that he  
5       is not guilty, you must give him the benefit of the doubt  
6       and find him not guilty.

7       Evaluating credibility. In deciding whether the State  
8       has proven the charge against the defendant beyond a  
9       reasonable doubt, you must decide the credibility of  
10      witnesses; that is, it is up to you to decide whom to  
11      believe. If there is any conflict between the witnesses,  
12      then you must resolve the conflict and decide what the  
13      truth is. Simply because a witness has taken an oath to  
14      tell the truth does not mean that you must accept the  
15      testimony as true.

16      In deciding which witnesses to believe, you should use  
17      your common sense and judgment. I suggest you consider a  
18      number of factors: Whether the witness appeared to be  
19      candid, whether the witness appeared worthy of belief, the  
20      appearance and demeanor of the witness, whether the witness  
21      had an interest in the outcome of the trial, whether the  
22      witness had any reason for not telling the truth, whether  
23      what the witness said seemed unreasonable or inconsistent



1 with other evidence in the case or with prior statements by  
2 the witness, and whether the witness had any friendship or  
3 animosity towards other people in the case.

4 In deciding which witnesses to believe and how much of  
5 their testimony to believe, you should consider both the  
6 direct and cross-examination of that witness. You should  
7 consider these factors in deciding the credibility of all  
8 witnesses.

9 In short, you should consider the testimony of each  
10 witness and give it the weight you think it deserves. You  
11 can accept all of what a witness has said, you can reject  
12 all of what a witness has said, or you can accept some of  
13 it and reject some of it.

14 Victim's testimony needs no corroboration. During your  
15 deliberations, bear in mind that the testimony of the  
16 victim is not required to be corroborated in prosecutions  
17 for sexual assault crimes.

18 Expert testimony. In this case, you've also heard the  
19 testimony of an expert witness. An expert is someone who  
20 has specialized knowledge, such as scientific or technical  
21 knowledge, that qualifies the expert to give an opinion as  
22 to matters that are not common knowledge. The opinion of  
23 an expert may assist you in understanding the evidence or

1 in deciding the facts of this case. You are not bound by  
2 the opinion of the expert. You are free to ignore the  
3 expert's opinion if you find that the reasons given in  
4 support of that opinion are not sound or if you find that  
5 other evidence outweighs that opinion.

6 In deciding whether you believe a witness, you may  
7 consider whether the witness made statements before trial  
8 which were not consistent with what the witness said at  
9 trial. If the witness made an inconsistent statement  
10 before trial, you may use that statement in deciding  
11 whether to believe that witness. You may not use the  
12 statement made before trial as proof that the facts in the  
13 statement are true. You may only use the statement made  
14 before trial in deciding whether to believe a witness.

15 Definition of crimes. A crime is any breaking of the  
16 law for which the law provides punishment. All crimes have  
17 at least the two parts; one, an intent and, two, an act.  
18 In deciding whether a person is guilty of a crime, it is  
19 absolutely necessary for you to know both what the person's  
20 actions were and what his intentions were. The word  
21 "intent" refers to what a person mentally believes his  
22 physical acts will accomplish.

23 The word "act" refers to a physical deed. Thus, for a

1 person to be guilty of a crime, he must have done the  
2 following two things: One, he must have mentally intended  
3 to do something that is criminal; two, he must have  
4 physically acted to do something that is criminal. Unless  
5 a person both intended and acted to do something criminal,  
6 that person has not committed a crime. This means that if  
7 a person either did not mentally intend to do something  
8 criminal or if a person did not act to do something  
9 criminal, then he is not guilty of a crime. Criminal  
10 intent is not an issue in this case.

11 In this case, the State must prove that the defendant  
12 committed certain acts. However, you need not determine  
13 whether the defendant acted with the required intent. The  
14 defendant and the State have agreed that intent is not an  
15 issue in this case at all. The sole issue is whether the  
16 acts occurred.

17 Indictments. In this case, the defendant is charged  
18 with four indictments for aggravated felonious sexual  
19 assault in the rectory offices and four indictments for  
20 felonious sexual assault in the rectory offices. As I will  
21 explain shortly, the rectory office indictments alleging  
22 felonious sexual assault are lesser-included offenses of  
23 the aggravated felonious sexual assault charges. There is

1 an additional charge of felonious sexual assault involving  
2 the rectory apartment.

