

IN THE MISSOURI SUPREME COURT

STATE ex rel. MARIANIST)
PROVINCE OF THE UNITED)
STATES,)
)
Relator-Defendant,)
)
vs.) No. SC88779
)
HONORABLE JOHN A. ROSS,)
JUDGE, CIRCUIT COURT,)
COUNTY OF ST. LOUIS,)
DIVISION 15)
)
Respondent.)

**BRIEF OF RELATOR
MARIANIST PROVINCE OF THE UNITED STATES**

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 1. Relator is entitled to a permanent order prohibiting Respondent from enforcing his order denying Relator’s motion for summary judgment, because Plaintiff’s claim for abuse that allegedly occurred twenty-two (22) years ago is clearly time-barred as a matter of law, in that a reasonable person who *always* remembered participating in “experiments” in which he (i) stripped down to his underwear, (ii) was blindfolded, (iii) hyperventilated, and (iv) had a knife held to his throat would have been put on notice of a “potentially actionable injury” as a matter of law. 11

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JURISDICTIONAL STATEMENT

Upon application of Relator Marianist Province of the United States (“Marianist Province”), this Court issued a Preliminary Writ of Prohibition on October 30, 2007. This Court has jurisdiction to adjudicate this matter pursuant to Article V, § 4 of the Missouri Constitution. Marianist Province seeks a Permanent Order of Prohibition to prevent the Honorable John A. Ross from enforcing his Order of July 30, 2007, denying Marianist Province summary judgment on claims that are clearly time barred by the applicable statute of limitations.

STATEMENT OF FACTS

A. Summary

Plaintiff Robert Visnaw (“Plaintiff”) alleges that he was abused by former Marianist Brother William Mueller (“Mueller”) in 1984 and 1985 while Plaintiff was a senior at St. John Vianney High School (“Vianney”) in Kirkwood, Missouri. (A25-A26.) During that time, Mueller was employed by St. John Vianney, Inc. as an assistant vice-principal. (A41 at 20.) Approximately twenty-one years later, Plaintiff filed this lawsuit in January of 2006 against Mueller, Vianney, and Marianist Province based upon the alleged abuse by Mueller. (A16.) In this action, Plaintiff claims that over the course of the four incidents, Mueller purportedly asked Plaintiff to hyperventilate to the point of unconsciousness, massaged Plaintiff’s genitals, asked Plaintiff to strip down to his underwear, blindfolded Plaintiff, and put a knife to Plaintiff’s throat. (A64-A65, A70-A73 at 133-148; A75-A80 at 156-173.) Plaintiff claims that he was asked to participate in this conduct as part of a research “experiment” conducted by Mueller. (A64 at 109.) Plaintiff admits that he always remembered: (i) participating in the “experiments”; (ii) stripping down to his underwear, (iii) being blindfolded, (iv) hyperventilating to the point of unconsciousness, and (v) having a knife held to his throat. (A102 at 264; A79 at 169; A83-A84 at 188-89; A86 at 200.)

B. Plaintiff’s Background

Plaintiff was born on April 9, 1967. (A164.) He attended high school at Vianney in the fall of 1981 and graduated in May of 1985. (A38 at 8.) Plaintiff performed very

well academically, graduating in the top quarter of his class. (A44 at 32.) He was on the “gold” and “silver” honor rolls. (A44 at 30-31.)

Following graduation from Vianney, Plaintiff voluntarily stayed in contact with Mueller through phone calls and three, four, or five letters. (A66-A67 at 119-121.) Around 1986 or 1987, Plaintiff “quit” the Roman Catholic Church. (A69 at 131-32.) Plaintiff turned twenty-one years old on April 9, 1988.

Plaintiff attended college at the University of Missouri-St. Louis and graduated in 1989 with a bachelor’s degree in Spanish. (A49 at 49-50.) After graduation, he served in the human intelligence branch of the U.S. Army. (A51 at 60; A50 at 55.) In the military, his job was to interrogate foreign nationals and others. (A51 at 60.) Plaintiff currently is employed as a criminal investigator/special agent with the U.S. Department of Homeland Security/Immigration & Naturalization Service (“Homeland Security”). (A56 at 80.) He speaks or understands five languages: English, Spanish, Portuguese, Italian, and some Korean. (A51 at 60.) Prior to his employment with Homeland Security, Plaintiff attended Federal Law Enforcement Training in Glencoe, Georgia; that training involved criminal investigations and criminal law. (A102 at 261-62; A57 at 81.) By the age of thirty, Plaintiff had been trained to understand the terms “mens rea” and “actus reus.” (A103 at 265-66.)

C. Plaintiff’s Lawsuit

Plaintiff claims that in September of 2005, he read some St. Louis Post-Dispatch newspaper articles relating to a claim brought by Bryan Bacon (“Bacon”) against

Mueller. (A47 at 42-43.) Plaintiff admits that he contacted Bacon to tell Bacon about his alleged incidents with Mueller. *Id.*

Plaintiff filed this lawsuit in January of 2006 – approximately twenty-one years after the alleged incidents with Mueller. (A16.) Plaintiff’s lawsuit pleads the following tort claims against Marianist Province and the other Defendants for alleged:

intentional failure to supervise (Count I);

intentional infliction of mental distress (Count II);

negligence (Count V); and

negligent supervision, retention and failure to warn (Count VI). (A25-A33.)

Plaintiff claims that he was damaged as the result of four separate incidents that occurred between him and Mueller during his senior year at Vianney. (A25-A33.) A more detailed description of each alleged incident follows below.

First Alleged Incident

Plaintiff first met Mueller during his senior year [1984-1985] at Vianney, when he would have been seventeen years old. (A60 at 94-95.)

Plaintiff claims that in the first alleged incident, Mueller instructed him to come to his office in the evening after school. While Plaintiff was in Mueller’s office, Mueller allegedly had him hyperventilate to the point of unconsciousness four or five times. (A65 at 113.) Each time upon awakening, Mueller would question him about what he had experienced. (A64-65.) Mueller allegedly told Plaintiff that he was conducting a research experiment on fear for his masters’ thesis. (A64 at 109.) Plaintiff admits that he does not recall having been physically injured during the first alleged incident with

Mueller, and admits that he has no evidence of having been sexually abused during the incident. (A65 at 113-14.) He further admits that he has “always recalled the passing out and waking up with the questions” and the incident itself. (A65 at 115.) In addition, Plaintiff admits that he did not find anything that occurred in the first alleged incident to have been physically offensive, harmful, or injurious. (A66 at 117.)

Second Alleged Incident

Plaintiff’s second alleged incident with Mueller occurred about three weeks to a month after the first incident. This time he met Mueller at the school gymnasium entrance in the evening after swim practice. (A67-A71 at 124-25, 133-40.) Plaintiff and Mueller went to the varsity locker room. (A71 at 138-39.) Mueller again instructed Plaintiff to hyperventilate and make himself pass out; Plaintiff did so. (A72 at 142.) After the hyperventilating, Plaintiff recalls waking up “laying down on something” and realizing that Mueller was massaging Plaintiff’s genitals. (A72 at 143.) Plaintiff recalls hearing moaning, or sounds associated with sexual activity, as he woke up. (A72 at 143.) Plaintiff also allegedly saw Mueller holding his own penis with his other hand; and Plaintiff recalls Mueller stopped immediately. (A72 at 143-44, A75 at 153.) Plaintiff admits to having been “freaked out” by the incident. (A72 at 144.)

Third Alleged Incident

Plaintiff claims that the third alleged incident with Mueller happened around Christmas break of his senior year. (A76 at 157.) He claims to have met Mueller at Vianney’s main entrance after diving practice. Then, the two of them went to the varsity locker room and walked all the way to the back of the locker room. (A76 at 157.)

Plaintiff claims that Mueller again instructed him to hyperventilate to unconsciousness while Mueller grabbed Plaintiff's head and moved it side to side in circles while he was bent over and hyperventilating. (A76 at 158-59.) When Plaintiff woke up, he was in the front of the locker room or gym sitting on the floor with his knees up at his chest. (A76 at 159.) Plaintiff recalls that after he regained consciousness, Mueller helped him stand up and asked him to put VO5 hair gel in his hair; Plaintiff did so without objection, and he does not recall Mueller touching him while he did so. (A76 at 160.) Plaintiff testified that that he is unaware of or cannot recall any sexual misconduct having occurred during the third alleged incident. (A76-A77 at 160-61.)

Fourth Alleged Incident

Plaintiff claims that the fourth and final alleged incident with Mueller happened in March the night of the Spring Dance of his senior year – just a month before his eighteenth birthday. (A77 at 163-64.)

Plaintiff arrived at the dance after dark and met Mueller outside the main entrance to Vianney near the administration center. (A78 at 165.) Plaintiff and Mueller then walked to a small teachers' office near where the bookstore used to be located. (A78 at 167.) Plaintiff claims that Mueller told him that as part of the experiment, he needed him to take off his clothing down to his underwear. (A78 at 167-68.) Plaintiff complied. *Id.* Plaintiff claims that Mueller stepped out of the office while he took his clothes off; when he re-entered the office, Mueller instructed Plaintiff to face away from him. (A78 at 168.) Plaintiff claims that Mueller then blindfolded him, repeatedly touched his shoulder, and asked him if he was afraid; Plaintiff repeatedly responded that he was not. (A78 at

168.) Plaintiff claims that Mueller then placed a knife to his throat and closed the gap of space between them. (A78-A79 at 168-169.) Plaintiff claims he put his hands on a table in front of him. (A79 at 169.) Plaintiff alleges that Mueller would ask him while he held the knife to his throat if he was afraid. Plaintiff would respond that he was not afraid and then Mueller would press the knife harder against his throat. (A79 at 170.)

Plaintiff claims that eventually he felt skin-to-skin contact between his back and what he assumes was Mueller's stomach and that he became "very afraid." (A79 at 171.) Plaintiff admits that eventually he told Mueller during the alleged incident that he was afraid. (A79 at 170.) Mueller then allegedly reached his hand down into Plaintiff's pants and started massaging his genitals. (A79-A80 at 172-73.) Plaintiff testified that "from the tips of [his] fingers to the tips of [his] toes," he was "totally, totally, totally scared to death about what was happening." *Id.* He claims that suddenly, everything stopped, and he woke up in the hallway fully clothed followed by Mueller taking him out to the school track to walk around. (A80 at 173.) Plaintiff does not recall having had a discharge, but does remember having had an erection during the alleged incident. (A80 at 173-74.) Plaintiff was fully conscious during the fourth alleged incident. (A87 at 203.)

D. Plaintiff's Memories Of The Alleged Incidents

Plaintiff admits that he has always known of his participation in the four alleged experiments. (A91 at 220.) Plaintiff testified that he recalled having participated in Mueller's "experiments" in July of 1991, when he received correspondence from Mueller at his parents' home, and he told his father that he had assisted Mueller in the experiments when he attended Vianney. (A66 at 117-18.) Plaintiff also admits that he

always has remembered that Mueller told him not to tell anyone about the “experiments.” (A83 at 187-88.) With respect to the first incident, Plaintiff admits that he has “always recalled the passing out and waking up with the questions” and the incident itself. (A65 at 115.) Also, he admits that he always remembered Mueller asking him to hyperventilate and pass out and does not claim that he ever repressed that part of his memories about the alleged incidents. (A102 at 264.)

Plaintiff admits that he always remembered taking off his clothes down to his underwear and does not claim that he ever repressed that part of his memories about the alleged incidents. (A83-A84 at 188-89.) He also admits that he always has remembered Mueller holding a knife to his throat and admits that he never repressed that recollection. (A83 at 188; A102 at 264.) With respect to the alleged fondling of Plaintiff’s genitals, Plaintiff testified that: “I believe that it wasn’t forgotten.” (A84 at 189, ln 22). Rather, Plaintiff claims he “buried” the fondling memory so he would not have to “relive” it. (A84 at 189). As indicated below, however, Plaintiff can offer no competent expert testimony that he repressed any aspect of the alleged experiments.

E. Procedural History

On May 25, 2007, Marianist Province filed its Motion for Summary Judgment with an accompanying Statement of Uncontroverted Material Facts and Memorandum in Support, arguing that Plaintiff’s causes of action were time barred by Missouri’s statute of limitations. (A113-240.)

In its Motion for Summary Judgment, Marianist Province argued that because Plaintiff claimed that the incidents at issue occurred in 1985, the general five-year statute

of limitations contained in RSMo § 516.120 applied, although it would have been tolled until Plaintiff's twenty-first birthday by § 516.170. Marianist Province therefore argued that Plaintiff should have filed his suit *no later than* April 9, 1993 – which would be five years after he turned twenty-one. (A8.)

On July 30, 2007, the Honorable John A. Ross, Respondent, Judge of the Circuit Court for the County of St. Louis, Missouri, Division 15, denied Marianist Province's Motion for Summary Judgment with no written record for the basis of his denial. (A241.) Only three days later, the St. Louis City Circuit Court entered an order granting Marianist Province summary judgment on statute of limitations grounds on similar facts and issues. (A242-53.)

Marianist Province filed a Petition for Writ of Prohibition with the Missouri Court of Appeals on August 10, 2007. On August 14, 2007, the Missouri Court of Appeals entered a Preliminary Order of Prohibition in this matter. On August 28, 2007, the Petition for Writ of Prohibition was denied without opinion.

On October 30, 2007, this Court issued a Preliminary Writ of Prohibition which commanded Respondent to take no further action except to sustain Marianist Province's Motion for Summary Judgment.

POINTS RELIED ON

I. MARIANIST PROVINCE IS ENTITLED TO A PERMANENT ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS ORDER DENYING MARIANIST PROVINCE’S MOTION FOR SUMMARY JUDGMENT, BECAUSE PLAINTIFF’S CLAIMS ARE CLEARLY TIME BARRED AS A MATTER OF LAW, IN THAT A REASONABLE PERSON WHO ALWAYS REMEMBERED PARTICIPATING IN “EXPERIMENTS” IN WHICH HE (i) STRIPPED DOWN TO HIS UNDERWEAR, (ii) WAS BLINDFOLDED, (iii) HYPERVENTILATED TO THE POINT OF PASSING OUT, AND (iv) HAD A KNIFE HELD TO HIS THROAT WOULD HAVE BEEN PUT ON INQUIRY NOTICE OF A “POTENTIALLY ACTIONABLE INJURY” AND THAT HE MAY HAVE SUSTAINED SUBSTANTIAL DAMAGE BACK IN 1985

Powel v. Chaminade College Preparatory, Inc., 197 S.W.3d 576 (Mo. banc 2006)

Business Men’s Assur. Co. of Am. v. Graham, 984 S.W.2d 501 (Mo. banc 1999)

Klemme v. Best, 941 S.W.2d 493 (Mo. banc 1997)

RSMo § 516.120

ARGUMENT

I. MARIANIST PROVINCE IS ENTITLED TO A PERMANENT ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS ORDER DENYING MARIANIST PROVINCE’S MOTION FOR SUMMARY JUDGMENT, BECAUSE PLAINTIFF’S CLAIMS ARE CLEARLY TIME BARRED AS A MATTER OF LAW, IN THAT A REASONABLE PERSON WHO ALWAYS REMEMBERED PARTICIPATING IN “EXPERIMENTS” IN WHICH HE (i) STRIPPED DOWN TO HIS UNDERWEAR, (ii) WAS BLINDFOLDED, (iii) HYPERVENTILATED TO THE POINT OF PASSING OUT, AND (iv) HAD A KNIFE HELD TO HIS THROAT WOULD HAVE BEEN PUT ON INQUIRY NOTICE OF A “POTENTIALLY ACTIONABLE INJURY” AND THAT HE MAY HAVE SUSTAINED SUBSTANTIAL DAMAGE BACK IN 1985

A. Introduction

The case arises from Plaintiff’s claim that he was the victim of four alleged abuse incidents that took place approximately twenty-one years ago. Plaintiff was an intelligent, successful senior in high school at the time. By the time the fourth incident occurred, Plaintiff was just shy of his eighteenth birthday.

Plaintiff admits that he always remembered critical aspects of the alleged abuse incidents, including (i) his participation in the “experiments” with Mueller (i) stripping down to his underwear, (ii) being blindfolded, (iii) hyperventilating to the point of unconsciousness, and (iv) having a knife held to his throat. (A102 at 264; A79 at 169;

A83-A84 at 188-89; A86 at 200.) Because these essential facts are not in dispute, Plaintiff's claims are time-barred as a matter of law under the objective, reasonable person standard set forth in *Powel v. Chaminade College Preparatory, Inc.*, 197 S.W.3d 576, 580 (Mo. banc 2006). As a matter of law, a reasonably prudent person would have been put on inquiry notice of a "potentially actionable injury" and that he may have sustained substantial injury back in 1985 based on the factual allegations not in dispute. The five-year statute of limitations began running on April 9, 1988 – Plaintiff's twenty-first birthday and expired in 1993. Accordingly, a permanent order prohibiting Respondent from taking any action in the underlying case other than granting summary judgment in favor of the Marianist Province is warranted.

B. Standard of Review

This Writ comes before the Court upon review of Respondent's denial of Marianist Province's Motion for Summary Judgment. The standard of review regarding summary judgment is essentially *de novo*. *White v. Zubres*, 222 S.W.3d 272, 274 (Mo. banc 2007). The statute of limitations is an affirmative defense under Rule 55.08, and a party who moves for summary judgment on the basis of a statute of limitations need only show that the statute bars the plaintiff's claims. *Id.* Once a statute of limitations expires and bars a plaintiff's cause of action, the defendant has a vested right to be free from suit. *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 341 (Mo. banc 1993). Accordingly, an absolute writ of prohibition is the appropriate remedy to relieve a defendant of the expense and burden of unwarranted litigation when a claim is time-barred. *See also State ex rel. BP Products N. Am. v. Ross*, 163 S.W.3d 922 (Mo. banc

2005) (making absolute in part a preliminary writ of prohibition on an order denying summary judgment on the issue of statute of limitations); *see also State ex rel. O'Blennis v. Adolf*, 691 S.W.2d 498, 500 (Mo. App. E.D. 1985).

**C. The General Five-Year Statute of Limitations (RSMo § 516.120) Bars
Plaintiff's Claims**

Because Plaintiff claims the incidents alleged in this lawsuit occurred in 1985, the general five-year statute of limitations contained in RSMo § 516.120 applies. *See Powel*, 197 S.W.3d at 580. RSMo § 516.020 provides, in relevant part, that an action for “any other injury to the person or rights of another, not arising on contract and not herein otherwise enumerated” is to be commenced within five years of that injury. RSMo § 516.170 contains a general tolling provision that tolls the statute of limitations until age twenty-one. RSMo. § 516.170. In the present case, therefore, under the general statute of limitations set forth in RSMo § 516.120, Plaintiff should have filed his suit no later than April 9, 1993 – which would be five years after

he turned twenty-one.¹

**D. Plaintiff's Claims Are Time Barred As A Matter Of Law Under The
Objective, Reasonable Person Test**

Based on the undisputed factual allegations set forth in Marianist Province's Motion for Summary Judgment, Plaintiff's claims are time barred as a matter of law because a reasonably prudent person would have been put on inquiry notice of a potentially actionable injury and that he may have sustained substantial damage back in 1985. Under the minority tolling provision of RSMo § 516.170, the statute of limitations began to run on Plaintiff's twenty-first birthday on April 9, 1988, and expired long before Plaintiff filed this lawsuit in January of 2006.

¹ Marianist Province recognizes that Plaintiff claims the last alleged incident occurred prior to his turning twenty-one; however, there is no allegation that he ever forgot or repressed his knowledge of the experiments prior to turning twenty-one in April of 1988; rather, Plaintiff admits that he has always remembered the bulk of what happened during the incidents. As such, under the objective test set forth in *Powel*, Plaintiff had a "potentially actionable injury" for which the statute of limitations began to run for him immediately upon turning twenty-one in April 1988, thus the statute of limitations expired in 1993 at the very latest under RSMo § 516.120.

RSMo § 516.100 sets forth the method of accrual of Missouri state law claims for purposes of statutes of limitations, including the five-year limitations period in § 516.120(4). RSMo § 516.100 states that:

the cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the damage resulting therefrom is capable of ascertainment, and if more than one item of damage, then the last item, so that all resulting damage may be recovered, and full and complete relief obtained.

Id. Under this statute, the applicable limitations period begins to run when the injury or damage has been sustained and is capable of ascertainment.

This Court in *Powel* discussed in detail when damages are “capable of ascertainment” under § 516.100, stating:

Although this Court has not previously clearly articulated a specific, generally applicable test to be used in making this determination, a consistent approach is evident upon careful review of this Court’s decisions from the last 40 years: *the statute of limitations begins to run when the “evidence was such to place a reasonably prudent person on notice of a potentially actionable injury.”* At that point, damages would be sustained and capable of ascertainment as an objective matter – or, in the words of Professor Davis, that is the moment when the damage would be “substantially complete.”

197 S.W.3d at 582 (emphasis in original) (footnote and citation omitted).

Powel examined a number of decisions that reflect this “consistent approach” taken by Missouri courts over the years. 197 S.W.3d at 582-84. For example, in *Chemical Workers Basic Union, Local Number 1744 v. Arnold Savings Bank*, 411 S.W.2d 159, 164 (Mo. banc 1966), the statute of limitations began to run “once the union officers were *put on notice* of a problem because their anticipated dividend checks were not deposited, for at that point ‘upon any inquiry [the damages] soon could have been discovered and made known,’ ‘[s]ince the amount of damage [equaled] the amount of the check.’” *Powel*, 197 S.W.3d at 582-83. (quoting *Chemical Workers*, 411 S.W.2d at 165) (emphasis added).