3 Each indictment against this defendant constitutes a  
4 separate offense. You must consider each indictment  
5 separately and determine whether the State has proven the  
6 defendant's guilt beyond a reasonable doubt. The fact that  
7 you may find the defendant guilty or not guilty of any one  
8 or more of the indictments should not influence your  
9 verdicts with respect to the other indictments.

10 Elements of aggravated felonious sexual assault. As to  
11 the indictments alleging aggravated felonious sexual  
12 assault, the State must prove beyond a reasonable doubt  
13 that the defendant, one, engaged in sexual penetration of  
14 the victim prior to the victim's 16th birthday, which the  
15 parties agree was November 18th, 1983; two, the defendant  
16 was in a position of authority over the victim; three, the  
17 defendant used his position of authority to coerce the  
18 victim to submit. Sexual penetration includes, but is not  
19 limited to, fellatio. Fellatio is oral stimulation of the  
20 penis. Emission is not required. Thus, the State does not  
21 have to prove there was emission.

22 Elements of felonious sexual assault. As to the  
23 indictments alleging felonious sexual assault, the State

1 must prove beyond a reasonable doubt that the defendant  
2 engaged in sexual penetration with the victim prior to the  
3 victim's 16th birthday, which the parties agree was  
4 November 18th, 1983. Sexual penetration includes, but is  
5 not limited to, fellatio. Fellatio is oral stimulation of  
6 the penis. Emission is not required. Thus, the State does  
7 not have to prove there was emission.

8 With regard to the rectory office indictments, you  
9 should consider the indictments for aggravated felonious  
10 sexual assault first. If you decide that the defendant is  
11 not guilty of any or all of the aggravated felonious sexual  
12 assault indictments, you should then go on to consider and  
13 decide whether he is guilty of the lesser-included offenses  
14 of felonious sexual assault.

15 A lesser-included offense is a similar but less serious  
16 crime. Here, as to each indictment, if you decide that the  
17 defendant is not guilty of aggravated felonious sexual  
18 assault, then you should consider whether the State has  
19 proven beyond a reasonable doubt that he is guilty of the  
20 similar but less serious crime of felonious sexual  
21 assault.

22 With regard to the rectory apartment indictments, you  
23 should reach a verdict separately from the rectory office

1        indictments. In other words, no matter what you decide on  
2        each of the rectory office indictments, you must also and  
3        independently consider the rectory apartment indictments.

4            Now, on the last page you should have--. Is there a  
5        list in front of you now? Okay. Mine is separate. What  
6        I've done is just laid out the indictments so that you can  
7        go through those, the indictments for aggravated felonious  
8        sexual assault, make your determination, guilty or not  
9        guilty. If you make a not guilty finding on those, then  
10       you move down and decide the rectory office lesser-  
11       included indictments, and consider those and decide whether  
12       the defendant is guilty or not guilty. And then  
13       indictment-- incidentally and not necessarily in this  
14       order-- you should decide the rectory apartment  
15       indictments.

16            Now, it is your duty as jurors to talk with one another  
17        and to deliberate in the jury room. You should try to  
18        reach an agreement, if you can. Each of you must decide  
19        the case for yourself but only after consideration of the  
20        evidence with the other members of the jury. While this is  
21        going on, do not hesitate to reexamine your own opinions  
22        and change your mind, if you are convinced that you're  
23        wrong. But do not give up your honest beliefs solely

1           because the others think differently or merely to get this  
2           case over with.

3           In a very real way, you are judges. You are the judges  
4           of the facts. Your only interest is to determine whether  
5           the State has proved the defendant guilty beyond a  
6           reasonable doubt.

7           Now I'm going to draw the foreperson and if I pick  
8           someone who doesn't want the job, let me know. I mean, I  
9           encourage you to do it but if you really feel uncomfortable  
10          doing it, just say so and I'll consider another juror. It  
11          will be juror number 2, Mr. Hackett. Mr. Baker. Okay. I  
12          got confused with our order of events here. Okay. Are you  
13          willing to serve as the foreperson?