In *Dixon v. Shafton*, 649 S.W.2d 435 (Mo. banc 1983), “[n]otice of *some* substantial damage resulting from the wrong was also identified as the triggering event.” *Powel*, 197 S.W.3d at 583 (emphasis added). In *Dixon*,

Although the wrong had existed and had been at least theoretically ascertainable since the inception of the contract, the statute of limitations did not begin to run until the lawyer-partner advised the remaining partners that they should get an independent counsel because he had made a mistake in the contract. At that point, *although the remaining partners did not know the extent of the damages, they did know that “a substantial claim existed as to them. They had suffered some damage*, at least to the extent that they had to hire new counsel who would have otherwise been unnecessary.”

Powel, 197 S.W.3d at 583 (quoting *Dixon*, 649 S.W.2d at 438) (emphasis added); *see also Business Men’s Assurance Co. of Am. v. Graham*, 984 S.W.2d 501, 507 (Mo. banc 1999) (a cause of action accrues when a party can first ascertain the fact of damages, even though he may not know the extent of damage); *Martin v. Crowley, Wade & Milstead, Inc.*, 702 S.W.2d 57, 58 (Mo. banc 1985) (capable of ascertainment standard met when the plaintiff had sufficient knowledge to be placed on “inquiry notice” of the wrong and damages).

Powel noted that the standard to be gleaned from these decisions had special application to cases involving repressed memory (the plaintiff in *Powel* alleged that he repressed his memory of the sexual abuse).² The Court stated that: “Only when [the plaintiff] regained

² Here, Plaintiff offered no competent expert testimony supporting a “repressed memory” theory. Plaintiff’s sole medical expert in this case, Plaintiff’s treating psychologist, Dr. George Harris, admitted that he would *not* be “a good person to serve as an expert witness if someone was making the argument for a repressed memory.” (A36-A37 at pp. 36-37.) In fact, Dr. Harris admitted that the entire subject of repressed memory is “hotly debated” in his field, and Dr. Harris simply does not have an understanding of how it may work physiologically. *Id.* Dr. Harris reaffirmed his lack of expertise on this subject matter later in his deposition when asked when Plaintiff “first obtained conscious recollection of that overt sexual abuse?” (A362 at 55.) Dr. Harris responded: “It is one of those questions that probably is best answered by an expert witness.” *Id.* No such expert was ever offered by Plaintiff.

the repressed memories would the victim for the first time have ‘reason to question’ defendant’s conduct and have information sufficient ‘to place a reasonably prudent person on notice of a potentially actionable injury.’” 197 S.W.3d at 584. In *Powel*, the Court found factual disputes in the record and remanded the case so that the trial court and the parties could address “the statute of limitations issue from the objective, ‘reasonable person’ standard set out herein” and the need to conduct additional discovery in a case involving a claim of repressed memory. *Id.* at 586.

In light of the test articulated in *Powel*, a reasonable person would have been put on inquiry notice that an injury may have occurred based on the fact that Plaintiff always remembered the bulk of the “experiments” with Mueller. Here, Plaintiff had more than sufficient notice of a *potential* injury back in 1984-1985. Consider what Plaintiff admits he *always* remembered:

- Plaintiff admits that he has “always recalled the passing out and waking up with the questions” and the first incident itself (A65 at 115);
- Plaintiff admits that he always remembered Mueller asking him to hyperventilate and pass out (A102 at 264);
- Plaintiff admits that he recalled having participated in Mueller’s “experiments” in July of 1991, when he received correspondence from Mueller at his parents’ home and he told his father that he had assisted Mueller in the experiments when he attended Vianney (A66 at 117-18.);
- Plaintiff admits that he has always remembered that Mueller told him not to tell anyone about the “experiments” (A82-A83 at 187-88);

- Plaintiff admits that he always remembered taking off his clothes down to his underwear – when he was seventeen, almost eighteen years old (A3-A84 at 188-89);
- Plaintiff admits that he has always remembered Mueller holding a knife to his throat (A79 at 169; A102 at 264.)

Based on these facts, Plaintiff had more than sufficient notice of his alleged damages back in 1985. The extent of Mueller’s behavior about which Plaintiff complains, if all of Plaintiff’s allegations of fact are taken as true, is objectively serious and questionable enough to any “reasonably prudent person,” especially an almost-18-year-old man, to have put Plaintiff on inquiry notice of a potential claim and that he may have sustained substantial damage. Indeed, the Honorable Judge Robert Dierker, St. Louis City Circuit Judge, reached this very conclusion in his August 2, 2007, Order granting summary judgment to the Marianist Province of the United States: “[r]easonable people do not blithely accept the propriety of ‘secret experiments’ involving physical contact between a teacher and a pupil behind closed doors.” (App. at 249.) He also noted that the “conduct described by [Plaintiff], though not overtly sexual, is not the sort of thing that a reasonable person would become involved in without subsequent inquiry as to its legitimacy.” *Id.* Hence, under the objective framework provided by this Court in *Powel*, the statute of limitations for tort claims has barred the action that Plaintiff might have had against Defendants at one time.

Since a reasonable person in Plaintiff's situation would have been placed on inquiry notice of his potentially actionable injury when Plaintiff turned twenty-one years old on April 9, 1988, and because Plaintiff did not file this lawsuit until January 2006, Plaintiff's causes of action are time barred by the five-year statute of limitations under RSMo §§ 516.100 and 516.120(4).

E. Under the Objective, “Reasonably Prudent Person” Test, It Is Irrelevant When Plaintiff Subjectively “Appreciated” Or Knew The Extent of His Damages

In his argument before Respondent below, Plaintiff, in effect, asked Respondent to adopt a subjective test for the running of the statute of limitations. In *Powel*, this Court rejected such a subjective test.

In *Powel*, the plaintiff brought an action against his former boarding school, and two clergymen formerly employed there, for sexual abuse that he allegedly suffered while under their care. *Id.* at 578-79. The abuse purportedly took place over the course of two years while the plaintiff, then aged 15-17 years old, was a boarding student at the school. *Id.* at 579. In analyzing prior opinions discussing the “capable of ascertainment” test, this Court explicitly rejected the plaintiff's request to adopt a subjective awareness standard. *Id.* at 581. The plaintiff urged this Court to adopt a standard whereby the statute of limitations would not begin to run until plaintiff became aware that he suffered damages and that they were caused by the actions of the defendant. *Id.* In other words, the phrase “capable of ascertainment” under the approach advocated by the plaintiff would mean when plaintiff “should have discovered his injury and

damages.” *Id.* Relying on prior precedent, this Court again rejected this test. To adopt this test “would be little different than the ‘discovery’ rule, and ‘this is not what the legislature did and it is not for us to rewrite the statute to do provide.’” *Id.* (quoting *Jepson v. Stubbs*, 555 S.W.2d 307, 313 (Mo. banc 1977)); *see also Graham v. McGrath*, No. ED89168, 2007 WL 4301191 (Mo. App. E.D. 2007) (Slip Op. Dec. 11, 2007) (“[T]he issue is not when a plaintiff is subjectively aware of his injury; subjective awareness of damages does not resolve the question of when those damages were objectively capable of ascertainment.”).

Moreover, in rejecting the subjective standard advocated by Plaintiff, this Court in *Powel* stressed several times that the “capable of ascertainment” test is an objective test. *Id.* at 584-85. Under the objective test, “the statute of limitations begins to run when the ‘evidence was such to place a reasonably prudent person on notice of a potentially actionable injury.’” *Id.* at 582 (emphasis in original). Hence, the issue is “not when the injury occurred, or when plaintiffs subjectively learned of the wrongful conduct and that it caused his or her injury, but when a reasonable person would have been put on notice that an injury and substantial damages *may* have occurred and *would have* undertaken to ascertain the extent of the damages. *Id.* (emphasis added).

Here, Plaintiff essentially argued to the trial court below that the statute of limitations should not begin to run until he discovered his alleged injuries, or as he put it, “appreciated” or “ascertained” the harm from the alleged sexual abuse. (A312.) This amounts to nothing more than the date Plaintiff subjectively learned of the alleged wrongful conduct – a standard which *Powel* rejected. Damage is reasonably capable of

ascertainment “when the fact of damage can be discovered or made known, not when a plaintiff actually discovers injury or wrongful conduct.” *Sheehan v. Sheehan*, 901 S.W.2d 57, 58 (Mo. banc 1995). “Subjective knowledge of damages is not required.” *Powel*, 197 S.W.3d at 588 (Wolff, C.J. concurring); *Graham*, 2007 WL 4301191, at *3. Under Plaintiff’s faulty logic, a plaintiff essentially could avoid the running of the statute of limitations indefinitely by alleging, as Plaintiff has done here, that he did not comprehend or ascertain that he had sustained substantial injuries until some number of years after the wrongful act. This is not the law in this State. Under the objective test set forth in *Powel*, Plaintiff’s claims were capable of ascertainment in 1985 when the alleged incidents took place and he gained knowledge of the aspects of his claims that put him on notice that he had *potentially* been injured. Once Plaintiff reached the age of majority on April 9, 1988, the statute of limitations commenced to run. The limitations period for Plaintiff’s claims expired in 1993.

Perhaps recognizing the insurmountable statute of limitations hurdle, Plaintiff also asserted in the trial court below that prior to 2005, he was “incapable of ascertaining the resulting damages from [Mueller’s] conduct.” (A26-27.) Again, this is not the test in Missouri. Missouri law is clear that a cause of action accrues when a party “can first ascertain the fact of damage, *even though he may not know the extent of the damage.*” *Powel*, 197 S.W.3d at 584 (quoting *Business Men’s Assur.*, 984 S.W.2d at 507) (emphasis added). Indeed, “all possible damages do not have to be known, or even knowable, before the statute accrues.” *Powel*, 197 S.W.3d at 584 (quoting *Klemme v. Best*, 941 S.W.2d 493, 497 (Mo. banc 1997)). While “the mere existence of the wrong and some

nominal damage is not enough,” a plaintiff may be put on notice to inquire further when “the fact of damage could have been discovered or made known.” *Klemme*, 941 S.W.2d at 497. Put another way, the date that Plaintiff “completed his psychological process of uncovering is irrelevant.” *Graham*, 2007 WL 4301191, at * 3. Rather, the test is when a reasonable person would have been put on notice that an injury and substantial damages *may have occurred* and would have undertaken to ascertain the extent of the damages. *Powel*, 197 S.W.3d at 585.

Here, all evidence shows that the Plaintiff – a smart, successful high school senior – was fully aware of the critical aspects of the alleged wrongful conduct and always remembered as much. (A102 at 264; A79 at 169; A83-A84 at 188-189; A86 at 200.) Plaintiff knew sufficient facts to be put on inquiry notice of the need to inquire further at the time these alleged incidents occurred in 1984-1985.

Consider the fact that for the last twenty-one years, Plaintiff always has remembered a grown man blindfolding him, asking him to strip to his underwear, hyperventilate, and placing a knife to his throat. (A102 at 264; A79 at 169; A83-A84 at 188-89; A86 at 200.) Even accepting Plaintiff’s claim that he did not question the legitimacy of the conduct when he was nearly eighteen, this information clearly was enough to put Plaintiff on notice to inquire further at some point prior to turning twenty-six years old. Armed with the permanent knowledge that a grown man directed Plaintiff to strip down to his underwear and hyperventilate, while being blindfolded and having a knife held to his throat, Plaintiff apparently made no efforts to inquire further or

otherwise timely pursue a possible claim.³ Missouri law requires that he do so; otherwise, his claim is time barred.

Plaintiff has given clear testimony describing alleged behavior that, as noted above, a reasonably prudent person would have known was not normal. Plaintiff complains in his lawsuit that the behaviors he recalled all along were offensive and caused him damage. (“Defendant Brother William Mueller physically grasped, held, touched, fondled, choked and/or groped plaintiff in threatening and highly inappropriate ways during which he brandished what Plaintiff believed was a knife and placed it to his neck and face . . . Defendant’s actions put plaintiff in fear of bodily harm...by reason of defendant's actions, plaintiff suffered damage.” (A29.) As such, *Powel* dictates that under the “reasonable person” standard, Plaintiff was on notice of his potential claim and/or damages in this matter, and simply failed to file his lawsuit in time.

The undisputed facts clearly establish that Plaintiff knew and remembered sufficient information regarding his abuse allegations to put a reasonably prudent person on notice to inquire further. Plaintiff failed to do so. Whether his alleged damages were “complete” through recollection of certain “sexual” aspects of the alleged abuse incidents is irrelevant because plaintiff always remembered sufficient information to be put on inquiry notice of a “potentially actionable injury.”

³ In assessing the duty to inquire issue, it bears repeating that during the late 1980s and early 1990s Plaintiff was a professional military interrogator with federal law enforcement training in the area of criminal law. (A51 at 60; A50 at 55.)

F. Whether Plaintiff Was “Reverential” Toward Mueller Is Wholly Irrelevant under the Objective *Powel* Test

Once again misconstruing the holding of *Powel*, Plaintiff argued before the trial court below that his claims are not time barred because he was raised to trust and respect religious figures of authority such as Mueller and accordingly did not question at the time the legitimacy of Mueller’s “experiments.” Plaintiff’s argument runs essentially as follows: “Even though I remembered the conduct for the past twenty-two (22) years, I did not know that I was damaged when Mueller blindfolded me and put a knife to my throat because I was raised to trust and respect religious figures.”

Whether true or not, this assertion carries absolutely no legal significance under *Powel* because it pre-supposes a subjective awareness or “discovery” standard that this Court consistently has rejected. Under *Powel*, the issue of when a plaintiff first becomes aware that he had been aggrieved by the defendant’s conduct is immaterial to a statute of limitations analysis. *Id.* at 580-81. In rejecting the approach suggested by Plaintiff, this Court noted in *Powel*: “Plaintiff, in effect, asks this Court to hold that by this phrase [“capable of ascertainment”] the legislature meant that the statute of limitations would not begin to run until he subjectively became aware that he suffered damages and they were caused by ‘the actions of the individuals’ in question and were connected to his psychological injuries.” *Id.* at 581. However, this test if adopted would amount to nothing more than a “discovery” rule, which is not what the Missouri General Assembly intended. *Id.* To say that the statute of limitations did not start to run on Plaintiff’s claim until twenty-one years after the alleged conduct because Plaintiff “trusted” and

“respected” Defendant Mueller is simply another way of stating: “I was not subjectively aware that I was damaged by defendant’s actions.”

“Subjective knowledge of damages is not required.” *Powel*, 197 S.W.3d at 588 (Wolf, C.J., concurring). “Mere ignorance on the part of a plaintiff does not toll the statute of limitation where reasonable diligence on his or her part would have revealed the injury or wrongful conduct.” *O’Reilly v. Dock*, 929 S.W.2d 297, 301 (Mo. App. S.D. 1996). And “[m]ere ignorance of the plaintiff of his cause of action will not prevent the running of the statute of limitations.” *Carr v. Anding*, 793 S.W.2d 148, 150 (Mo. App. E.D. 1990) (internal quotations omitted). Here, Plaintiff cannot shut his eyes to his potential claims for over twenty years by simply arguing that he was raised to trust and respect religious figures.

Plaintiff’s counsel offered this same argument in another case filed against Mueller and Marianist Province in the Circuit Court of the City of St. Louis (*Timothy Kluempers and Matthew Giegling vs. Marianist Province, et al.*, Circuit Court of City of St. Louis, Cause No. 052-11454). The argument properly was rejected by the Judge Dierker, who noted in his summary judgment order of August 2, 2007, “If the Plaintiff’s position were to be the law, one might wonder, as Chief Justice Wolff did in his concurring opinion in *Powel*, ‘Why have a statute of limitations?’” (A242-253.)

Plaintiff’s position is not the law in Missouri, which is why this Honorable Court properly sustained Relator’s Petition for Writ of Prohibition. The Court should make permanent its Writ of Prohibition.

CONCLUSION

This Court should make absolute its Preliminary Writ as the uncontested factual allegations show that Plaintiff's claim is time-barred under Missouri's five year statute of limitations set forth in RSMo § 516.120. Otherwise, Marianist Province will be forced to suffer the burden of unnecessary and burdensome litigation. This Court should make absolute its Preliminary Order of Prohibition by ordering Respondent to take no action in this case other than to vacate his Order of July 30, 2007, and enter an order granting summary judgment in favor of Marianist Province, and for such other and further relief this Court deems just and proper.

Respectfully submitted,

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Certificate of Compliance

The undersigned certifies that this brief complies the limitation set forth Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word and contains approximately 6, 581 words and approximately 584 lines. The font is Times New Roman 13 point type. The undersigned also certifies that a copy of the brief and appendix was filed with the Court on a CD-Rom (in lieu of a floppy disk) and that the CD-Rom has been scanned for viruses and it is virus-free.

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Certificate of Service

The undersigned certifies that two copies of the brief in printed form and one copy of the brief on CD-Rom in Microsoft Word format was served upon:

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**IN THE
MISSOURI SUPREME COURT**

STATE ex rel. MARIANIST)	
PROVINCE OF THE UNITED)	
STATES,)	
	)	No. SC88779
)	
Relator-Defendant,	)	St. Louis County, Missouri
	)	Judge John A. Ross
)	
vs.	)	Circuit Court Cause No. 06CC-000008
)	
)	
)	
HONORABLE JOHN A. ROSS,)	
JUDGE, CIRCUIT COURT,)	
COUNTY OF ST. LOUIS,)	
DIVISION 15)	
)	
)	
Respondent.)	

**APPENDIX OF DEFENDANT-RELATOR
MARIANIST PROVINCE OF THE UNITED STATES**

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ORAL ARGUMENT REQUESTED

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for Summary Judgment

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)	
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**APPENDIX OF DEFENDANT-RELATOR
MARIANIST PROVINCE OF THE UNITED STATES
Volume 1 of 2**

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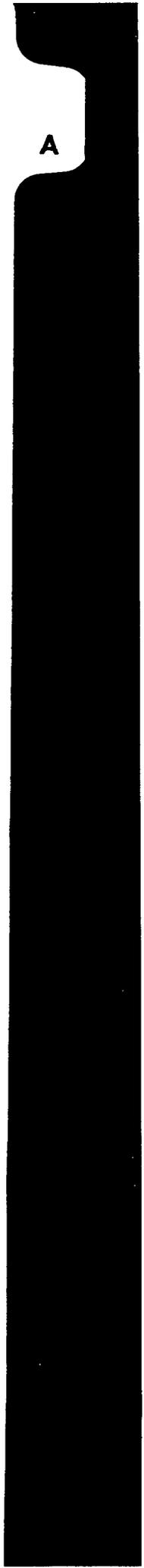
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A



IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

2007 11 2 0:57

ROBERT WILLIAM VISNAW,)
)
 Plaintiff,)
) Cause No 06CC-000008
 v)
) Div No 15
 MARIANIST PROVINCE OF THE)
 UNITED STATES, ST. JOHN VIANNEY)
 HIGH SCHOOL, INC and BROTHER)
 WILLIAM MUELLER,)
)
 Defendants)

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT MARIANIST
PROVINCE OF THE UNITED STATES AND ST. JOHN VIANNEY HIGH SCHOOL,
INC.'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION AND SUMMARY

This lawsuit arises from claims of sexual abuse that allegedly took place at Vianney High School twenty-two (22) years ago. All of Plaintiff Robert Visnaw's (hereinafter "Plaintiff") claims are clearly barred, however, by Missouri's statute of limitations. There is no genuine issue of material fact that, based on Plaintiff's own admissions, discovery responses, and testimony in this case, he had notice of the potentially actionable injuries that he allegedly suffered over twenty years ago, at the time the alleged incidents occurred. As such, Defendants Vianney and the Marianist Province (hereinafter "Vianney" and "Marianist Province," respectively) are entitled to summary judgment as a matter of law.

Plaintiff Robert Visnaw has filed a six-count Amended Petition against all named Defendants, including the Marianists and Vianney High School. Of the six (6) counts the following were alleged against the Marianists and Vianney, specifically: Intentional Failure to Supervise (Count I), Intentional Infliction of Mental Distress (Count II), Negligence (Count V),



and Negligent Supervision, Retention and Failure to Warn (Count VI) (See Exhibit B, attached, Plaintiff's First Amended Petition)¹ Mr. Visnaw claims that he was assaulted (Count III) and/or battered (Count IV) by former Brother William Mueller (hereinafter "Mueller") in the fall of 1985 while he was a senior at Vianney High School. As noted above and discussed fully below, because Mr. Visnaw's claims are barred by the statute of limitations, the Marianists and Vianney are entitled to judgment as a matter of law.

II BACKGROUND FACTS

Plaintiff Robert Visnaw was born on April 9, 1967 (See Exhibit C, attached, Plaintiff's Responses to Separate Interrogatories of St. John Vianney High School Directed to Pl., at No. 1(b)). He started attending high school as a freshman at Vianney in the fall of 1981 and graduated in May of 1985 (See Exhibit D, attached, Deposition of Robert Visnaw at p. 8). Plaintiff alleges that his damages are the result of four separate incidents that transpired between him and former brother Mueller during his senior year at Vianney (See Ex. D at p. 96). At the time of the alleged incidents, Mueller was employed at Vianney as an "assistant vice-principal" (See Ex. D at p. 20). Plaintiff first met Mueller during his senior year at Vianney when he would have been 17 years old (See Ex. D at p. 20).

A. First Alleged Incident

Plaintiff claims that in the first alleged incident with Mueller, Mueller instructed him to come to his office in the evening after school, and while he was in Mueller's office Mueller allegedly had him hyperventilate to the point of unconsciousness four or five times (See Ex. D at pp. 109-113). Each time upon awakening, Mueller would question him about what he had experienced (See Ex. D at pp. 109-113). Mueller allegedly told Plaintiff that he was conducting

¹ Plaintiff's original Petition was filed on January 3rd, 2006. That Petition is attached as Exhibit A for purposes of illustrating to the Court the original date of Plaintiff's filing.

an experiment on fear for his masters' thesis (See Ex D at p 109) Plaintiff admits that he does not recall having been physically injured during the first alleged incident with Mueller, and admits that he has no evidence of having been sexually abused during the incident (See Ex D at pp 114-115) He further admits that he has "always recalled the passing out and waking up with the questions" and the incident itself (See Ex. D at p 115) He also admits that he did not find anything that occurred in the first alleged incident to have been physically offensive, harmful, or injurious (See Ex D at p 117)

B. Second Alleged Incident

Plaintiff's second alleged incident with Mueller occurred about three weeks to a month after the first incident, he met Mueller at the school gymnasium entrance in the evening after swim practice (See Ex D at pp 125 and 137) Plaintiff and Mueller went to the varsity locker room (See Ex D at p 139) Mueller again instructed Plaintiff to hyperventilate and make himself pass out; Plaintiff did so (See Ex D at p 142)

After the hyperventilating, Plaintiff recalls waking up "laying down on something" and realizing that Mueller was massaging Plaintiff's genitals (See Ex D at p 142-143) Plaintiff recalls hearing moaning, or sounds associated with sexual activity, as he woke up (See Ex D at p 143) Plaintiff also allegedly saw Mueller holding his own penis with his other hand, and Plaintiff recalls Mueller stopped immediately (See Ex D at pp 143 and 153) Plaintiff admits to having been "freaked out" by the incident despite how he claims not to have recalled what happened in the incident until 2005 (See Ex D at pp 144-145)

C Third Alleged Incident

Plaintiff claims that the third alleged incident with Mueller happened around Christmas break of his senior year (See Ex D at p 157) He claims to have met Mueller at Vianney's

main entrance after diving practice and the two of them went to the varsity locker room, they walked all the way to the back of the locker room (See Ex D at p 157-158) Plaintiff claims that Mueller again instructed him to hyperventilate to unconsciousness while Mueller grabbed Plaintiff's head and moved it side to side in circles while he was bent over and hyperventilating (See Ex D at p 158) When Plaintiff woke up, he was in the front of the locker room or gym sitting on the floor with his knees up at his chest (See Ex D at pp 158-159).

Plaintiff recalls that after he regained consciousness, Mueller helped him stand up and asked him to put VOS hair gel in his hair; Plaintiff did so without objection and he does not recall Mueller touching him while he did so (See Ex D at pp 141-142) Plaintiff admits that he is unaware of or cannot recall any sexual misconduct having occurred during the third alleged incident (See Ex D at pp 160-161)

D. Fourth Alleged Incident

Plaintiff claims that the fourth and final alleged incident with Mueller happened in March the night of the Spring Dance of his senior year (See Ex D at p 164) Plaintiff got to the dance after dark and met Mueller outside the main entrance to Vianney near the administration center (See Ex D at p. 166) Plaintiff and Mueller then walked to a small teachers' office near where the bookstore used to be (See Ex D at p 167) Plaintiff claims that Mueller told him that as part of the experiment, he needed him to take off his clothing down to his underwear, Plaintiff agreed and said he thought that doing so was "no big deal" (See Ex D at p 168)

Plaintiff claims that Mueller stepped out of the office while he took his clothes off, when he re-entered the office, he instructed Plaintiff to face away from him (See Ex D at p 168) Plaintiff claims that Mueller then blindfolded him, repeatedly touched his shoulder, and asked him if he was afraid, Plaintiff repeatedly responded that he was not (See Ex D at p 168)

Plaintiff claims that Mueller then placed a knife to his throat and closed the gap of space between them, Plaintiff claims he put his hands on a table in front of him (See Ex D at pp. 169-172)

Plaintiff admits that he has always remembered Mueller having held a knife to his throat and admits that he never repressed that recollection (See Ex D at pp 169 and 264) He also claims that Mueller would ask him while he held the knife to his throat if he was afraid, Plaintiff would respond that he was not and then Mueller would press the knife against his throat harder (See Ex D at p. 170) Plaintiff claims that eventually he felt skin-to-skin contact between his back and what he assumes was Mueller's stomach and that he became "very afraid" (See Ex D at p 171) Plaintiff admits that he eventually told Mueller during the alleged incident that he was afraid (See Ex D at p 172)

Mueller then allegedly reached his hand down into Plaintiff's pants and started massaging his genitals. (See Ex D at p 173) Plaintiff admits that " from the tips of [his] fingers to the tips of [his] toes," he was " totally, totally, totally scared to death about what was happening " (See Ex D at p 173) He claims that suddenly, everything stopped, and he woke up in the hallway fully clothed followed by Mueller taking him out to the school track to walk around (See Ex. D at p 173) Plaintiff does not recall having had a discharge, but does remember having had an erection during the alleged incident (See Ex D at p 174)

Plaintiff admits that he always remembered taking off his clothes down to his underwear and does not claim that he ever repressed that part of his memories about the alleged incidents (See Ex D at p 189) He also admits that he was fully conscious during the fourth alleged incident (See Ex D at p 203)

E. Plaintiff's Memories of the Alleged Incidents, Recapped

Plaintiff admits that he has always known of his participation in the alleged experiments (See Ex D at 220) With respect to the first incident, Plaintiff admits that he has “always recalled the passing out and waking up with the questions” and the incident itself (See Ex D at p 115) Also, he admits that he always remembered Mueller asking him to hyperventilate and pass out and does not claim that he ever repressed that part of his memories about the alleged incidents (See Ex D at p 264)

Plaintiff admits that after the last alleged incident, he “made excuses to not help Brother Mueller any longer ” (See Ex C at No 10) He also testified that he recalled having participated in Mueller’s “experiments” in July of 1991, when he received correspondence from Mueller at his parents’ home and he told his father that he had assisted Mueller in the experiments when he attended Vianney (See Ex D at pp 117-118) In fact, Plaintiff also admits that he has always remembered that Mueller told him not to tell anyone about the “experiments ” (See Ex D at p 187)

Plaintiff admits that he always remembered taking off his clothes down to his underwear and does not claim that he ever repressed that part of his memories about the alleged incidents (See Ex D at p 189) He also admits that he has always remembered Mueller having held a knife to his throat and admits that he never repressed that recollection (See Ex. D at pp 169 and 264)

F. Plaintiff's Activities Following Graduation from Vianney

Plaintiff performed very well academically at Vianney, graduating in the top quarter of his class, he was also on the silver honor roll (See Ex D at pp 32 and 219) Following graduation, he voluntarily stayed in contact with Mueller through phone calls and three, four, or

five letters (See Ex D at pp 119-121) Eventually, he graduated from the University of Missouri-St Louis with a bachelor's degree in Spanish, and is currently employed as a criminal investigator/special agent with the Department of Homeland Security/Immigration & Naturalization Service (See Ex D at pp 49-50 and 262 , respectively, see also Ex C at No 2)

Plaintiff claims that around 1986-1987, he "quit" the Catholic Church while he was in college at the University of Missouri-St Louis. (See Ex D at pp. 66-67) After graduating from college, he served in the human intelligence branch of the U S Army. (See Ex D at p 258, see also Ex C at No. 3) He speaks five languages. English, Spanish, Portuguese, Italian and some Korean (See Ex D at p. 60) Prior to his employment with the Department of Homeland Security, Plaintiff attended Federal Law Enforcement Training in Glencoe, Georgia, that training involved criminal investigations and criminal law (See Ex D at pp 50-51 and 82)

Plaintiff claims that in September of 2005, he reviewed some St Louis Post-Dispatch newspaper articles relating to a claim brought by Bryan Bacon against Mueller (See Ex D at pp 42-43) He admits that he contacted Bryan Bacon to tell Bacon about his alleged incidents with Mueller (See Ex D at p 43)

III. LAW AND ARGUMENT

A. Summary Judgment Standard

To be entitled to summary judgment, a movant must demonstrate that there is (1) no genuine dispute of material fact, and (2) he is entitled to judgment as a matter of law *ITT Commercial Financial Corp v Mid-America Marine Supply Corp* , 854 S W 2d 371, 377 (Mo banc 1993) If the movant is the defending party, he can establish a prima facie case for summary judgment by one or more of the following means (1) facts that negate any one of the plaintiff's elements, (2) that the plaintiff, after an adequate period of discovery, has not been able

to produce and will not be able to produce evidence sufficient to allow the trier of fact to find the existence of any one of the plaintiff's elements, or (3) that there is no genuine dispute as to the existence of each of the facts necessary to support defendant's properly pleaded affirmative defense *Id* at 381

Here, there is no dispute that the statute of limitations defense bars all of Plaintiff's claims, as such, Defendant are entitled to summary judgment as a matter of law. The following sections address, in detail, why Plaintiff's cause of action is barred in the present matter

B. Plaintiff's Cause of Action is Barred by Missouri's Statute of Limitations Because Plaintiff was Put on Notice of A Potentially Actionable Injury in 1985

Because Plaintiff claims the incidents alleged in this lawsuit occurred in 1985, the general five year statute of limitations contained in R S Mo § 516 120 applies. See *Powel v Chaminade College Preparatory, Inc*, 197 S W 3d 576, 580 (Mo banc 2006). R S Mo § 516 020 provides, in relevant part, that "... an action for any other injury to the person or rights of another, not arising on contract and not herein otherwise enumerated " is to be commenced within five years of that injury. R S Mo § 516 170 contains a general tolling provision that tolls the statute of limitations until age 21. See R S Mo § 516 170. In the present case, therefore, under the general statute of limitations set forth in R S Mo § 516 120 Plaintiff should have filed his suit no later than 1993—which would be five (5) years after he turned twenty-one (21) ²

Even under the lengthiest period of limitations that might potentially apply to his claim, Plaintiff's case is time-barred. Under Missouri law in effect in 1985, an action for "childhood

² Defendants recognize that Plaintiff claims the last alleged incident occurred prior to his turning 21, however, as is discussed in detail in this Memorandum, there is no allegation that he ever forgot or repressed his knowledge of the incidents prior to turning 21 in April of 1988, rather, Plaintiff admits that he has always remembered the bulk of what happened during the incidents. As such, under the objective test set forth in *Powel*, Plaintiff had a "potentially actionable injury" for which the statute of limitations began to run for him immediately upon turning 21 in April 1988, thus making the statute of limitation have run on his claims in 1993 at the very latest under R S Mo § 516 120 (or in 1990 under R S Mo § 537 046, which is discussed in the next paragraph)

sexual abuse” was barred unless Plaintiff filed his case either within five (5) years of his eighteenth (18th) birthday or within three (3) years after he reasonably should have discovered that his alleged injury was caused by the alleged abuse, whichever occurred later R S Mo. § 537.046(2) (1990) Plaintiff did not file his original Petition in this matter, however, until January 3rd, 2006—over 21 years after he turned 18 years of age in 1985³ (See Ex A; see also Ex C, at No 1(b)(Plaintiff was born on April 9, 1967) To overcome this obvious timing problem, Plaintiff claims in his Amended Petition that he was “incapable of ascertaining the resulting damages from [Mueller’s] conduct ” See Ex B at ¶¶8-9 Plaintiff’s own behavior and his admissions regarding his behavior, however, unequivocally belie his attempt to allege repressed memory. This is because in the recent case of *Powel v Chaminade College Preparatory, Inc* , 197 S W.3d 576 (Mo banc 2006), the Missouri Supreme Court set forth the following *objective* standard “the statute of limitations begins to run when the evidence was such to place a reasonably prudent person on notice of a potentially actionable injury” *Id* at 582 (internal citations omitted)

In *Powel*, the plaintiff brought an action against his former boarding school, and two clergymen formerly employed there, for sexual abuse that he allegedly suffered while under their care *Id* at 578-79 The abuse purportedly took place over the course of two years while the plaintiff, then aged 15-17 years old, was a boarding student at the school *Id* at 579

The concurring opinion by Chief Justice Wolff noted that while that an action does not automatically accrue at the time the wrong is done, an action *can* accrue at the time the damages occur See *Id* at 588 (“[Plaintiff]’s damages were objectively *capable* of ascertainment when

³ Plaintiff admits that he has always remembered the bulk of what happened during the incidents As such, under the objective test set forth in *Powel*, Plaintiff had a “potentially actionable injury” for which the statute of limitations began to run for him immediately upon turning 18 in April 1988, thus making the statute of limitation have run on his claims in 1990 at the very latest under R S Mo § 537.046

they occurred”)(Emphasis in the original). Whether or not a plaintiff later represses those memories is irrelevant if the damage was already capable of ascertainment when it happened *Id*

Chief Justice Wolff also explained that the concept of the objective test should raise the question “whether a reasonable person *in this situation* would realize he had suffered a wrong” *Id* at 587 (emphasis added) Chief Justice Wolff twice stressed the difference between a small child victim and a teenage victim *Id* at 586, 589 He also explained that the plaintiff in *Powel* admitted to remembering the abuse he allegedly suffered until some time during his 17th year, and the trial court found both that the plaintiff was aware of the abuse as it occurred and that the abuse was traumatic *Id* at 588 Accordingly, Chief Justice Wolff noted that the plaintiff’s damages were ascertained during the time he remembered the abuse as a teenager, although the statute therefore tolled until he was 21 years old (under the application of R S Mo. § 537 046), it went on to expire five years later, when the plaintiff turned 26 years old *Id* at 589. This, according to Justice Wolff, was a conclusion that should have properly resulted in an order granting summary judgment to the defendants *Id* at 592

The same analysis is properly applied to the present case whether the Court applies a general 5-year statute of limitations analysis or a R S Mo § 537 046 analysis In the present case Plaintiff had more than sufficient notice of his alleged damages back in 1985, regardless of whether certain contents of his memories of the alleged incidents purportedly resurfaced later in 2005 The extent of Mueller’s behavior about which Plaintiff complains, if all of Plaintiff’s allegations of fact are taken as true, is objectively serious and questionable enough to any “reasonably prudent person,” especially an almost-18-year-old man, to have put Plaintiff on notice of a potential lawsuit as a matter of law

To illustrate this, a review of exactly what Plaintiff admits to having remembered is critical. Plaintiff admits that he has always recalled the following:

--Plaintiff admits that he has “always recalled the passing out and waking up with the questions” and the first incident itself (*See Ex. D* at p. 115),

--He admits that he always remembered Mueller asking him to hyperventilate and pass out, and does not claim that he ever repressed that part of his memories about the alleged incidents (*See Ex. D* at p. 264),

--He admits that after the last alleged incident, he “made excuses to not help Brother Mueller any longer” (*See Ex. C* at No. 10),

--He admits that he recalled having participated in Mueller’s “experiments” in July of 1991, when he received correspondence from Mueller at his parents’ home and he told his father that he had assisted Mueller in the experiments when he attended Vianney (*See Ex. D* at pp. 117-118),

--He admits that he has always remembered that Mueller told him not to tell anyone about the “experiments” (*See Ex. D* at p. 187),

--He admits that he always remembered taking off his clothes down to his underwear—at 17, almost 18 years of age—and does not claim that he ever repressed that part of his memories about the alleged incidents (*See Ex. D* at p. 189),

--He admits that he has always remembered Mueller having held a knife to his throat and admits that he never repressed that recollection (*See Ex. D* at pp. 169 and 264)

Mr. Visnaw’s admitted memory of all of these events clearly establishes that he was put on notice of a “potentially actionable injury” beginning in 1985. As noted above, the salient

legal issue for statute of limitations purposes is not whether Mr. Visnaw subjectively realized he was harmed, but whether a **reasonably prudent person** in Visnaw's situation would have been put on a notice. *Powel*, 197 S.W.3d at 587 (emphasis added). As the principal opinion in *Powel* noted, an action can accrue *before* the memory is repressed, and in such a case, the statute will begin to run after the age of majority has been reached. *Powel*, 197 S.W.3d at 588-89. Here, Plaintiff admits that he has always known of the alleged experiments with Mueller, including all the details laid out in the discussion above. (See Ex. D at p. 220). He was not a small child. He was a highly intelligent seventeen (17) year old. (See Ex. D at p. 32 and 219). The suspension of disbelief that Plaintiff requests of the Court runs contrary to common sense as well as applicable Missouri law on the issue as noted above. It defies any objective or reasonable logic for the Court to draw any conclusion other than that a normal, reasonably prudent person in Plaintiff's position would have known that

- having a knife pressed to his throat,
- meeting in secrecy,
- being told to repeatedly hyperventilate and pass out, and
- taking off his clothes down to his underwear while alone with a teacher

were not acceptable or normal activities to be engaging in under Plaintiff's circumstances or position. There is simply no material dispute of fact, under the guidelines of Missouri law (and much less common sense), that a reasonably prudent person in Plaintiff's position—as a smart 17 (almost 18) year old—would have clearly known that he had suffered an injury and/or a wrong potentially entitling him to relief. Therefore, under the objective framework provided by the Supreme Court of Missouri in *Powel*, the statute of limitations for tort claims has barred the action Plaintiff might have had against the Defendants at one time.

Plaintiff attempts to work around this fatal flaw in his case by, as noted above, claiming that he was “incapable of ascertaining the resulting damages from [Mueller’s] conduct” (See Ex B at ¶¶8-9) Specifically (regardless of how questionable this claim may be), Plaintiff claims that he not did recall just the sexual component of the “experiments” until much more recently, in 2005 Although he admits he recalled all the elements of the “experiments” listed above, Plaintiff claims he buried the memories of waking up with an erection, or the alleged fondling, or the alleged sexual moaning (See Ex D at pp 189-193). Plaintiff’s parsing out of his recollections, however, fails to change the analysis of his claim being barred under Missouri law As Chief Justice Wolff noted in the *Powel* case, Missouri law is clear that a cause of action accrues when a party “ can first ascertain the fact of damage, **even though he may not know the extent of the damage**” *Powel*, 197 S W 3d at 584 quoting *Business Men’s Assur Co of America v Graham*, 984 S W.2d 501, 507 (Mo banc 1999)(emphasis added)

Plaintiff’s testimony regarding his repeated return to engage in experiments with Mueller, even after the questionable conduct that allegedly occurred in the first and subsequent incidents, is a clear indication as to Plaintiff’s state of mind as it related to his knowledge and notice that a “potentially actionable injury” had occurred Plaintiff has given clear testimony describing alleged behavior that, as noted above, a reasonable 17-year-old objectively would have known was not normal Even more notably, Plaintiff eliminates any uncertainty or dispute—by his own testimony—that there was ever a disconnect or lapse in his consciousness or recollection of the behaviors described above Even if he did not recall the sexual aspects of the “experiments” until more recently, Plaintiff complains in his lawsuit that even the behaviors he recalled all along were offensive and caused him damage (See Ex B at ¶¶25-28 (“ Defendant Brother William Mueller physically grasped, held, touched, fondled, choked and/or groped plaintiff in

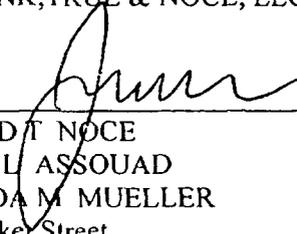
threatening and highly inappropriate ways during which he brandished what plaintiff believed was a knife and placed it to his neck and face Defendant's actions put plaintiff in fear of bodily harm by reason of defendant's actions, plaintiff suffered damage ") As such, *Powel* dictates that Plaintiff was on notice of his potential lawsuit and/or damages in this matter, and simply failed to file his lawsuit in time

III. CONCLUSION

Defendants are entitled to judgment as a matter of law because the unconcontroverted material facts establish that Mr Visnaw's was put on notice of a "potentially actionable injury" in 1985 when the alleged harmful conduct occurred Therefore, summary judgment is proper.