14   MR. BAKER:     Yes, your Honor.

15   THE COURT:     And Mr. Baker, I just want to remind you that  
16                    you're to treat all the jurors fairly, which I know you  
17                    will do, and give them all an opportunity to think and  
18                    express their feelings throughout the deliberations.

19                  Now I will draw the three jurors that will be  
20                  alternates, and I'll just draw them out here. Of course,  
21                  this does not mean it's necessarily over for any of you  
22                  because as I explained, if someone gets sick or something  
23                  happens during the deliberations, among the three we will

1 draw by lot from the alternates one to go down and fill  
2 that person's place. And it has happened before that more  
3 than one has had to come down.

4 Juror number 1, juror number 7, and juror number 14 are  
5 the alternates. You will all be alternates. I know this  
6 has quite an impact on you and believe me, we all realize  
7 that here in court, especially after a case like this.

8 All right. I'm almost completed. I just want to read  
9 through this. I can't even remember what I wrote but I'll  
10 go through it. I thought it was important at the time and  
11 I'm sure that it is.

12 Your verdicts must be unanimous. All 12 of you must  
13 agree on the verdict, whether it is guilty or not guilty.

14 If, in the course of your deliberations, you have a  
15 question regarding the law, the foreperson should write the  
16 question regarding the law down on a piece of paper, put  
17 the time on the paper, knock on the door of the jury  
18 deliberation room, and give the paper to the bailiff who  
19 will be standing outside the door. I will go over the  
20 question with counsel and get you an answer as soon as  
21 possible to any question. No member of the jury should  
22 ever attempt to communicate with the Court by any means  
23 other than a signed writing, and the Court will never



1       communicate with any member of the jury on any subject  
2       touching the merits of the case otherwise than in writing  
3       or orally here in open court. In other words, there could  
4       be a circumstance, where we bring you back into open court  
5       for some reason.

6             Keep in mind also that you're never to reveal to any  
7       person, not even to the Court, how the jury stands  
8       numerically or otherwise on the questions before it until  
9       after you have reached a verdict.

10            If at any time, Mr. Baker, you feel that the jury needs  
11       a break, just call one, and it is very important that all  
12       deliberations stop during breaks and lunch. You don't  
13       deliberate during your breaks or during lunch, and none of  
14       you are to discuss anything about the case unless all of  
15       you are present at the time that you're discussing it.

16            If, or when you reach a verdict, do not write it down.  
17       Remember that your verdict must be unanimous. Knock on the  
18       door and tell the bailiff that you've reached a verdict.  
19       You'll then be brought into the courtroom and the clerk  
20       will ask you, Mr. Baker, to announce the jury's verdict,  
21       guilty or not guilty. What the clerk does is read through  
22       the indictment numbers that are provided on that list that  
23       I gave you at the back of the instructions. So you must

1        wait for the clerk to ask. He'll give you the indictment  
2        number, the charge, and then you give him guilty or not  
3        guilty. Also, there is a possibility, if you have a guilty  
4        finding, all the jurors may be polled on that finding; that  
5        is, we might go through every juror and see if you do  
6        indeed all agree.

7                Now before I release you, is there anything that  
8        counsel wants to discuss at sidebar before the jury leaves?

9        MR. KOCH:        No.

10       THE COURT:        We're all set.

11       THE BAILIFF:    Your Honor, all right to state that the alternates  
12                will also come up with the rest of the jury on the verdict?  
13                They did the last time. We brought them up separately.

14       THE COURT:        I don't know. Since this is a new law, I've never  
15                had this situation where they came up, but I don't know.  
16                We'll figure it out.

17       THE BAILIFF:    I appreciate it, your Honor.

18       JUROR:                Are you going to send us lunch?

19       THE COURT:        Well, we will, and you should have the evidence  
20                down there with you before you begin the deliberations. So  
21                Susan will get that evidence down to you soon, but don't  
22                begin deliberations until you have that down there with you  
23                so you can get all started. Thank you.

(Jury commenced deliberations at 12:47 p.m.  
And suspended for the day at 4:25 p.m.)

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