HEPLER, BROOM, MacDONALD,
HEBRANK, TRUE & NOCE, LLC

By _____


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Attorneys for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing has been sent this 25 day of May, 2007 via first class U S Mail, postage prepaid, to Mr. Daniel W Craig, Attorneys for Plaintiffs, 1125 Grand Blvd , Suite 900, Kansas City, MO 64106 and Mr J Martin Hadican, Attorney at Law, 225 South Meramec, Suite 832, St Louis, MO 63105 - Attorney for Defendant Mueller

SOef

MISSOURI CIRCUIT COURT
TWENTY-FIRST JUDICIAL CIRCUIT
COUNTY OF ST. LOUIS

ROBERT WILLIAM VISNAW,)
)
 Plaintiff,)
)
 v.)
)
 MARIANIST PROVINCE OF THE)
 UNITED STATES,)
)
 Serve CT Corporation System)
 Registered Agent)
 120 South Central Avenue)
 Clayton, Missouri 63105)
)
 ST. JOHN VIANNEY HIGH SCHOOL, INC.)
)
 Serve Wendell L. DePhillips)
 Registered Agent)
 1311 S Kirkwood Road)
 St Louis, Missouri 63122)
)
 BROTHER WILLIAM MUELLER,)
)
 Serve Service by Special Process Server)

Case No.
 Division
15
 JURY TRIAL DEMANDED

PETITION FOR DAMAGES

COMES NOW plaintiff, by and through counsel, and for his cause of action states as follows

1 Plaintiff Robert Visnaw is a Kansas citizen residing in Johnson County, Kansas. At all times relevant to the allegations of this cause of action, plaintiff was a citizen of the state of Missouri, attended defendant St. John Vianney High School, in St. Louis County, Missouri, and was a minor parishioner and student of defendants



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2 Defendant Marianist Province of the United States is a Missouri non-profit corporation in good standing, with its principal place of business in the city of St. Louis, Missouri. At all times relevant to the allegations of this cause of action, defendant was the supervisor of defendant Brother William Mueller, and was the owner and operator of defendant St. John Vianney High School.

3 Defendant St. John Vianney High School, Inc. is a Missouri non-profit corporation in good standing, with its principal place of business in St. Louis County, Missouri. At all times relevant to the allegations of this cause of action, defendant was wholly owned, operated and/or managed by defendant Marianist Province of the United States. At all times relevant to the allegations of this cause of action, defendant was the supervisor of defendant Brother William Mueller.

4 Defendant Brother William Mueller is believed to be a citizen of Texas residing in the city of San Antonio, Texas. At all times relevant to the allegations of this cause of action, defendant was a member, associate and/or employee, and was under the supervision of, defendants Marianist Province of the United States and/or St. John Vianney High School.

5 Jurisdiction and venue are proper in this Court because plaintiff asserts claims under Missouri common law only, because the acts, omissions, and/or occurrences giving rise to this cause of action arose in St. Louis County, Missouri, and because at least one defendant is a citizen of the state of Missouri, where this action is being brought.

6 Each of the acts or omissions of defendants as set forth below caused or contributed to cause the injuries and damages to plaintiff, and therefore each defendant is jointly and severally liable for said injuries and damages.

7 In approximately 1984, defendant Brother William Mueller repeatedly assaulted and/or battered plaintiff. Plaintiff believes such assaults and batteries included, but were not limited to, sexual misconduct. Said assaults and/or batteries occurred on property which defendants Maronist Province of the United States and/or St. John Vianney High School owned and/or controlled and/or had the right to control the activity thereon.

8 The aforementioned abuse of plaintiff, and the circumstances under which the abuse occurred, caused plaintiff to develop various psychological coping mechanisms which made him incapable of ascertaining the resulting damages from that conduct until approximately 2005, when specific details of defendant Mueller's abuse of minors emerged publicly.

9 Due to the way in which defendant Mueller abused plaintiff, in that he would initially render him unconscious prior to his assault and battery of plaintiff, prevented plaintiff from ascertaining the resulting damages from that conduct until 2005, when specific details of defendant Mueller's abuse of minors emerged publicly.

10 Prior to defendant Brother William Mueller's assault and battery of plaintiff, defendants Maronist Province of the United States and/or St. John Vianney High School had knowledge and were aware of several previous assaults and batteries, including sexual misconduct, by defendant Mueller on minors during the 1960's, 1970's and/or early 1980's.

Count I- Intentional Failure to Supervise Clergy
(Plaintiff v. Marianist Province of the United States and
St. John Vianney High School)

11 Plaintiff incorporates by reference the allegations made in paragraphs 1-10 above

12 At the time of the assaults and batteries described above, defendant Brother William Mueller was under the supervision of defendants Marianist Province of the United States and/or St. John Vianney High School

13 At the time of the assaults and batteries, defendant Brother William Mueller's supervisors, defendants Marianist Province of the United States and/or St. John Vianney High School knew that harm was certain or substantially certain to result

14 Defendant Brother William Mueller's supervisors, defendants Marianist Province of the United States and/or St. John Vianney High School disregarded the known risks

15 As a result of defendant Brother William Mueller's supervisors' inaction, damage was caused to plaintiff

16 The harm that occurred to plaintiff occurred on premises owned or controlled, or with the right to control the activity thereon, by defendants Marianist Province of the United States and/or St. John Vianney High School

17 Defendants' conduct as stated above was outrageous because of defendants' evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages

WHEREFORE, plaintiff prays for judgment against defendants Marianist Province of the United States and St. John Vianney High School, jointly and severally, in an amount that will

fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper

Count II- Intentional Infliction of Mental Distress

(Plaintiff v. All Defendants)

18 Plaintiff incorporates by reference the allegations made in paragraphs 1-17,
above

19 Defendant Brother William Mueller assaulted and battered plaintiff

20. Defendants Marianist Province of the United States and/or St. John Vianney High School intentionally failed to supervise defendant Mueller, which resulted in his assaulting and battering plaintiff

21 Defendants' actions, inactions and/or omissions were extreme, outrageous, and intolerable

22 Plaintiff sustained severe emotional distress which was medically diagnosable and medically significant

23 Defendants' conduct as stated above was outrageous because of defendants' evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages

WHEREFORE, plaintiff prays for judgment against all named defendants in this action, jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper

Count III- Assault

(Plaintiff v. Brother William Mueller)

24 Plaintiff incorporates by reference the allegations made in paragraphs 1-23,
above

25 Defendant Brother William Mueller physically grasped, held, touched, fondled,
choked and/or groped plaintiff in threatening and highly inappropriate ways during which he
brandished what plaintiff believed was a knife and placed it to his neck and face

26 Defendant's actions put plaintiff in fear of bodily harm

27 By reason of defendant's actions, plaintiff suffered damage

28 Defendant's conduct as stated above was outrageous because of defendant's evil
motive or reckless indifference to the rights of others, thus justifying an award of punitive
damages

WHEREFORE, plaintiff prays for judgment against defendant Brother William Mueller,
jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his
damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other
relief as may be just and proper.

Count IV- Battery

(Plaintiff v. Brother William Mueller)

29 Plaintiff incorporates by reference the allegations made in paragraphs 1-28,
above

30 Defendant Brother William Mueller physically held, touched, and groped plaintiff
in threatening and highly inappropriate ways during which he brandished what plaintiff believed
was a knife and placed it to his neck and face

31 Defendant's actions constituted harmful and offensive touching upon plaintiff.

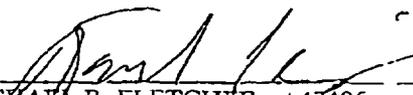
32 By reason of defendant's actions, plaintiff suffered damage

33. Defendant's conduct as stated above was outrageous because of defendant's civil
motive or reckless indifference to the rights of others, thus justifying an award of punitive
damages

WHEREFORE, plaintiff prays for judgment against defendant Brother William Mueller,
jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his
damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other
relief as may be just and proper.

Respectfully Submitted.

SANDERS, SIMPSON, & FLETCHER, L.C.

By 
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(816) 471-6444, FAX (816) 471-6664

ATTORNEYS FOR PLAINTIFFS

MISSOURI CIRCUIT COURT
TWENTY-FIRST JUDICIAL CIRCUIT
COUNTY OF ST. LOUIS

ROBERT WILLIAM VISNAW,)	
)	
Plaintiff,)	
	)	Case No.
v)	
	)	Division
MARIANIST PROVINCE OF THE)	
UNITED STATES,)	
ST. JOHN VIANNEY HIGH SCHOOL, INC.,)	
BROTHER WILLIAM MUELLER,)	
)	
Defendants.		

CERTIFICATE OF SERVICE

I hereby certify that the following pleadings and documents were served upon all named defendants concurrently with service of plaintiff's Petition for Damages

- 1 Notice of Deposition of Defendant Marianist Province of the United States pursuant to Rule 57.03 (b)(4)
- 2 Notice of Deposition of Defendant St. John Vianney High School pursuant to Rule 57.03 (b)(4)
- 3 Request for Admissions to Defendant Marianist Province of the United States
- 4 Request for Admissions to Defendant St. John Vianney High School
- 5 Plaintiffs' First Set of Interrogatories to Defendant Marianist Province of the United States
- 6 Plaintiffs' First Set of Interrogatories to Defendant St. John Vianney High School

Respectfully Submitted,

SANDERS, SIMPSON & FLETCHER, L.L.C

By 
 Michael R. Fletcher MO #474115
 Daniel W. Craig MO #43883
 1125 Grand Boulevard, Suite 1400
 Kansas City, Missouri 64106
 816-471-6444 Fax No 816-471-6664

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served upon defendants along with the original Summons and Pctition for Damages



 Attorney for Plaintiff

operated and/or managed by defendant Marianist Province of the United States. At all times relevant to the allegations of this cause of action, defendant was the supervisor of defendant Brother William Mueller.

4 Defendant Brother William Mueller is believed to be a citizen of Texas, residing in the city of San Antonio, Texas. At all times relevant to the allegations of this cause of action, defendant was a member, associate and/or employee, and was under the supervision of, defendants Marianist Province of the United States and/or St. John Vianney High School.

5 Jurisdiction and venue are proper in this Court because plaintiff asserts claims under Missouri common law only, because the acts, omissions, and/or occurrences giving rise to this cause of action arose in St. Louis County, Missouri, and because at least one defendant is a citizen of the state of Missouri, where this action is being brought.

6 Each of the acts or omissions of defendants as set forth below caused or contributed to cause the injuries and damages to plaintiff, and therefore each defendant is jointly and severally liable for said injuries and damages.

7 In approximately 1984, defendant Brother William Mueller repeatedly assaulted and/or battered plaintiff. Plaintiff believes such assaults and batteries included, but were not limited to, sexual misconduct. Said assaults and/or batteries occurred on property which defendants Marianist Province of the United States and/or St. John Vianney High School owned and/or controlled, and/or had the right to control the activity thereon.

8 The aforementioned abuse of plaintiff, and the circumstances under which the abuse occurred, caused plaintiff to develop various psychological coping mechanisms which made him incapable of ascertaining the resulting damages from that conduct until approximately 2005, when specific details of defendant Mueller's abuse of minors emerged publicly.

9 Due to the way in which defendant Mueller abused plaintiff, in that he would initially render him unconscious prior to his assault and battery of plaintiff, prevented plaintiff from ascertaining the resulting damages from that conduct until 2005, when specific details of defendant Mueller's abuse of minors emerged publicly.

10 Prior to defendant Brother William Mueller's assault and battery of plaintiff, defendants Marianist Province of the United States and/or St John Vianney High School had knowledge and were aware of several previous assaults and batteries, including sexual misconduct, by defendant Mueller on minors during the 1960's, 1970's and/or early 1980's

Count I- Intentional Failure to Supervise Clergy
(Plaintiff v. Marianist Province of the United States and
St. John Vianney High School)

11 Plaintiff incorporates by reference the allegations made in paragraphs 1-10, above.

12 At the time of the assaults and batteries described above, defendant Brother William Mueller was under the supervision of defendants Marianist Province of the United States and/or St John Vianney High School

13 At the time of the assaults and batteries, defendant Brother William Mueller's supervisors, defendants Marianist Province of the United States and/or St John Vianney High School knew that harm was certain or substantially certain to result

14 Defendant Brother William Mueller's supervisors, defendants Marianist Province of the United States and/or St John Vianney High School disregarded the known risks

15 As a result of defendant Brother William Mueller's supervisors' inaction, damage was caused to plaintiff

16. The harm that occurred to plaintiff occurred on premises owned or controlled, or with the right to control the activity thereon, by defendants Marianist Province of the United States and/or St John Vianney High School.

17. Defendants' conduct as stated above was outrageous because of defendants' evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages

WHEREFORE, plaintiff prays for judgment against defendants Marianist Province of the United States and St John Vianney High School, jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper.

Count II- Intentional Infliction of Mental Distress

(Plaintiff v. All Defendants)

18 Plaintiff incorporates by reference the allegations made in paragraphs 1-17, above

19 Defendant Brother William Mueller assaulted and battered plaintiff

20 Defendants Marianist Province of the United States and/or St John Vianney High School intentionally failed to supervise defendant Mueller, which resulted in his assaulting and battering plaintiff

21 Defendants' actions, inactions and/or omissions were extreme, outrageous, and intolerable

22 Plaintiff sustained severe emotional distress which was medically diagnosable and medically significant

23 Defendants' conduct as stated above was outrageous because of defendants' evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages.

WHEREFORE, plaintiff prays for judgment against all named defendants in this action, jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper

Count III- Assault

(Plaintiff v. Brother William Mueller)

24 Plaintiff incorporates by reference the allegations made in paragraphs 1-23, above

25 Defendant Brother William Mueller physically grasped, held, touched, fondled, choked and/or groped plaintiff in threatening and highly inappropriate ways during which he brandished what plaintiff believed was a knife and placed it to his neck and face.

26. Defendant's actions put plaintiff in fear of bodily harm

27. By reason of defendant's actions, plaintiff suffered damage

28. Defendant's conduct as stated above was outrageous because of defendant's evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages

WHEREFORE, plaintiff prays for judgment against defendant Brother William Mueller, jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper

Count IV- Battery

(Plaintiff v. Brother William Mueller),

29. Plaintiff incorporates by reference the allegations made in paragraphs 1-28,
above

30. Defendant Brother William Mueller physically held, touched, and groped plaintiff
in threatening and highly inappropriate ways during which he brandished what plaintiff believed
was a knife and placed it to his neck and face

31 Defendant's actions constituted harmful and offensive touching upon plaintiff.

32 By reason of defendant's actions, plaintiff suffered damage

33. Defendant's conduct as stated above was outrageous because of defendant's evil
motive or reckless indifference to the rights of others, thus justifying an award of punitive
damages

WHEREFORE, plaintiff prays for judgment against defendant Brother William Mueller,
jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his
damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other
relief as may be just and proper

Count V- Negligence

(Plaintiff v. All Defendants)

34 Plaintiff incorporates by reference the allegations made in paragraphs 1-33,
above

35 Defendants had a duty to protect children served by their schools.

36 Upon information and belief, defendants, by and through their agents, servants and employees, knew or reasonably should have known of defendant Mueller's dangerous and exploitive propensities and/or that he was an unfit agent, and despite such knowledge, defendants breached their duty to protect plaintiff when they failed to protect plaintiff from the sexual and other abuse described herein

37 Defendants' actions and/or inactions were willful, wanton and reckless for which punitive damages and/or damages for aggravating circumstances are appropriate

38 As a direct result of the acts or omissions described herein, plaintiff has suffered, and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life, was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling

WHEREFORE, plaintiff prays for judgment against defendants jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper

Count VI- Negligent Supervision, Retention and Failure to Warn

(Plaintiff v. Marianist Province and St. John Vianney)

39. Plaintiffs incorporate by reference the allegations made in paragraphs 1-38, above

40 Upon information and belief, defendants, by and through their agents, servants and employees, knew or reasonably should have known of defendant Mueller's dangerous and exploitive propensities and/or that he was an unfit agent, and despite such knowledge, defendants negligently retained and/or failed to supervise defendant Mueller, who was in a position of trust and authority as a Brother, teacher, and Assistant Principal, where he was able to commit the wrongful acts against the plaintiff Defendants failed to provide reasonable supervision of defendant Mueller, failed to use reasonable care in investigating defendant Mueller and failed to provide adequate warning to plaintiff and his family of defendant Mueller's dangerous propensities

41 Defendants' actions and/or inactions were willful, wanton and reckless for which punitive damages and/or damages for aggravating circumstances are appropriate

42 As a direct result of the acts or omissions described herein, plaintiff has suffered, and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life, was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling

Respectfully Submitted,

SANDERS & SIMPSON, L C.

By: 
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Kansas City, MO 64106
(816) 471-6444, FAX: (816) 471-6664

ATTORNEYS FOR PLAINTIFF

IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS
STATE OF MISSOURI

ROBERT WILLIAM VISNAW,)
)
Plaintiff,)
) Case No O6CC-000008
v)
) Div No 15
MARIANIST PROVINCE OF THE)
UNITED STATES, ST JOHN VIANNEY)
HIGH SCHOOL, INC and BROTHER)
WILLIAM MUELLER,)
)
Defendants)

**PLAINTIFF VISNAW'S ANSWERS TO SEPARATE INTERROGATORIES OF
DEFENDANT ST. JOHN VIANNEY
HIGH SCHOOL, INC. DIRECTED TO PLAINTIFF**

COMES NOW, plaintiff, and hereby provides answers to the interrogatories of defendant, St John Vianney High School, Inc , as follows

INSTRUCTIONS

These interrogatories call for all information (including information contained in or on writings, records, photographs, or any other tangible thing or material) that is known or available to plaintiff, including all information in the possession of plaintiffs agents, attorneys, accountants, auditors, directors, officers, employees, or other persons or experts and any investigator or any person acting on plaintiffs behalf of under his attorney's employment, direction or control

Each interrogatory is intended to and does request that each and every particular and part thereof be answered with the same force and effect as if each part and particular were the subject of partnership, and were asked by a separate interrogatory

If you are unable to answer any interrogatory completely, answer to the extent possible and set forth the reasons for your inability to answer more fully



In responding to these interrogatories, the definitions set forth below are to apply unless the context of the interrogatory indicates otherwise,

DEFINITIONS

1. "You" or "your" refers to plaintiff and any other person (as defined below) acting on said Plaintiffs behalf

2. "Person" refers to the plural as well as the singular and means any natural person, firm, association, corporation or other form of legal identity

3 "Document" as used herein is defined to include any and all manners of written, typed, printed, computer generated messages, electronic e-mail, faxed, reproduced, filmed or recorded material, and all photographs, pictures, plans or other recorded material, and all photographs, pictures, plans or other representations of any kind of anything pertaining, describing, referring or relating, directly or indirectly, in whole or in part, to the subject matter of the interrogatory, and the term includes, without limitation all matters and items contemplated within Rule 57 of the Missouri Rules of Civil Procedure

4 "Identify" or "identification" means such designation of such person or document as to facilitate discovery

- (a) Unless otherwise indicated, when the terms are used to refer to any person, state such as person's name, last known business and residential address, last known place of employment, employment title, and last known business and residence telephone numbers,
- (b) Unless otherwise indicated, when the terms are used to refer to any document, state with respect to each such document the nature and substance thereof, the date it bears, the date it was prepared, the identity of the present custodian thereof, the identity of the author thereof, the identities of each addressee, the present location of identifying the document. As an alternative, a copy may be attached to Plaintiffs responses
- (c) Unless otherwise indicated, when the terms are used to refer to any oral communication or conversation, state with respect to each such oral

communication or conversation the date and place thereof, whether it was in person or by telephone, the identity of each person who participated in or heard any part of the communication, the substance of what was said by each person who participated therein, and the identity of any document that recorded summarized or confirmed the communication.

INTERROGATORIES

1 Please state the following

- (a) Your full legal name and any assumed names, aliases or any other name that you have ever used;
- (b) Age and date of birth,
- (c) Citizenship status date and place of birth,
- (d) Social security number;
- (e) Present residential address and length of time at this address;
- (f) All addresses of all places of residence from the age of five (5) to the present,
- (g) Present marital status, name and address of present spouse, if any, the date of such marriage, and the name, age, and address of any and all children,
- (h) The name, address and telephone number of any and all past Spouses and the dates of such marriages, and name, age and address of any and all children

ANSWER:

- (a) **Robert William Visnaw.**
- (b) **Age 38, born April 9, 1967.**
- (c) **U.S. citizen, born Pueblo, Colorado.**
- (d) **Social security number withheld pending protective order**
- (e) **January 1999 to present, plaintiff has resided at current address in Johnson County, Kansas; address withheld pending protective order.**
- (f) **1972 to 1976, military housing, San Diego, California**
1976 to 1977, 727 Questover Lane, Creve Couer, Missouri
1977 to 1980, Memphis, Tennessee, address unknown.
1980 to 1991, 4825 Bankfield Court, St. Louis, Missouri 63128
1991 to 1996, various military housing in Missouri, California, Arizona, and Korea.
1996, 4825 Bankfield, Missouri
1996 to 1999, various addresses in Kansas City, Missouri area.
- (g) **Married, Brandi Visnaw, same address as plaintiff, married October 9, 1999**
Three children, ages 12 (step-child), 5, and 1. Names withheld pending protective order.
- (h) **Dennisha Marie Gialdini, current address and telephone number unknown, married May 2, 1992, no children**

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

ROBERT WILLIAM VISNAW,)
)
Plaintiff,)
) Cause No. 06CC-000008
vs) Division No. 15
)
)
MARIANIST PROVINCE OF THE)
UNITED STATES, ST JOHN)
VIANNEY HIGH SCHOOL, INC.,)
and BROTHER WILLIAM MUELLER,)
)
Defendants)

VIDEOTAPED DEPOSITION OF ROBERT WILLIAM VISNAW
Taken on behalf of the Defendants

October 18, 2006

INDEX PAGE 3

JENNIFER L. BRODERICK, CSR, RPR
IL CSR LICENSE NO. 084-004271

KRIEGSHAUSER REPORTING & VIDEO, LLC
319 North Fourth Street, Suite 608
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PHONE (314)621-4408 FAX (314)621-4553
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1 IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

2 ROBERT WILLIAM VISNAW)
3)
4 Plaintiff,)
5) Cause No. 06CC-000008
6 vs) Division No. 15
7)
8)
9 MARIANIST PROVINCE OF THE)
10 UNITED STATES, ST JOHN)
11 VIANNEY HIGH SCHOOL, INC.,)
12 and BROTHER WILLIAM MUELLER,)
13)
14 Defendants)

15 DEPOSITION OF ROBERT WILLIAM VISNAW, produced
16 sworn, and examined on behalf of the Defendants, on
17 October 18, 2006, between the hours of 9:00 in the
18 forenoon and 5:15 in the evening of that day at the
19 offices of Burroughs, Hepler, Broom, MacDonald, Hebrank
& True, LLP, 800 Market Street, Suite 2300 St. Louis,
Missouri 63101, before JENNIFER L. BRODERICK, a
Certified Shorthand Reporter and Notary Public in and
for the State of Illinois

14 APPEARANCES

15 The Plaintiff was represented by Daniel W. Craig
16 of the law firm of Sanders, Simpson & Fletcher,
17 1125 Grand Boulevard, Suite 1400 Kansas City
Missouri 64106

18 The Defendant Marianist Province of the United
19 States was represented by Gerard I. Noce and Amanda M.
20 Mueller of the law firm of Burroughs, Hepler, Broom,
21 MacDonald, Hebrank & True, LLP, 800 Market Street,
22 Suite 2300, St. Louis, Missouri 63101

23 The Archdiocese of St. Louis and Catholic High
24 School Association of the Archdiocese of St. Louis were
25 represented by Edward M. Goldenhersh of the law firm of
Greensfelder, Hemker & Gale, 10 South Broadway
Suite 2000 St. Louis, Missouri 63102

The Defendant Brother William Mueller was
represented by J. Martin Hadican, 221 South Meramec
Suite 852 St. Louis, Missouri 63105

IN ATTENDANCE Ed Poppe, Videographer

1 IT IS HEREBY STIPULATED AND AGREED by and between
2 Counsel for the Plaintiff and Counsel for the
3 Defendants that this deposition may be taken in
4 shorthand by JENNIFER L. BRODERICK, a Certified
5 Shorthand Reporter and Notary Public, and afterwards
6 transcribed into typewriting, and the Witness read and
7 signed the deposition.

9 O-0-0

11 VIDEOGRAPHER. This is the video deposition of
12 Robert Visnaw. Today's date is October 18th, 2006.

13 The time is 9:07 a.m.

14 This is the case of Robert William Visnaw vs.
15 Marianist Province of the United States, St. John
16 Vianney High School, Incorporated, and Brother William
17 Mueller, Case No. 06CC-000008, Division 15. This case
18 is pending in the Circuit Court of the County of
19 St. Louis, State of Missouri.

20 Counselors, will you please state your
21 appearance

22 MR. CRAIG: Dan Craig on behalf of plaintiff.

23 MR. NOCE: Jerry Noce for the Society of --

24 The Marianist Province of the United States and
25 St. John Vianney High School

5

7

1 MR. GOLDENHERSH: Edward Goldenhersh for the
2 Archdiocese of St. Louis and Catholic High School
3 Association of the Archdiocese of St. Louis.

4 MR. HADICAN. Marty Hadican for Bill Mueller.

5 MR. NOCE: Amanda Mueller is my co-counsel.
6 She's here with me also.

7 VIDEOGRAPHER: The court reporter will now
8 swear in the witness.

9
10 O-O-O

11
12 ROBERT WILLIAM VISNAW,
13 being of lawful age, being produced, sworn, and
14 examined on the part of the Defendants, deposes and
15 says:

16
17 DIRECT EXAMINATION

18 BY MR. NOCE:

19 Q. Sir, would you state your name, please, for
20 the record

21 A. Sure. My name is Robert W. Visnaw,
22 V-as-in-Victor, I, S-as-in-Sam, N-A-W

23 Q. Mr. Visnaw, we just met

24 A. Sure

25 Q. My name's Jerry Noce. I'm a lawyer for

1 Q. Just tell us. All right, sir. Now,
2 Mr. Visnaw, we have some information that you've
3 answered for us in interrogatories I want to go
4 through it a little bit with you And as I understand,
5 you were born in 1967?

6 A. Yes, sir.

7 Q. And can you tell me where did you grow up?

8 A. I grew up throughout the United States. My
9 father was in the military He was in the United
10 States Navy, so I was born in Colorado, moved to
11 San Diego, California, spent several years in Coronado,
12 California

13 After his retirement, I moved to St. Louis,
14 Missouri. He got a job with a restaurant. They
15 transferred him to Memphis, Tennessee where I lived for
16 three years

17 And then they transferred him back up to
18 St. Louis in about 1980, June of 1980, and that's
19 where -- from there -- from then until 1991 when I
20 enlisted in the military, it's St. Louis.

21 Q. So who was your father's employer that
22 transferred him?

23 A. Steak 'N Shake.

24 Q. And when you moved back to St. Louis in 1980,
25 did you attend grade school here?

6

8

1 Vianney and Marianist in the case that you filed
2 against them

3 I'm going to ask some questions today about
4 your lawsuit and about your claims and about your
5 damages

6 If at any time you don't understand any of the
7 questions I ask you, would you tell me that?

8 A. Yes.

9 Q. Because I am going to assume that if I ask a
10 question and if you answer it that you, one, understood
11 it, and two, you were trying to respond to it the best
12 that you could

13 A. Yes, sir.

14 Q. And also -- and you're doing a good job
15 Conversationally we often say uh-huh and huh-uh With
16 a videotape, it's not as bad as if we were just with
17 the transcript, but sometimes it's unclear

18 So if you're going to make either negative or
19 affirmative responses, would you say yes or no to make
20 a clear record for us?

21 A. Yes

22 Q. If at any time you need a break -- I think Dan
23 mentioned to you, this is no marathon here, so you can
24 take a break if you need it Is that okay?

25 A. Yes

1 A. Yes, I did

2 Q. And what grade school did you attend?

3 A. I went to Assumption Parish Elementary School.

4 Q. On Mattis?

5 A. Yes, sir

6 Q. And what grades did you attend?

7 A. 8th grade only

8 Q. And when you graduated from Assumption, did
9 you enroll and attend Vianney?

10 A. Yes, I did

11 Q. So what year did you enroll at Vianney?

12 A. I believe I started in August of 1981 and
13 graduated in May of 1985

14 Q. Were there other classmates from Assumption
15 that attended Vianney with you?

16 A. Yes. Right now the only one I can remember
17 would be Matthew Eddy

18 Q. Matt Eddy, the lawyer?

19 A. Uh-huh

20 Q. Is that correct? Was he a friend of yours?

21 A. Yes, he was

22 Q. Is he still a friend of yours?

23 A. I haven't really spoken to him since we
24 graduated from Vianney

25 Q. Who was your best friend in high school while

1 you attended Vianney?
 2 A. While I attended Vianney?
 3 Q. Yes, sir, best friend in high school, whether
 4 he or she attended Vianney.
 5 A. Greg Meyer.
 6 Q. Where did Greg go to school?
 7 A. Mehlville.
 8 Q. Do you still have any communication or contact
 9 with Greg?
 10 A. Unfortunately, the only time I really see him
 11 is at funerals, so no.
 12 Q. Did you participate in any sports at Vianney?
 13 A. Yes, I did.
 14 Q. What sports?
 15 A. My freshman year, I ran track and was a member
 16 of the swimming and diving team, and then swimming and
 17 diving my sophomore, junior, and senior years.
 18 Q. Were you in any other activities at school?
 19 A. At school?
 20 Q. At Vianney.
 21 A. No I mean, we had the -- people would play
 22 chess after school or do like Dungeons & Dragons after
 23 school, and I partook in that occasionally, but not on
 24 a regular basis.
 25 Q. Were you involved in student council at all or

1 O'Connell, who was my Spanish teacher for three out of
 2 the four years I was there and Gary Corbin who was the
 3 swimming coach and my biology teacher.
 4 Q. Is Ms. O'Connell or Mr. Corbin still there, do
 5 you know?
 6 A. I believe Ms. O'Connell is. I don't know. I
 7 believe my mom told me that Mr. Corbin had gone to
 8 another high school, but I'm not certain which one. I
 9 think it may have been SLU.
 10 Q. Was he your -- strike that, please. Did --
 11 swimming and diving, was that a fall or a spring
 12 activity?
 13 A. That usually started officially in the fall
 14 and ended in February at the state swimming and diving
 15 championships.
 16 Q. So it would be a --
 17 A. A fall sport.
 18 Q. A fall sport?
 19 A. Uh-huh.
 20 Q. But fell in -- it bled into the spring
 21 semester?
 22 A. Correct.
 23 Q. Was there anybody else involved -- strike
 24 that, please. And swimming and diving were at the same
 25 time?

1 any other activities?
 2 A. No.
 3 Q. Who would have been your best friend at -- who
 4 attended Vianney?
 5 A. I don't think I really had one. Because of
 6 the sports, I was pretty much going to school or going
 7 to swimming or diving practice.
 8 Q. Did you have counselors at school?
 9 A. We had school counselors, but I couldn't tell
 10 you who they were.
 11 Q. You don't recall?
 12 A. I think one was a Mr. Stevenson, but I can't
 13 be certain of that.
 14 Q. And what year was he your counselor?
 15 A. I don't think he -- he was not my counselor.
 16 He was a school counselor.
 17 Q. Did you have a counselor who you would see
 18 from time to time to help you with class -- you know,
 19 line up your classes, maybe line up taking SATs, things
 20 of that nature?
 21 A. I can't recall if I ever used a counselor in
 22 that fashion or not.
 23 Q. Do you recall any teachers that you were close
 24 with at all at Vianney?
 25 A. Well, there would be Miss O'Connell, Ms. Judy

1 A. Correct.
 2 Q. And did you participate in both of those or
 3 just diving or swimming?
 4 A. Diving was my main emphasis, but in a pinch,
 5 Mr. Corbin would throw me into a relay or into a short
 6 race if he needed to fill a spot.
 7 Q. And was he the diving coach, or was there
 8 someone else who also helped him out?
 9 A. On record he was the diving coach for the
 10 team, but we never had an official diving coach.
 11 Q. One thing I forgot to tell you, Mr. Visnaw, I
 12 will do my best to wait until you're finished answering
 13 if you can wait until I finish the question. It's
 14 better for the record, again, if that's okay.
 15 Were there any team members who were friends
 16 of yours?
 17 A. Do you mean outside of school or just in
 18 school?
 19 Q. Sure, either way.
 20 A. Outside of school, no.
 21 Q. How about in school?
 22 A. We were teammates.
 23 Q. Can you remember any of those people?
 24 A. I can see their faces, but I can't remember
 25 There was -- during my freshman and sophomore year,

1 there was Brian Bell, Robert Trotter -- I think it's
 2 Robert Trotter or Robert Tretter.
 3 I can't think of -- there was Allen Bell who
 4 was a swimmer, and I can't think of anybody else's
 5 names on that.
 6 Q. Did you work while you were in high school?
 7 A. Yes.
 8 Q. Where did you work?
 9 A. I worked at Hardee's which used to be located
 10 down by the South County Mall.
 11 Q. On Lindbergh down there?
 12 A. Yeah I believe now it's a Barnes & Noble or
 13 a B. Dalton Bookstore
 14 Q. And is that the only place you worked while in
 15 high school?
 16 A. Pizza Hut on Tesson Ferry, and then I worked
 17 for a Mexican restaurant maybe two nights that's no
 18 longer in existence
 19 Q. What was that name?
 20 A. I think it was Old Mexico
 21 Q. Where was that?
 22 A. On Tesson Ferry as well.
 23 Q. Did you have any friends of yours who worked
 24 with you at these places?
 25 A. Matt Eddy actually got me the job at the

1 63128.
 2 Q. And what's -- is mom still living?
 3 A. Yes.
 4 Q. And where does she live?
 5
 6
 7 She just moved there I believe
 8 in August, so I don't know her exact address.
 9 Q. Did she move there from the address?
 10 A. Yes.
 11 Q. So is there anybody else that would have been
 12 a friend of yours that you hung out with who attended
 13 Vianney other than the people you've already mentioned
 14 to us throughout the four years you attended there?
 15 A. I'm trying to recall if there was anybody.
 16 I'd have to say no. I didn't really have many outside
 17 of school friends because of the -- I would be swimming
 18 or I would be diving pretty much year round.
 19 Q. Did you dive in a club?
 20 A. No. It was -- we had a coach -- I won't say
 21 he was a coach -- Craig Tapperson who was a former
 22 diver at Mehlville and was running a diving class, so
 23 to speak.
 24 Some of the other divers, Allen Bell and Bob
 25 Trotter or Tretter, had gone to him in the past, and I

1 Mexican restaurant
 2 Q. I may have asked you this, and I forget
 3 already, but have you had contact with Matt Eddy over
 4 the years?
 5 A. No
 6 Q. When's the last time you saw him?
 7 A. Actually seen him, I haven't seen him since
 8 graduation
 9 Q. Have you attended any high school reunions at
 10 all?
 11 A. No
 12 Q. Have you received any information about any of
 13 those like notice that 5 year, 10 year, 20 year reunion
 14 is being held or anything like that?
 15 A. I -- the information I do find, if I go out to
 16 the Vianney website, I would find it there I have not
 17 received information.
 18 They used to have my mother's old address and
 19 would send things there, and they either got forwarded
 20 to me or they didn't.
 21 Q. And mom's old address was down in Assumption
 22 Parish area?
 23 A. Uh-huh, yes, sir
 24 Q. What was that address?
 25 A.

1 hooked up with him through there
 2 He had -- he was running like a learn how to
 3 dive class, but we'd go there and he would coach us as
 4 well
 5 Q. Where was that?
 6 A. Out of Mehlville out of their swimming pool.
 7 Q. At the high school?
 8 A. At the Mehlville High School, yes, sir.
 9 Q. Was he the high school coach there?
 10 A. No He -- he would be -- I guess you'd
 11 classify him more as an AAU coach or an amateur
 12 athletics coach for myself and some of the other divers
 13 that he had.
 14 And he -- we would go out to Clayton -- the
 15 pool out in Clayton during the summers and practice out
 16 there, or on Thursday nights we'd go to the Mehlville
 17 High School pool and practice out there over the
 18 summers as well
 19 Q. Aside from competing on a high school level,
 20 you know, interscholastic like that, did you compete in
 21 diving on any other basis, the AAU?
 22 A. I attended a couple AAU meets but really
 23 nothing significant, because typically during the
 24 summer it would be practice and then work.
 25 Q. Did you compete in the state high school

1 diving championships?
 2 A. Three out of the four years that I was at
 3 Vianney, yes.
 4 Q. And how did you do?
 5 A. My first year, I was 22nd. That would be my
 6 sophomore year. My junior year, I was 7th. And in
 7 1985, I was the champion.
 8 Q. So you were state champion in 1985?
 9 A. Yes, sir.
 10 Q. In diving?
 11 A. Yes
 12 Q. And was that -- were they in divisions at that
 13 time, in other words, Class IV or something like that
 14 or one class for everybody?
 15 A. This was the entire state of Missouri from
 16 what I understand. I mean, we had representation from
 17 all parts of Missouri.
 18 Q. And did Vianney win the diving or swimming
 19 state championship that year, or were you simply the
 20 individual champion?
 21 A. I was the individual champion for diving
 22 Q. I want to kind of -- do you recall who your --
 23 any of your freshman teachers were at Vianney?
 24 A. Kurt Clodeus was, I believe, my English
 25 teacher.

1 Coach Cozinski, I don't know his first name.
 2 We called him coach because he was one of the football
 3 coaches.
 4 Obviously Ms. O'Connell was my Spanish
 5 teacher. Mr. Corbin was my biology teacher.
 6 Brother Pace, P-A-C-E, was a religion teacher I believe
 7 in my junior year
 8 Coach Ferrell was my home room teacher, if I
 9 remember correctly, for my senior year.
 10 Q. What did he coach?
 11 A. I think it was soccer
 12 Q. That was before Villa?
 13 A. I think he was -- Coach Ferrell was like an
 14 assistant for Coach Villa. I want to say soccer, but
 15 it may have been football. Again, I'm a swimmer. I
 16 had water on the brain kind of thing
 17 Q. Okay.
 18 A. Ms. O'Connell. I'm trying to go through. And
 19 there were various teachers that may have only been
 20 there for a year or came in at the end of a year
 21 that --
 22 Q. As you sit here today, can you recall any
 23 other teachers or brothers that you had while at
 24 Vianney?
 25 A. Well, as teachers?

1 Q. Was he a member of the order, or was he --
 2 A. No, he was a layperson
 3 Q. Was he your home room teacher?
 4 A. I couldn't recall. Ms Di Grossa was my
 5 Spanish teacher for my freshman year. I can't remember
 6 who my band teacher was
 7 And to be exact, I think those are the only
 8 two teachers that I can recall that I had that year. I
 9 believe I had a brother or two for like religion and
 10 maybe another course here or there
 11 Q. Who was the principal when you attended
 12 Vianney? Was it Brother Grieshaber?
 13 A. He was for my senior year. Really, I didn't
 14 get to know the principals when I was there
 15 I believe one of the assistant vice principals
 16 was Brother Rudy, and I can't remember if he was there
 17 for my freshman and sophomore year or just my freshman
 18 year
 19 Q. Can you recall any other teachers or brothers
 20 that taught or instructed you or that you dealt with at
 21 school?
 22 A. Oh, sure. There was -- Mr. Isley was an
 23 English teacher. Brother Mason was my algebra/geometry
 24 teacher. I think he was predominantly my geometry
 25 teacher

1 Q. As teachers or people that you recall.
 2 A. Well, there was Brother Mueller who was an
 3 assistant vice-principal while I was there. My senior
 4 year, Brother Grieshaber was the principal that was
 5 there
 6 Coach Villa was obviously the soccer coach.
 7 Don Heed was the football coach. I can picture their
 8 faces. I just can't put their names to them.
 9 Q. William Mueller, Brother Mueller as you
 10 referred to him, was he there only your junior and
 11 senior year?
 12 A. He -- he was there my senior year. I first
 13 met him in 1984
 14 Q. And you would have been there '84/'85 for your
 15 senior year?
 16 A. Correct
 17 Q. Do you recall him being there at all at any
 18 time before that?
 19 A. No
 20 Q. And he was still there when you graduated?
 21 A. Yes
 22 Q. I'm going to ask you a little bit about your
 23 family background, Mr. Visnaw
 24 A. Uh-huh
 25 Q. You mentioned your dad had been in the Navy?

1 A. Yes.
 2 Q. [REDACTED]
 3 A. [REDACTED]
 4 Q. Okay. And when he came home from the Navy,
 5 eventually he went to work for Steak 'N Shake?
 6 A. Yes.
 7 Q. All right. And then he worked for them in
 8 Memphis and the family moved there and then moved back
 9 here to St. Louis?
 10 A. Yes.
 11 Q. And did he continue to work for Steak 'N Shake
 12 until he retired?
 13 A. He was medically retired due to a heart
 14 condition. He was considered 100 percent disabled
 15 through the military
 16 Q. And was that before he actually went to work
 17 for Steak 'N Shake or after?
 18 A. He had had a heart attack in the Navy. He
 19 retired from the Navy in 1976 and got picked up by
 20 Steak 'N Shake I want to say it was that same year.
 21 He spent a year with Steak 'N Shake before he
 22 got transferred to Memphis, came back up to St. Louis,
 23 and while he was in St. Louis with Steak 'N Shake is
 24 when he had -- throughout that four or five year period
 25 he had several more heart attacks, and finally, he was

1 it, but --
 2 Q. How old was he when he passed?
 3 A. 60's. I couldn't tell you his exact age.
 4 Q. Okay. And then mom is still with us?
 5 A. Yes, sir.
 6 Q. All right. And her name is?
 7 A. [REDACTED]
 8 Q. Do you know how old she is?
 9 A. I believe she's going to be 63 this November.
 10 Q. And do you have brothers and sisters?
 11 A. I have two sisters that are alive, and
 12 one sister passed away in May of 2005.
 13 Q. What are your sister's names, and where do
 14 they live?
 15 A. [REDACTED]
 16 St. Louis, Missouri, excuse me, off of Bayless, I
 17 believe it is.
 18 Q. What's her last name? Visnaw?
 19 A. Visnaw
 20 Q. Is she married?
 21 A. No, she's divorced
 22 Q. And is she -- well, tell me what's the order?
 23 A. [REDACTED]
 24 then my sister who passed away last May
 25 Q. And what was her name?

1 medically retired by the military
 2 Q. And do you recall he was medically retired?
 3 A. No, I don't
 4 Q. And when you say medically retired, he was
 5 basically on disability?
 6 A. Correct. He was receiving a disability check
 7 from the military.
 8 Q. And he stopped working at that point at
 9 Steak 'N Shake, or did he continue to work?
 10 A. No, he quit working at Steak 'N Shake and quit
 11 working all together
 12 Q. And he passed away, didn't he?
 13 A. Yes, he did.
 14 Q. When did he pass away, sir?
 15 A. 15 years ago today
 16 Q. And so that would be --
 17 A. October 18th, 1991
 18 Q. 1991. At that time did he have a heart attack
 19 and die as a result of that, or do you recall?
 20 A. I don't -- I did not get to see the autopsy
 21 The way it was explained to me is that he had a heart
 22 cramp and passed away
 23 There was no damage to the -- he had had a
 24 heart transplant, and there was no damage to his new
 25 heart as stated in the autopsy. I didn't get to read

1 A. [REDACTED]
 2 Q. And what did she pass from?
 3 A. A brain aneurysm.
 4 Q. How old was she?
 5 A. She would have been 35, so he was 34
 6 Q. [REDACTED]
 7 Was it Visnaw?
 8 A. She was married, [REDACTED]
 9 Q. Married at the time of her death?
 10 A. No, she was divorced
 11 Q. Married only once?
 12 A. Correct.
 13 Q. What was the husband's name?
 14 A. Joe -- Joseph [REDACTED]
 15 exact
 16 Q. And did they have children born of that
 17 marriage?
 18 A. They have one, yes
 19 Q. And that child's with [REDACTED]
 20 A. Correct
 21 Q. And do you have any contact with either the
 22 child or Joe?
 23 A. No, I don't. Being that I live in Kansas
 24 City, I may see her at a family holiday function or
 25 along those lines

1 Q. What's her name?
 2 A. [REDACTED]
 3 Q. [REDACTED] okay [REDACTED]
 4 A. Early 40's.
 5 Q. And where does she live?
 6 A. She lives -- I believe it's St. Charles or
 7 St. Peters.
 8 Q. And her last name?
 9 A. [REDACTED] She actually -- it's hyphenated,
 10 [REDACTED]
 11 Q. And she is married?
 12 A. Correct.
 13 Q. And her husband's name?
 14 A. John.
 15 Q. Does she work outside the house?
 16 A. She's a schoolteacher
 17 Q. Do you know who she works for?
 18 A. I do not know the school district, no
 19 Q. Is it the public school system or private or
 20 parochial?
 21 A. I want to say maybe parochial, but I can't
 22 guarantee that
 23 Q. Is it out in St. Charles?
 24 A. I couldn't tell you. I don't know
 25 Q. [REDACTED] how old is [REDACTED]

1 Q. (By Mr. Noce) Okay. [REDACTED] have any
 2 children?
 3 A. She has four.
 4 Q. And are they with her on [REDACTED]
 5 A. Two are with her and two are with [REDACTED]
 6 Q. Are you particularly close with any of your
 7 siblings?
 8 A. Since my sister's death in May of 2005 [REDACTED]
 9 and I have gotten to be a lot closer I'm not really
 10 close to my sister [REDACTED] I mean, we do talk, but it's
 11 not where I would call her on the phone and carry on a
 12 conversation or expect her to do the same.
 13 Q. How about with your mom?
 14 A. My mom, we try to talk as often as possible.
 15 Recently it's been a lot more space in between the
 16 phone calls just because of my work and her moving and
 17 whatnot.
 18 Q. When you were growing up here in St. Louis,
 19 did you have a pediatrician or physician that you would
 20 go to for if you had the mumps or if you had a cold or
 21 anything like that?
 22 A. Dr. Munchnik.
 23 Q. Where was he -- is that M-U-C-H-N-I-C-K?
 24 A. I believe so I couldn't tell you the exact
 25 spelling.

1 A. She's probably I want to say 43, going to
 2 be -- I want to say 42 going on 43 or 43 going on 44
 3 Q. [REDACTED]
 4 A. She's a nurse, and she gets calls and says
 5 that she's going to work at one hospital one night, so
 6 I don't know exactly which hospital you would say she
 7 works for.
 8 Q. Where does she live?
 9 A. Over off of 55 and Bayless I think that's
 10 the street.
 11 Q. And is she married?
 12 A. No, she's divorced
 13 Q. What's her ex-husband's name?
 14 A. [REDACTED]
 15 Q. Not the lawyer?
 16 A. Oh, no, he's probably the farthest thing from
 17 an attorney.
 18 Q. Okay I don't know how to take that, but
 19 okay
 20 A. No, no.
 21 MR. HADICAN. He meant it in a nice way
 22 MR. NOCE I don't know if in high regard or
 23 not, but okay
 24 MR. HADICAN He meant it in a nice way
 25 THE WITNESS I'll defer to his statement

1 Q. All right. And where was Mr. Munchnik's
 2 office located?
 3 A. Located -- I want to say it was on Old Tesson.
 4 The best way I put it, it was between Tesson Ferry and
 5 there was one street that was just south of that. I
 6 believe that was Old Tesson. He had -- him and another
 7 doctor, there was like a little medical complex office
 8 space there.
 9 Q. So if you had to get a physical to compete in
 10 sports or if you had the flu --
 11 A. He would be the one I went to, yes, sir
 12 Q. And do you know was he a pediatrician or was
 13 he an internist?
 14 A. At that time, I didn't know the difference I
 15 believe he would just be considered a general
 16 practitioner
 17 Q. Was there any other doctor you would have seen
 18 while you were in grade school or high school here in
 19 St. Louis other than Dr. Munchnik that you can recall?
 20 A. On occasion, if Dr. Munchnik wasn't available,
 21 I believe I'd go to his partner I want to say it was
 22 Dr. Ortley, but again, Dr. Munchnik was the primary
 23 doctor for me
 24 Q. Same office?
 25 A. Exactly.

1 Q. And do you know is the office still operating,
 2 or do you know one way or the other?
 3 A. I don't know.
 4 Q. Do you recall Dr. Munchnik's first name?
 5 A. No, I don't.
 6 Q. When you attended Vianney, did you have any
 7 kind of scholarship?
 8 A. To go to Vianney?
 9 Q. Yes, sir
 10 A. No.
 11 Q. Or did you have any financial assistance of
 12 any kind for the high school?
 13 A. My -- between my junior and senior year, I
 14 tried to work at the school to help pay some of the
 15 tuition, but the diving got in the way. I had to
 16 eventually stop that.
 17 Q. Who would you report to for that program?
 18 A. I don't know his name. There was a brother
 19 that I would go to, and I can't remember his name
 20 Q. What type of work were you doing, Mr Visnaw,
 21 in that program?
 22 A. Putting grass, watering grass, just general,
 23 you know, picking up trash, whatever it may have been
 24 Q. And would that be restricted to the Vianney
 25 grounds, or would it include going up to Maryhurst in

1 after that I was on the silver honor roll after that.
 2 Q. So freshman, sophomore, junior year you were
 3 on the gold honor roll?
 4 A. Correct.
 5 Q. And then senior year, you were on the silver
 6 honor roll?
 7 A. For three out of the four quarters, yes.
 8 Q. And was the fourth quarter the gold honor
 9 roll?
 10 A. No, my first quarter was.
 11 Q. Okay. No, I meant -- so you had another
 12 quarter of gold honor roll, and then you finished up
 13 with the silver?
 14 A. Silver, yes, sir
 15 Q. Was the silver the lesser of the two?
 16 A. Correct.
 17 Q. Like the second honors?
 18 A. Right.
 19 Q. As opposed to first honors?
 20 A. Right. You never want to see your name show
 21 up on silver honor roll, but it did three quarters.
 22 Q. How many people were in your graduating class,
 23 do you remember?
 24 A. Under 200. Maybe 130 to 150.
 25 Q. Do you recall what your class rank was?

1 the whole vicinity, or do you recall?
 2 A. We considered -- at the school, we considered
 3 the entire complex where Vianney sat and Maryhurst, the
 4 gymnasium and the museum sat is all one property, so it
 5 encompassed the whole thing
 6 Q. Did you go all the way out to Lindbergh doing
 7 your work?
 8 A. No.
 9 Q. Was there anything between Vianney and
 10 Lindbergh back then?
 11 A. The -- my senior year, it was the Missouri
 12 Senate of the --
 13 Q. Lutheran Church?
 14 A. Lutheran Church
 15 Q. Okay. That's when they built that?
 16 A. They started it my junior year and finished it
 17 my senior year
 18 Q. Were you on the honor roll at school?
 19 A. Yes
 20 Q. All semesters do you think?
 21 A. We had two different classifications. We had
 22 the gold honor roll, and then we had the silver honor
 23 roll
 24 And up until my first semester my senior year
 25 I was on the gold honor roll, and then I want to say

1 A. My class rank?
 2 Q. Yes. Like were you 10th or 12th or 20th out
 3 of the class?
 4 A. The number 33 sticks in my mind for some
 5 reason.
 6 Q. Is it fair to say you were in the top quarter
 7 of your class?
 8 A. I think that would be a fair estimate
 9 Q. And I asked you this before about student
 10 council, and I want to make sure. Were you involved in
 11 any other activities other than diving such as
 12 yearbook, student newspaper, anything like that?
 13 A. No, sir.
 14 Q. Were you in the band?
 15 A. I was in the band. It was an elective I took
 16 from freshman year up through my graduating year
 17 Q. What did you play in the band?
 18 A. The clarinet.
 19 Q. And who was the head of the band?
 20 A. That's a good question. I can't remember his
 21 name
 22 Q. Was William Mueller ever involved with the
 23 band while you were there?
 24 A. Not to my knowledge.
 25 Q. Did you take -- what is the class -- whatever

33

35

1 it is -- student driving or a driving class at Vianney?
 2 A. No.
 3 Q. Did you take any kind of class like that --
 4 you know what I mean -- the driving class?
 5 A. Driver's education?
 6 Q. Driver's ed, did you take that anywhere?
 7 A. No, sir.
 8 Q. Did you get a driver's license when you turned
 9 16?
 10 A. Yes.
 11 Q. Was it on your 16th birthday or closely
 12 thereafter?
 13 A. It was after I turned 16 I don't know the
 14 exact date that it was issued or the date that I got
 15 it, but I know it was around that time.
 16 Q. And were you -- did you pass the test the
 17 first time, the written test?
 18 A. I passed the written test, yes.
 19 Q. How about the diving test?
 20 A. It took two times.
 21 Q. Two times. Parallel parking Right?
 22 A. Exactly.
 23 Q. And after you passed the test, did you have
 24 your own car, or did you use a family car?
 25 A. A family car.

1 freshman?
 2 A. Correct.
 3 Q. Did you stay in that same car pool your
 4 sophomore year?
 5 A. I believe so
 6 Q. And then junior year is when people start
 7 turning 16 and they don't want mom driving them to or
 8 from school. Right?
 9 A. Yes
 10 Q. It's the same in every high school that I can
 11 recall. How did you get to school your junior year?
 12 A. That would be one of the family cars at that
 13 point
 14 Q. Did you car pool with other guys?
 15 A. I think on occasion, but I can't remember
 16 exactly if there was an established car pool.
 17 Q. And then senior year is the time you started
 18 driving yourself?
 19 A. Correct
 20 Q. Your sisters, they were both older and younger
 21 than you Right?
 22 A. Yes.
 23 Q. And were they -- where did they attend high
 24 school?
 25 A. My oldest sister [REDACTED] actually graduated from

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36

1 Q. And how many cars did the family have?
 2 A. Two.
 3 Q. Did you drive it to school from the time you
 4 were 16, or what did you do in that regard?
 5 A. My father was retired I believe when I -- this
 6 is to the best of my knowledge -- was retired when I
 7 got my driver's license, so there would be -- I can't
 8 remember if the car pool stopped when I turned 16 or
 9 not, but there would be like a car pool
 10 I started driving to school every day in my
 11 senior year. I can't remember if we still did the car
 12 pool my junior year or not.
 13 Q. Did you -- were you in the same car pool your
 14 freshman year throughout the entire year?
 15 A. In my freshman year?
 16 Q. Yes, sir
 17 A. Yes.
 18 Q. Was that somebody's parents driving four or
 19 five of you to school?
 20 A. Yes, sir
 21 Q. Who was in your car pool that you recall your
 22 freshman year?
 23 A. Dave Kristante, Matt Hackett, myself, and
 24 one other individual I can't remember his name
 25 Q. Were these all kids from Assumption, all

1 high school from Collierville, Tennessee.
 2 Q. So she was a graduate by the time she got here
 3 from Memphis?
 4 A. No. She actually was allowed -- my parents
 5 allowed her to stay in Tennessee to finish out her high
 6 school, so she would have graduated high school before
 7 actually relocating to Missouri
 8 But when we initially relocated to Missouri
 9 from Memphis, during the summer, my parents decided she
 10 could go back down to Memphis and finish school down
 11 there
 12 Q. How about your other sisters? Where did they
 13 attend?
 14 A. [REDACTED] went to Mehlville High School My
 15 youngest sister started off at Cor Jesu and then
 16 transferred to Mehlville
 17 Q. And was that their choice, your parents'
 18 choice?
 19 A. It was their choice
 20 Q. And going to Vianney, was that your choice, or
 21 how did that happen?
 22 A. Well, I was given an option You can either
 23 go to Mehlville or you can go to a private school,
 24 which one
 25 And having been educated in the public school

1 system for -- excuse me -- kindergarten through 7th
2 grade and getting into the parish school, I felt that I
3 would like to try a private school, so I took the test
4 for Vianney and was accepted.

5 Q. I want to take sort of William Mueller out of
6 the equation and ask you about the rest of your
7 experience at Vianney. Did you have any problems
8 attending Vianney at all if you take away William
9 Mueller?

10 A. No.

11 Q. Aside from that, did you enjoy attending the
12 school?

13 A. Most certainly.

14 Q. Did you feel like you obtained a good or
15 excellent education there?

16 A. Yes, I do.

17 MR. NOCE: Can we take just a short break?

18 VIDEOGRAPHER. We're going off the record at
19 9:44 a.m.

20 (A break was taken)

21 VIDEOGRAPHER. We're back on the record at
22 9:54 a.m.

23 Q. (By Mr. Noce) We were talking about Vianney
24 and the education you received which you thought was
25 very good?

1 either of those surgeries?

2 A. They were done at the same time on the same
3 day, same operating room, so I believe I was I don't
4 know exactly how long the stay was.

5 Q. And do you recall when that was?

6 A. It would have been the summer of 1985. I want
7 to say July of 1985.

8 Q. So after graduation?

9 A. Yes, sir.

10 Q. And were there any physicians involved that
11 you can recall other than Perron and Dusek in that?

12 A. No, sir

13 Q. Any other hospitalizations?

14 A. Since then?

15 Q. No, during that time period other than the
16 elbow and knee surgeries.

17 A. None that I can recall.

18 Q. Did you ever have any -- not -- while in high
19 school -- strike that. I'm going to start over.

20 While in high school, from time to time you
21 might have had some high school counselors perhaps help
22 you sign up for grades or courses or maybe even for
23 college testing

24 I want to take that aside, because I assume
25 that probably happened and you just don't recall. But

1 A. Yes, sir.

2 Q. Now while you were a student living in
3 St. Louis, did you ever have to be hospitalized or were
4 you ever hospitalized?

5 A. While I was attending Vianney?

6 Q. The whole time you lived in St. Louis say from
7 your 8th grade until the end of your freshman -- end of
8 your period at Vianney is what I'm asking if you were
9 hospitalized?

10 A. Yes.

11 Q. Okay And where were you hospitalized?

12 A. I believe it was St. Anthony's.

13 Q. Okay. And what was the reason for the
14 hospitalization?

15 A. I had -- I'm sorry I had a bone spur removed
16 from my right elbow, and I had some tissue removed from
17 my left knee

18 Q. Was that Dr. Dusek and Dr. Perron that did
19 that for you?

20 A. I believe that was their name

21 Q. Okay So St. Louis Orthopedic Group down
22 there?

23 A. I don't know if that's what they were called
24 then, but --

25 Q. And were you kept overnight, Mr. Visnaw, for

1 aside from those counselors, did you have any other
2 counselors that you saw while you were in high school
3 at Vianney, counselors of any kind?

4 A. Well, I'm a little confused on your definition
5 of counselor, because when I think of a counselor, I
6 think of somebody who is specifically there to give
7 counsel

8 If you're speaking of somebody that I may have
9 gone to to seek advice from -- is that what you mean?

10 Q. That would be -- thanks And that's exactly
11 what I want you to do If you don't understand me,
12 tell me that, and we'll try to clarify it

13 So any type of counselor that you had during
14 say grade school, high school days while here in
15 St. Louis?

16 A. There was none in grade school. I was only
17 here for the 8th grade While I was at Vianney, I
18 really didn't get into too many, you know, personal or
19 family issues

20 There was -- my senior year, there was
21 Brother Mueller that, you know, would -- we'd talk to
22 after class or in between classes

23 Q. Did he teach you in any class?

24 A. I don't believe so, no I know that he did
25 teach some of the religion courses or he would

41

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1 substitute for some of the religion courses, but he was
2 never one of my direct teachers.

3 Q. Did you consider him to be a counselor of
4 yours?

5 A. Because of his position at the school as an
6 assistant vice-principal, you know, myself and a lot of
7 students thought you could go to talk to him if you had
8 an issue, whether it be school related or outside of
9 school

10 Q. And did you do that on any occasions, speak
11 with Brother Mueller about school or out of school
12 issues?

13 A. There -- out of school issues, no There were
14 some issues in school where -- you know, just the high
15 school, you know, rivalries between other students and
16 whatnot.

17 And he would -- you know, he'd be like what's
18 going on, and you'd tell him the issue at hand, and
19 you'd talk about that.

20 Q. In-school rivalries?

21 A. Between students, just the egos, you know, 16,
22 17 year old kids full of testosterone.

23 Q. He'd give advice or things of that nature?

24 A. He would always for some reason find a way to
25 be there at the right time to keep whatever might

1 that were made at that point.

2 And when I was reading the complete news
3 article from the *Post*, the statement that Bryan Bacon
4 had made was very similar to my experiences, and I
5 sought him out to say, you know, what do I do. Here's
6 what I have. What do I do?

7 Q. Did you know he was a lawyer?

8 A. Only from the newspaper article.

9 Q. Did you read the article that ran in the
10 *Kirkwood-Webster Times* that he was interviewed on?

11 A. If that is -- is that when he came public?

12 The only article originally that I read was one I
13 believe -- excuse me -- was published in the
14 *Post-Dispatch*

15 Q. In other words, you're not familiar with an
16 article -- an interview that he gave in the
17 *Webster-Kirkwood Times* about William Mueller?

18 A. I may be. I don't know if it's specifically
19 from the *Webster-Kirkwood Times* or if it was the
20 one that was published in the *Post-Dispatch*, but what
21 I -- the website that I went to was the *St. Louis*
22 *Post-Dispatch*, and that's where I found the
23 accusations.

24 Q. And that would have been in September of 2005?

25 A. Correct.

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1 happen from happening I was never involved in a fight
2 at school with anybody from my high school or even out
3 of school

4 But, you know, if there were issues that
5 needed to be handled or needed to be addressed, and I
6 would have -- you know, I say I'd probably be speaking
7 for the majority of my classmates felt that you could
8 go to him and say, hey, I have an issue What can we
9 do?

10 Q. Do you know Bryan Bacon?

11 A. I do know Bryan Bacon

12 Q. How long have you known Bryan Bacon?

13 A. He was an underclassman of mine, but we didn't
14 talk or anything while we were at school I didn't
15 really get to know Bryan Bacon until September of 2005.

16 Q. And how did you get to know him in September
17 of 2005?

18 A. In September of 2005, my mom had called and
19 said, hey, Brother Mueller's in the news Do you know
20 why? And she had left it -- it was a voice mail on our
21 home phone on the answering machine I thought, you
22 know, that's kind of odd Why would my mom be calling
23 about that?

24 So I went out and did some internet searches
25 on the *St. Louis Post-Dispatch* and saw the accusations

1 Q. And was that the first time you were aware
2 that there were accusations being made about William
3 Mueller?

4 A. Yes, sir

5 Q. Aside from William Mueller, were there any
6 other counselors during your high school days in the
7 broadest sense of the term?

8 A. No Well, strike that. Let me say that, you
9 know, Mr Corbin and Ms O'Connell, they were -- if
10 anybody -- you know, everybody has a favorite teacher
11 from some point in time in their education

12 Ms O'Connell is to this day my favorite
13 teacher from high school. And Mr Corbin, obviously we
14 had a relationship because of the four years of
15 swimming and diving

16 I felt that if I had issues at school or
17 whatnot that I could go to them as well Did I do
18 that, I can't recall, but I always felt comfortable
19 enough with those two individuals that I could have.

20 Q. In other words, if something came up that
21 troubled you, you felt comfortable and confident that
22 you could discuss it with either Coach Corbin or
23 Ms O'Connell?

24 A. Yes, sir

25 Q. Did you -- did you attend college?

1 A. Yes.
 2 Q. Did you enter college upon graduation from
 3 high school or two months thereafter?
 4 A. Yes.
 5 Q. Where did you attend college?
 6 A. I went to the University of Missouri-Columbia
 7 for one semester. I had a partial scholarship for
 8 diving to go there. I wasn't happy there and came back
 9 to the University of Missouri-St. Louis.
 10 Q. When you went to school in Columbia for the
 11 one semester, you had a partial scholarship. Was it
 12 related to diving?
 13 A. Yes, sir.
 14 Q. And was the diving team or the swim team, was
 15 that a fall sport down there?
 16 A. It was pretty much -- you would say that the
 17 competitive portion of it would have been fall, but it
 18 was my understanding that it was going to be a
 19 year-round team where we would practice even after the
 20 season ended.
 21 We started pretty much right away as soon as I
 22 got to school that fall, and then the competition
 23 started later that year.
 24 Q. And when you went down to Columbia, where did
 25 you live?

1 A. I lived in a dorm
 2 Q. And was it the athletic dorm?
 3 A. No, it was not. It was -- I want to say it
 4 was Johnson -- the Johnson dormitory, but I can't --
 5 that's the name that I can recall. I don't remember if
 6 that's the exact name of it or not.
 7 Q. Was that the one behind Brewer Field House,
 8 right back in that area?
 9 A. No, I don't think so. I haven't been -- I
 10 haven't set foot on Mizzou property in --
 11 Q. Since you left there?
 12 A. Since I left there.
 13 Q. Did you complete the semester there?
 14 A. I did.
 15 Q. And did you complete, what, 15 hours and then
 16 transferred to UMSL?
 17 A. I believe it was probably 13 or 14 hours and
 18 then transferred, but I did carry a full course of
 19 study.
 20 Q. Did you while you were in high school go out
 21 on dates with girls?
 22 A. Yes.
 23 Q. Okay. Did you have a girlfriend?
 24 A. Several.
 25 Q. Say senior year, did you have a girlfriend?

1 A. Probably a couple, not -- nothing too steady.
 2 Q. Senior prom at Vianney?
 3 A. I didn't go.
 4 Q. Did you go to any other proms at any other
 5 schools?
 6 A. My senior year, I went to a senior prom. I
 7 can't remember the name of the school. I want to say
 8 it was like St. Mary's Institute, the female school
 9 that was kind of in Ladue. I can't remember the name.
 10 I do know I went to one.
 11 Q. Villa Duchesne?
 12 A. Could have been. I'm not certain which school
 13 it was, but I do know that it was a female school that
 14 I went to.
 15 Q. On Conway Road?
 16 A. I believe so, but I can't be certain of that.
 17 Q. Do you recall who you went with?
 18 A. No, I don't. One of the younger divers that
 19 Craig Tapperson, the AAU coach had, his older sister
 20 invited me, and I said yeah, yes.
 21 Q. Aside from that, did you have a girlfriend you
 22 went out with on more than one occasion during your
 23 senior year?
 24 A. During my senior year, there was one that was
 25 off and on.

1 Q. Who was that?
 2 A. Stephanie Lesmeister, but we really -- most of
 3 my senior year we didn't talk just due to -- you know,
 4 adolescent issues.
 5 Q. Where did Stephanie go to school?
 6 A. Narix.
 7 Q. Do you recall -- how do you spell her last
 8 name?
 9 A. L-E-S -- I'm sorry -- L-E-S-M-E-I-S-T-E-R.
 10 Q. Do you know her whereabouts at all these days?
 11 A. St. Charles.
 12 Q. Is she married?
 13 A. Yes. I don't know her married name, though.
 14 Q. Any other girls you can remember going out
 15 with say during your junior or senior years?
 16 A. Donna Faulkner, but I don't know if that was
 17 my junior year or not. I think it would have been
 18 because I was driving, but I have no idea where she's
 19 at.
 20 Q. Where did she go to school?
 21 A. She went to Mehlville.
 22 Q. Was she the same age as you, same class in
 23 school?
 24 A. I believe so, yes.
 25 Q. When you went down to Mizzou, did you have a

1 girlfriend?
 2 A. No.
 3 Q. When you returned to go to school at UMSL, did
 4 you take part in sports, diving?
 5 A. Not initially. The coach for the swim team
 6 contacted me towards the end of the school -- towards
 7 the end of the competitive season and asked me if I'd
 8 be willing to come out on a diving team, and I had
 9 advised her -- you know, I really -- it's not something
 10 I want to do.
 11 And she had me come out and just said, you
 12 know what, just try it. Just come out and help us out.
 13 And from that point on, I want to say it was March of
 14 '86 I started diving for UMSL and continued that
 15 through my senior year.
 16 Q. Okay. And you competed as a varsity team
 17 member?
 18 A. Yes
 19 Q. Did you win any awards or anything while
 20 diving at UMSL?
 21 A. I went to nationals my senior year for
 22 Division II
 23 Q. How did you do?
 24 A. 17th.
 25 Q. Did you obtain a degree from UMSL?

1 Criminal justice. I'm sorry
 2 Q. Did you receive some sort of certifications
 3 from these institutes?
 4 A. Conferring the degrees, no.
 5 Q. Or conferring some sort of a certification or
 6 an acknowledgment or recognition of your completion of
 7 a course of study?
 8 A. We would have gotten quote/unquote a diploma
 9 from FLETC which is the Federal Law Enforcement
 10 Training Center saying that you completed the criminal
 11 investigations training program
 12 And from the Defense Language Institute, we
 13 would have gotten a diploma or a certificate saying
 14 that you completed the course of study in a particular
 15 language
 16 Q. After you graduated from UMSL in 1989, where
 17 did you go to work?
 18 A. I went to work for Citicorp Mortgage,
 19 Incorporated. It used to be located out in Ballwin,
 20 Missouri.
 21 Q. Is that out there at Clayton and Clarkson?
 22 A. Clayton and Clarkson, yes, sir
 23 Q. How long did you work for Citicorp out there?
 24 A. Just -- I started working there the summer --
 25 towards the end of the summer of '89 and left there

1 A. Yes, I did
 2 Q. What was your degree in?
 3 A. Spanish.
 4 Q. And when did you graduate?
 5 A. May of '89.
 6 Q. That would be a BS degree?
 7 A. Yes, sir. Actually, I think it was a bachelor
 8 of arts.
 9 Q. Do you have any degrees conferred upon you by
 10 any other institutions other than your bachelor's
 11 degree from UMSL?
 12 A. Official degrees, no
 13 Q. Unofficial?
 14 A. I attended the Defense Language Institute
 15 Foreign Language Center out in Presidio, and their
 16 course of study equates to like five or six hours short
 17 of a bachelor's degree, so they consider it an
 18 associate's degree.
 19 The military training that I went through and
 20 the criminal justice when I went to the Federal Law
 21 Enforcement Training Center down in Glencoe, Georgia,
 22 the criminal court proceedings, the education that we
 23 got there they say equates to an associate's degree
 24 in -- what is it -- I can't think of the term now
 25 There is a whole course of study for it in colleges

1 February or March of '91 right before I enlisted in the
 2 military.
 3 Q. In order to attend -- strike that, please As
 4 a part of going to work for Citicorp, did you have to
 5 take any kind of physical examination?
 6 A. Not to my knowledge
 7 Q. Any psychological testing completed there?
 8 A. Not to my knowledge
 9 Q. Did you have any counselors while you attended
 10 UMSL at all?
 11 A. We had a student counselor, but that was just
 12 someone that you would go and talk to to get your
 13 grade -- to get your classes for graduation.
 14 And I think I only had contact with her once
 15 or twice going into my senior year so that we could
 16 ensure that I had the proper amount of credits and the
 17 proper coursework to graduate.
 18 Q. Would that counseling have been limited to
 19 like you say academic?
 20 A. Yes, sir
 21 Q. Any other counselors that you had during
 22 college at all other than the student counselors who
 23 helped you academically?
 24 A. No, sir
 25 Q. Did you receive a scholarship to UMSL?

1 A. No, I did not.
 2 Q. Did you have anybody that you went out with,
 3 dated more than one occasion or more than a couple of
 4 occasions while you attended UMSL?
 5 A. Well, that would go back to Stephanie. I
 6 mean, again, we were on again, off again for most of
 7 that. And then towards the -- my senior year,
 8 junior/senior year, we stopped seeing each other
 9 altogether
 10 We didn't really -- we broke up on really -- I
 11 don't want to say bad terms. It just wasn't -- I guess
 12 we were pretty much tired of one another at that point.
 13 And then a girl by the name of Tracy Dry.
 14 Q. How do you spell the last name?
 15 A. Dry, D-R-Y. I dated her for probably about
 16 six, seven months
 17 Q. Now Stephanie you would have dated off and on
 18 for four or five years?
 19 A. Maybe.
 20 Q. Did she go to college?
 21 A. Yeah. She actually started off at Quincy, I
 22 believe it was, and transferred back to UMSL.
 23 Q. While you were attending UMSL, where were you
 24 living?
 25 A. With my family at the [REDACTED] address

1 A. Yes.
 2 Q. And during the time, you know, you're living
 3 at home attending high school and then ultimately
 4 attending college until you went in the military, were
 5 you close with your father?
 6 A. It wasn't until actually probably about my
 7 senior year, we became more distant. I just didn't
 8 want to be around him or really any kind of adult male
 9 authoritative figure at that point. It was -- there
 10 were some issues with that.
 11 Q. You became more distant your senior year of
 12 high school?
 13 A. Yes, sir And that continued through college
 14 and pretty much right up until I enlisted in the
 15 military.
 16 Q. And what branch of the service did you enlist
 17 in?
 18 A. The Army
 19 Q. Did your -- did you seek your dad's advice
 20 about whether or not you should go into the service?
 21 A. No.
 22 Q. What led to that decision?
 23 A. I needed to get away and I think try to
 24 establish who I was, my own identity, so instead of
 25 always being around him and the animosity that was --

1 Q. When you graduated and went to work for
 2 Citicorp, did you still live at home?
 3 A. Yes.
 4 Q. Did you live at home until you entered the
 5 military?
 6 A. Yes.
 7 Q. Were you in any kind of a fraternity while you
 8 attended UMSL?
 9 A. No, sir.
 10 Q. Were you involved in any type of campus
 11 activities at UMSL other than the swimming and diving
 12 team?
 13 A. No, sir
 14 Q. And Tracy Dry, you went out with her for a
 15 period of time. Do you know where she is now, or is
 16 she married or single still?
 17 A. I know nothing about her whereabouts or her
 18 current marital status.
 19 Q. Where did she live when you went out with her?
 20 A. I guess you would say it would be Kansas
 21 City -- or St. Louis, Missouri, the actual city, off of
 22 Grand And I don't remember the exact street that was
 23 off of Grand.
 24 Q. And did she live at home when you went out
 25 with her with her parents?

1 that had developed between us
 2 Q. You needed to get away from your dad?
 3 A. I needed to get away from not only my dad, but
 4 I needed to get away from the whole St. Louis
 5 environment.
 6 I needed to -- I was becoming -- I think in
 7 adulthood I was becoming stagnant in who I was I was
 8 always, you know, at home, diving, you know, just
 9 everyday work, going to work, or you know, nothing new.
 10 Q. Were you still diving after you graduated from
 11 UMSL?
 12 A. A little bit, not much It wasn't
 13 competitive, but I would go to -- you know, I would go
 14 to the pool and try to work out, but not -- for the
 15 most part, no
 16 Q. With anybody in particular in those days?
 17 A. My high school coach -- or not my high school
 18 Strike that. My college coach who was picked up by
 19 UMSL my junior year, Kevi Hardwood. I want to say H A
 20 R -- I want to say it's H-A-R-D-W-O-O-D
 21 Q. What was the first name?
 22 A. Kevi, Kevin without an N, K-E-V-I
 23 Q. Oh, okay
 24 A. She and I -- she and I -- actually, after
 25 college, she became a good friend of mine, and we ended

1 up having a boyfriend/girlfriend type of relation for
 2 the next couple years.
 3 And then when I enlisted, that ended. It
 4 actually ended prior to that, but we still stayed in
 5 touch until I enlisted in the Army, and that ended.
 6 Q. And Kevi, where is she these days?
 7 A. I have no idea, sir.
 8 Q. What part of town was she from?
 9 A. She used to live in Kirkwood, but I don't know
 10 where she -- she lived in Kirkwood, moved to St. Louis
 11 City, and then after that when we lost touch, that was
 12 it. I'm sorry. Excuse me
 13 Kirkwood, St. Louis City, and then Creve
 14 Coeur/Olivette. She used to live on Creve Coeur -- I
 15 can't remember the exact street address, but she lived
 16 right across the street from a grocery store that was
 17 on Creve Coeur if you headed in towards the city
 18 Q. Okay. Like Dierbergs or something?
 19 A. It was a Schnucks.
 20 Q. Was she from Kirkwood to your knowledge, like
 21 her parents lived in Kirkwood?
 22 A. I believe so
 23 Q. Did you develop at any time after you got into
 24 the service a relationship with your father?
 25 A Yes, I did.

1 training, you went out to the Presidio?
 2 A. Of Monterey, yes, sir.
 3 Q. And attended the language center out there?
 4 A. Correct.
 5 Q. And what was your rank at that point?
 6 A. It was an E-4, specialist E-4.
 7 Q. What was the rank that you -- what was the
 8 highest rank you attended?
 9 A. It was a staff sergeant, E-6
 10 Q. And where did you leave -- where were you
 11 stationed when you separated?
 12 A Fort Lewis, Washington.
 13 Q. During the military service -- I think you
 14 were in for five years?
 15 A. Yes, sir.
 16 Q. Did you have any psychological counseling or
 17 any psychological testing at any time while in the
 18 military?
 19 A. You know, I don't think so. I don't think it
 20 was part of the entrance requirements. And because of
 21 the job description I went in to, there was no further
 22 requirement other than being able to pass what they
 23 called the D-Lab, the Defense Language Aptitude Battery
 24 which was a test that quote/unquote scored your ability
 25 to learn a foreign language.

1 Q. When did that take place?
 2 A. Probably it would have been shortly after
 3 basic training when, you know, it wasn't -- growing up
 4 in a military family having rules and regulations put
 5 down that you as a child don't understand or even as a
 6 young adult you don't understand, and then when you're
 7 put in that same situation, I realized that some of the
 8 things that were going on in my life growing up, there
 9 was a purpose behind, that it wasn't a bad thing to
 10 have a father who set down rules
 11 Q. You realized that after completing basic
 12 training?
 13 A. Right around that time, yeah. It would have
 14 been towards the end of basic training and right before
 15 I went to the Defense Language Institute.
 16 Q. And where did you do basic training?
 17 A. Fort Leonard Wood
 18 Q. Now when you entered the service, did you
 19 enter it as -- did you go through OCS?
 20 A. No, sir. I applied for OCS, but it was at the
 21 time that they were conducting their reduction in
 22 force, so they had closed the OCS process shortly after
 23 my packet was received at the Department of Army
 24 That's what I was told by the recruiter.
 25 Q. So then after you completed your basic

1 Q. And what did you do while you were in the
 2 service?
 3 A I was a Korean interrogator, Korean language
 4 interrogator to be more exact
 5 Q. Okay What does that mean?
 6 A. That means I was trained on how to
 7 interrogate/debrief/interview foreign nationals or
 8 anybody, and then as part of that, the Korean language
 9 was brought into play, because we would be stationed in
 10 Korea or we would interview Koreans, either North or
 11 South Koreans
 12 Q. Were you -- did you actually go to Korea
 13 yourself?
 14 A. Yes, I did
 15 Q. How long were you stationed there?
 16 A I entered country I believe it was December of
 17 1992, late November, early December 1992, and I
 18 departed to the United States in February of 1995.
 19 Q. And is that about the time that you left the
 20 service, in '95?
 21 A No, sir I didn't leave until '96
 22 Q. What languages do you speak?
 23 A. I speak Spanish, I understand Portuguese,
 24 Italian and some Korean. I speak some Korean and
 25 understand some Korean

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1 Q. Have you -- I know you're married now?
 2 A. Yes.
 3 Q. Have you been married in the past?
 4 A. Yes, I was.
 5 Q. And when did you first become married?
 6 A. May 1992.
 7 Q. And who did you marry?
 8 A. Dennisha, D-E-N-N-I-S-H-A, Gialdin,
 9 G-I-A-L-D-I-N-I, and she was a service -- service
 10 person or service man of the United States Air Force
 11 who was also at the Defense Language Institute in
 12 Presidio.
 13 Q. And do you know where she is now?
 14 A. I have no clue.
 15 Q. And how long were you married to her?
 16 A. Six months before we separated. I believe it
 17 was just about a -- I want to say a year, maybe under
 18 that, before the divorce was final
 19 Q. Where were you divorced?
 20 A. Green County, Texas, I think. I know it was
 21 in Texas. It was in whatever county in Texas her
 22 Air Force base was at, and I can't remember the name of
 23 the Air Force training base where she was at.
 24 Q. Was it around Corpus Christi?
 25 A. No, it was actually north near Odessa,

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1 Odessa/Midland. I'm sorry. I just can't remember the
 2 name of the Air Force base where she was at
 3 Q. How was it that the divorce took place there?
 4 Were you a resident of the state of Texas?
 5 A. No. Actually, she was because she was
 6 training there. I had already gone to Fort Huachuca,
 7 Arizona for my interrogation training
 8 And she had let me know that she wanted to get
 9 divorced. I did not want to get divorced, but she
 10 wanted to get divorced, and she took care of all the
 11 paperwork through an attorney there
 12 I had then went to Korea, and she was then
 13 subsequently sent to Korea to Osan Air Force base, and
 14 she brought the paperwork with her. I signed the
 15 paperwork, and she sent it back to her attorney
 16 Q. Did you receive any kind of paperwork or
 17 documentation confirming the fact that you are
 18 divorced?
 19 A. I did. I cannot find it, because it's -- for
 20 my five year periodic security clearance update, it's
 21 one of those things that they like to see copies of,
 22 but in my personal records I can't find it, but yes, I
 23 did receive a copy of the certified divorce decree
 24 Q. Okay. Did she take your name?
 25 A. Yes, she did

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1 Q. So somewhere there's a Dennisha Visnaw vs.
 2 Robert Visnaw divorce case?
 3 A. I would believe that to be true.
 4 Q. And you think that's in Texas somewhere?
 5 A. Yes.
 6 Q. And you think it's Green County?
 7 A. Green -- San Angelo, Texas.
 8 Q. San Angelo, okay.
 9 A. Is where I think the Air Force base is at,
 10 Goodfellow Air Force Base. Talk about it long enough,
 11 it shows up in your brain
 12 Q. Were there any children born of the marriage?
 13 A. No, sir
 14 Q. Did she tell you why she wanted a divorce?
 15 A. She told me it was -- the common term of
 16 irreconcilable differences. I just think that she
 17 didn't want to be married.
 18 She had gotten -- she had conceived a child
 19 prior to us getting married and had a miscarriage
 20 shortly after -- or shortly before we got married.
 21 So I don't know if that had anything to do
 22 with her not wanting to be married, but that was the
 23 reason I was given is that it was irreconcilable
 24 differences
 25 Q. Do you know where she was from?

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1 A. She -- her father is from Wisconsin, the
 2 Milwaukee area, and her mother who died in 1993 was
 3 from the Chicago area
 4 Q. So when you married her, she was pregnant?
 5 A. No, she was not pregnant when we married. She
 6 had a miscarriage shortly before our marriage was to
 7 take place
 8 Q. Okay. She was pregnant when you were getting
 9 ready to marry her?
 10 A. Correct.
 11 Q. And was it your child or no?
 12 A. To the best of my knowledge, yes.
 13 Q. Oh, it was your child, okay. Where did the
 14 miscarriage take place?
 15 A. While we were at Presidio, she was taken to
 16 the Fort Ord Medical Center which is just on the other
 17 side of the bay from the Presidio
 18 Q. And so the entire time -- you were married in
 19 California, and a divorce took place and was issued in
 20 a court in Texas?
 21 A. Correct
 22 Q. And the entire period of your marriage was
 23 about six months?
 24 A. I would say the entire time that I thought we
 25 were married -- was that six months. Legally it didn't

1 end until sometime in 1993.
 2 Q. Did you -- when you got married to her, what
 3 year was that?
 4 A. '92.
 5 Q. Family members attend the marriage?
 6 A. My mother did not. Her father came down
 7 Q. Was your dad already passed?
 8 A. My father had passed away already
 9 Q. Did he pass in 90?
 10 A. '91, October -- October 18th, 1991.
 11 Q. Were you in the service by that time?
 12 A. Yes, sir, I was.
 13 Q. Was his death a surprise or was it --
 14 A. It was a surprise, but it wasn't such a
 15 surprise that it -- we knew that if he was ever going
 16 to die, he was going to have another heart attack and
 17 die. We didn't think he would go from any other cause
 18 besides that.
 19 So when I was called into my first sergeant's
 20 office and saw the chaplain and my first sergeant
 21 there, my first words were, okay, so when did my dad
 22 die
 23 Not that it was unexpected -- or not that I
 24 expected it, but it wasn't as a shock as it would be
 25 say to most people who had a completely healthy father

1 point?
 2 A. Correct
 3 Q. Prior to that, did you attend with your
 4 family?
 5 A. I didn't attend with my family, but I did
 6 attend mass. My mom would go like on Saturday nights,
 7 and I would get up and go to --
 8 Q. 7-30 or something?
 9 A. Yeah, the one that was only like a half an
 10 hour long.
 11 Q. Okay And when you went to -- down to Mizzou,
 12 you were away from home for the first time. Did you go
 13 to Newman Center, or what did you do down there?
 14 A We went to the Newman Center once.
 15 Q. Did you go to the other churches like Sacred
 16 Heart over by Stephens or anything like that?
 17 A. No, sir.
 18 Q. Did you register at Newman Center at all, do
 19 you remember?
 20 A No, sir, I don't recall I don't believe I
 21 did
 22 Q. So you were at Mizzou '85 -- well, '85 for the
 23 fall semester and then back to live at home and go to
 24 UMSL by probably around Christmastime?
 25 A Correct

1 and he just all of a sudden dies from a heart attack.
 2 Q. Okay. So did you come home for the funeral?
 3 A. Yes, I did.
 4 Q. And was the service at Assumption?
 5 A. Yes, it was.
 6 Q. Father Dempsey?
 7 A. I don't know who -- I don't know who would
 8 have said the mass, but Dempsey does ring a bell
 9 Q. I think he would have been the pastor at the
 10 time. And did you speak at all at the service?
 11 A. No, sir.
 12 Q. And you, of course, attended the service?
 13 A. Yes
 14 Q. Did you at some point quit attending mass or
 15 church?
 16 A. Oh, yeah
 17 Q. When did that happen?
 18 A That would have probably been on a regular
 19 basis as far as where I felt part of the church
 20 probably would have been about '86/'87
 21 I did attend mass after that only because, you
 22 know, the family of the girl that I was dating,
 23 Stephanie, they were into the church, and I went kind
 24 of as a show
 25 Q. So you quit after you were in college at some

1 Q. All right And then it was sometime after
 2 moving back that you quit attending church?
 3 A Yes, sir
 4 Q. Okay. So mom came down and attended your
 5 wedding?
 6 A. No, my mother did not.
 7 Q. Oh, she did not? I'm sorry
 8 A No. Her father -- the bride's father came
 9 down from Milwaukee
 10 Q. Was that in a church?
 11 A. It was actually at an oceanside park in
 12 Pacific Grove, California.
 13 Q. And who married you?
 14 A The justice of the peace
 15 Q. So it was a judge or something like that?
 16 A Yes, sir.
 17 Q. A civil service?
 18 A Yes, sir
 19 Q. Since that time, you have remarried?
 20 A Yes, sir
 21 Q. And you're married right now?
 22 A. Yes, sir
 23 Q And your wife's name is [REDACTED]
 24 A [REDACTED]
 25 Q. [REDACTED] I'm sorry Is it her daughter who's

1 [REDACTED]
 2 A. Yes, sir.
 3 Q. And [REDACTED] is not your daughter, it's your
 4 wife's daughter?
 5 A. Correct.
 6 Q. Okay. Now where did you meet [REDACTED]
 7 A. I met her through my current sister-in-law who
 8 was a neighbor of mine in Kansas City.
 9 Q. [REDACTED] sister?
 10 A. Correct.
 11 Q. Okay. What's her name?
 12 A. [REDACTED]
 13 Q. [REDACTED]
 14 A. [REDACTED]
 15 Q. Is that [REDACTED] maiden name?
 16 A. No. [REDACTED] maiden name is Inscoe,
 17 [REDACTED] The name that she had at the time I met
 18 her was Evans.
 19 Q. Is [REDACTED] last name Evans?
 20 A. Yes, sir.
 21 Q. When did you marry?
 22 A. Oh, you're going to get me in trouble
 23 Q. She's not here
 24 A. October 9th -- October 9th, 1999.
 25 Q. How long did you go out with [REDACTED] before

1 Q. Is she a member of any church in particular?
 2 A. She is now. I think the name of it is Christ
 3 Family Church and that's in Olathe as well.
 4 Q. Is that affiliated with any denomination?
 5 A. I think it's nondenominational.
 6 Q. Are you a member of any church?
 7 A. No, sir.
 8 Q. Have the children -- your children been
 9 baptized in any church?
 10 A. No, they haven't.
 11 Q. Since leaving the service -- I think that was
 12 in '96 you told me?
 13 A. Yes, sir.
 14 Q. What's your employment been?
 15 A. In April of 1996, I went back to work for
 16 Citicorp Mortgage as a bilingual collections
 17 representative.
 18 Q. And where were you employed? What was your
 19 employment?
 20 A. The same place as before in Ballwin off of
 21 Clayton and Clarkson.
 22 Q. Where did you live when you worked there and
 23 came back to St. Louis?
 24 A. I lived with my mother for a short time
 25 My -- the girl that I was dating at the time insisted

1 that?
 2 A. Before we got married?
 3 Q. Yes, sir.
 4 A. We met in July of '98 at her sister's birthday
 5 party
 6 Q. And how many children do you have with [REDACTED]
 7 A. Three.
 8 Q. Names and ages?
 9 A. [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 Q. And where did you and [REDACTED] get married?
 13 A. We got married in Johnson County, Kansas
 14 Q. And where?
 15 A. Olathe, O-L-A-T-H-E, and we got married by a
 16 judge at a -- I won't say it's a banquet center, but we
 17 used one of the banquet rooms at the Holiday Inn
 18 located on 151st Street in Olathe.
 19 Q. So you had a civil service?
 20 A. Correct.
 21 Q. Okay Did your wife -- did she -- was she
 22 brought up in any organized religion?
 23 A. She was -- she considers herself Christian. I
 24 don't know what exactly religion she was or what church
 25 she would have attended

1 on coming back from Fort Lewis, Washington to St. Louis
 2 with me, so we moved from there to an apartment complex
 3 off of -- I think it's Olive just north of 40 Highway.
 4 I don't know the exact name or street address, but --
 5 Q. Olive turns into Clarkson, so it's a straight
 6 shot to where you worked?
 7 A. Exactly
 8 Q. Now when you were in the service at any time,
 9 either as a part of your induction or as a part of your
 10 training or as a part of your separation, did you ever
 11 take any psychological testing at all?
 12 A. No, sir
 13 Q. Or have any psychological testing conducted?
 14 A. No, sir
 15 Q. Did you ever have -- say up to 1996 at any
 16 time any counseling either from a social worker or a
 17 psychologist or a health care provider of any kind for
 18 any psychological reasons?
 19 A. When I got the call from my ex-wife that she
 20 wanted to get divorced, that did upset me because I
 21 didn't know why she wanted to get divorced.
 22 You know, I thought it was something that I
 23 had done, so I did go talk to the chaplain one time
 24 about that
 25 Q. And where was that?

1 A: At Fort Huachuca, Arizona.
 2 Q. Do you recall the chaplain's name?
 3 A. No, sir.
 4 Q. Do you know whether he or she was affiliated
 5 with any denomination?
 6 A. All I can tell you is that it was a Christian
 7 chaplain I don't know if it was -- if he was a
 8 Catholic chaplain or Methodist or Baptist or what,
 9 but --
 10 Q. And was that just to sort of talk out --
 11 A. Yes, sir.
 12 Q. -- problems?
 13 A. Yes, sir. It was more of, you know, why do
 14 you think this happened and just to try to calm me
 15 down, because I was not happy that she had just called
 16 me one day on the phone and said, hey, I want to get a
 17 divorce.
 18 Q. Was it a surprise to you?
 19 A. Very much so.
 20 Q. And she never explained the reason she wanted
 21 the divorce?
 22 A. Not that I can recall. Later we had talked,
 23 because we were both stationed in Korea at separate --
 24 separate bases, but it was -- we never really discussed
 25 it after I signed the divorce paperwork.

1 Q. Did you have any kind of counseling or
 2 psychological testing when you came back to work for
 3 them?
 4 A. No, sir.
 5 Q. Any kind of examination?
 6 A. No, sir.
 7 Q. Paperwork to fill out at all?
 8 A. We filled out -- I filled out I think it was
 9 another -- I don't want to say it was an application.
 10 I mean, it could have been just to update my personnel
 11 files and to put me back into a department that I could
 12 be used in.
 13 Since I was working for collections when I
 14 left, that was the obvious choice to put me back into
 15 when I came back.
 16 Q. And when you were in the service at any time,
 17 were you under or using any prescribed medicines at
 18 all?
 19 A. Motrin, but that would have been for, you
 20 know, ankle sprains, body aches. It would seem to
 21 be -- you know, we had a saying in the military. You'd
 22 go to the tactical or the troop medical center and get
 23 your ranger candy, because they'd give 800 milligrams
 24 of Motrin out for everything. It didn't matter what it
 25 was.

1 I think I saw her on one or two occasions
 2 where, you know, she just wanted to say, hi, how are
 3 you doing, and we'd have a dinner with her friends or
 4 whomever she came up to Osan to Seoul with, and we
 5 never really discussed why we got divorced.
 6 Q. Okay. So after the divorce occurred here in
 7 the states, on a couple of occasions the two of you
 8 would go out to dinner with her friends in Korea?
 9 A. No, it was -- I mean, I saw her maybe twice
 10 while I was in Korea, once to sign the divorce
 11 paperwork and then once after that, you know, just idle
 12 chitchat, hi, how are you doing, I'm in Seoul, you
 13 know, nothing outside of that.
 14 Q. Okay. And aside from that single occasion
 15 with the minister -- the chaplain in Arizona, no other
 16 counseling of any kind while you were in the service?
 17 A. No, sir.
 18 Q. After you left the service and went to work
 19 for Citicorp, was that the first place of employment
 20 after leaving the service?
 21 A. Immediately after separating from the service,
 22 Citicorp Mortgage had an employee clause that if you
 23 went on active duty while you were still employed, they
 24 would hold your job, so that's how I got to come back
 25 with them.

1 Q. But it was a prescribed medicine?
 2 A. Correct.
 3 Q. And did you take that regularly or
 4 irregularly?
 5 A. I would say irregularly.
 6 Q. Any other prescribed medicines?
 7 A. Not when I was -- not when I was in the
 8 military, no.
 9 Q. After leaving the military, how long did you
 10 go to work for Citicorp?
 11 A. I returned back to Citicorp I believe it was
 12 April of '96, and December 2nd of '96 I entered on duty
 13 with the then Immigration & Naturalization Service.
 14 Q. INS?
 15 A. Yes, sir.
 16 Q. And where did you start working for INS?
 17 Where did you get hired?
 18 A. Kansas City. I was actually interviewed here
 19 in St. Louis for a position here. A trainee in Kansas
 20 City had quit, they needed someone to fill his spot,
 21 and they asked me if I'd go to Kansas City, and I said
 22 sure.
 23 Q. You said that you had moved here with a
 24 girlfriend from Washington?
 25 A. Yes, sir.

1 Q. Who was that?
 2 A. Laura Margel, M-A-R-G-E-L.
 3 Q. And where is Laura now, do you know?
 4 A. I believe she's relocated back to Washington.
 5 I don't know exactly where. I would fathom a guess and
 6 say it would be back near Olympia, Washington or Kent,
 7 Washington
 8 Q. And did the two of you live together in an
 9 apartment somewhere?
 10 A. We lived together in the apartment complex off
 11 of Olive.
 12 Q. Do you remember the name of the apartment
 13 complex?
 14 A. No, I don't.
 15 Q. And how long did the two of you live there?
 16 A. Oh, not -- it wasn't very long because we
 17 started not getting along.
 18 And she actually found another place to live
 19 near Shrewsbury just past the Laclede Station/Murdoch
 20 cut-off exit. She found a place to live there.
 21 I actually stayed in the apartment on Olive at
 22 that point, so we maybe lived together from April until
 23 June or July, maybe August
 24 Q. Of 1996?
 25 A. Yes, sir Again, that's -- the time frame

1 Q. Did you undertake any testing?
 2 A. No, sir.
 3 Q. Did you have to have any counseling -- strike
 4 that, please.
 5 Did you undergo any psychological testing
 6 while a member of the INS?
 7 A. No, sir.
 8 Q. How about physical examinations?
 9 A. We had a physical that was conducted by a
 10 doctor that they sent me to It was a requirement of
 11 hire to be hired.
 12 Q. Where was that?
 13 A. Here in St. Louis, Missouri somewhere I
 14 don't -- I couldn't tell you what doctor it was or
 15 anything along those lines, but we had a physical, they
 16 gave us a rudimentary eye exam, hearing exam, they drew
 17 blood for alcohol or drug abuse, that type of stuff
 18 Q. And this -- the INS office, is it located in
 19 the federal courthouse? Where was it located when you
 20 interviewed here in St. Louis?
 21 A. The interview was here in St. Louis. I want
 22 to say it was off of 14th Street very close to what was
 23 then known as the Savvis Center
 24 Q. Is it the Robert Young building?
 25 A. I believe so.

1 is -- I can't exactly recall the amount of months that
 2 we lived together
 3 Q. Were you both on the lease there?
 4 A. Yes
 5 Q. The apartment?
 6 A. I believe so. I -- I'd have to say yes
 7 Q. And what -- where was that apartment complex
 8 located exactly?
 9 A. You know, I could drive you there It's off
 10 of Olive. I don't know how far down off of Olive
 11 it's been over 10 years since I've been there, so --
 12 Q. It's Olive say off of 270 or --
 13 A. No, it's actually Olive off of 40. If you
 14 were to go left -- if you're coming into the city on
 15 40, you get off of Olive and you go left. And I don't
 16 know how many miles down the road it is, but it would
 17 sit on the right-hand side
 18 Q. Is it all the way to 1417
 19 A. No, I don't think it's that far I mean, I
 20 couldn't tell you exactly the distance or the
 21 cross-streets or anything Like I said, it's been over
 22 10 years since I've been there
 23 Q. After you went to work for the INS, was there
 24 any kind of testing that you had to undertake?
 25 A. It wasn't required.

1 Q. And was the doctor's office there, too?
 2 A. No, sir
 3 Q. So the office -- INS sent you to a private
 4 physician for this physical exam?
 5 A. I don't know if it was a private physician,
 6 but they have doctors that they want you to see to fill
 7 out the paperwork, because they want -- I don't know if
 8 it's because they want to make sure that you meet all
 9 the requirements, you're just not having your personal
 10 physician say he's healthy.
 11 Q. After you obviously passed the examination,
 12 you were assigned to Kansas City?
 13 A. There was a waiting period because they had to
 14 wait for my security clearance to be processed, and
 15 then after that, then the offer of employment was made,
 16 and they gave me an entry on duty date of December 2nd,
 17 '96.
 18 Q. And where were you to report?
 19 A. Kansas City, Missouri
 20 Q. And what was your job title?
 21 A. Criminal investigation or criminal
 22 investigator/special agent
 23 Q. And what were your duties on that first job?
 24 A. On the first job? It's been my job since
 25 then

1 Q. What were your duties when you started, and if
2 they've changed, what are your duties?

3 A. I entered on duty in December of '96. I did
4 not go to the academy until the following year. We
5 had -- they kept canceling classes, so at that point I
6 was just kind of doing -- filing paperwork, helping --
7 because I was fluent in Spanish, I would help some of
8 the agents that were not totally fluent in Spanish
9 conduct their interviews to help translate.

10 At that point, I would help create databases
11 for the some of the agents on their case work, so I was
12 pretty much an administrative processor or in an
13 administrative capacity until I went to the academy.

14 Q. How long did that period last?

15 A. I want to -- I almost want to say it was until
16 May, April or May. I don't know the exact dates that I
17 went to the academy, but it was sort of spring/early
18 summer that I went to the academy.

19 Q. And what's the name of the academy, and where
20 is it located?

21 A. It's located in Glencoe, Georgia, and it's the
22 Federal Law Enforcement Training Center. Glencoe,
23 Georgia is kind of encompassed by Brunswick, Georgia.

24 Q. How long did that education or program last?

25 A. Let's see. The total course would have been

1 time I left Vianney until the time I entered the
2 military?

3 Q. Right.

4 A. Yeah, it was the surgeries that I had on my
5 right arm and my left knee.

6 Q. And since that time while you were in -- say
7 after leaving the service -- strike that.

8 During the service, were you ever
9 hospitalized?

10 A. I had my wisdom teeth removed surgically, and
11 it was a one night stay.

12 Q. Where was that?

13 A. That was in Seoul, Korea.

14 Q. After leaving the service up to today's date,
15 have you been hospitalized at all?

16 A. Many times.

17 Q. And tell me the first time after leaving the
18 service, when, and what it was for?

19 A. It would have been for shoulder repair, and
20 that would have been September of 2001.

21 Q. In Kansas City, Dr. Wardner?

22 A. Dr. Wersing. That was September of 2001.

23 September of 2002, I had completely torn my ACL, and
24 that was -- he removed my ACL.

25 Q. Same physician?

1 22 weeks if you took the Spanish course, which I did
2 not have to do, so I think it was like 17, 18 weeks,
3 16, 17, or 18 weeks that I was there.

4 Q. And what did that program consist of?

5 A. It consisted of criminal law, constitutional
6 law, and immigration and nationality law, amongst your
7 physical requirements, your basic handcuffing,
8 firearms.

9 Q. And as a part of that program, is there any
10 psychological testing at all?

11 A. No, sir.

12 Q. Any physical testing at all?

13 A. We did have to take a physical exam, running,
14 agility, lifting your body weight.

15 Q. Was there any further medical examinations as
16 a part of that program?

17 A. Not unless you were injured.

18 Q. Did you get injured during that program?

19 A. No.

20 Q. From the time you left Vianney to the time you
21 entered the armed forces, were you hospitalized on any
22 occasion?

23 A. In '85.

24 Q. And what was that?

25 A. That was the surgery. Again, it was from the

1 A. Correct. But that was -- both of those
2 surgeries were outpatient, but I considered them being
3 hospitalized because I was in the hospital environment.

4 Q. Sure.

5 A. September -- July of 2003 or 2004, I don't
6 know the exact year, but it seemed like I was having
7 one surgery after another, I went to Dr. Rasmussen and
8 had my ACL repaired.

9 Q. Again, in Kansas City?

10 A. Correct. And then I was hospitalized after
11 that surgery because I had contracted cellulitis and
12 had to spend several days in the hospital.

13 Q. When was that?

14 A. When I was -- that was -- I had the surgery in
15 July of 2003 or 2004 and that -- that was on a
16 Wednesday or Thursday. That Friday night, I was back
17 in the hospital with cellulitis in my leg.

18 And then I'm trying to figure out how old my
19 daughter was when this happened. I think it was 2005. I
20 was hospitalized with an abscess in my face. I was
21 hospitalized for two or three days then.

22 Q. Was that simply drained?

23 A. It was drained, and then I was put on
24 antibiotics after that. I had what they call a PIC
25 line inserted in my left arm for the administration of

1 antibiotics
 2 Q. Are all these hospitalizations at the same
 3 location?
 4 A. Goodness. The shoulder repair was done at --
 5 I can't remember the exact hospital. I think it was
 6 Johnson County Surgical Center. It was either there or
 7 Shawnee Mission Medical Center.
 8 And my knee, one was done at either Overland
 9 Park Regional or the Surgical Center of Johnson County.
 10 And my reconstruction, if I remember
 11 correctly, was done at Shawnee Mission Medical Center,
 12 and then the abscess was drained at Overland Park.
 13 Q. Any other hospitalizations?
 14 A. Not that I can recall.
 15 Q. Between the time that you were divorced and
 16 then remarried, you already told me you went out and
 17 lived with actually Laura Margel.
 18 Did you go out with anybody else for any more
 19 than one occasion during that period of time?
 20 A. In Korea, we dated for maybe two months
 21 towards the end of my stay in Korea, but it was more of
 22 circumstances that you're there, you're single, I'm
 23 single
 24 Q. Do you have a personal physician since --
 25 strike that

1 When you moved back to St. Louis after leaving
 2 the service, did you have a personal physician during
 3 that time frame?
 4 A. No
 5 Q. Until you moved to Kansas City?
 6 A. Correct.
 7 Q. Did you have any medical treatment for any
 8 reason during that time frame?
 9 A. Not that I can recall. I don't think I did.
 10 Q. And then upon transferring to Kansas City in
 11 '96, have you had any personal physician?
 12 A. Originally when I first got to Kansas City,
 13 no. After I met my wife in '98, I started listing her
 14 physician, Dr. John Bernard, with College Park Family
 15 Care, excuse me, as my primary physician
 16 Q. And your wife is a health care provider?
 17 A. She was a -- she is a licensed practical
 18 nurse. She -- with the birth of her fourth child, my
 19 third, she has quit work to stay at home.
 20 Q. In -- I think in September of 2005 or
 21 thereabouts, you started obtaining some counseling from
 22 a Dr. Harris who's a psychologist?
 23 A. Yes, sir
 24 Q. And have you ever received counseling from
 25 anyone -- by counseling I mean it could be anything in

1 the way -- in some instances it could be a licensed
 2 clinical social worker, it could be a psychiatrist,
 3 psychologist, it could be anything like that, a health
 4 care provider who's trying to treat a psychiatric,
 5 psychologic, or emotional disorders.
 6 Before Dr. Harris, did you have that kind of
 7 treatment from anyone, anywhere, at any time?
 8 A. The only other person that that -- I think
 9 would qualify for that would be my primary care
 10 physician, Dr. Bernard, but that was right around the
 11 same time as well that Dr. Harris -- that I started
 12 seeing Dr. Harris.
 13 Q. And Dr. Harris, you were referred to him by
 14 the EAP at your work?
 15 A. Yes, sir.
 16 Q. Okay. Had you ever asked for any -- I think
 17 that stands for employee assistance program?
 18 A. Yes, sir.
 19 Q. Had you ever participated or received any
 20 assistance from the EAP at any time in any of your
 21 employment situations prior to that?
 22 A. No, sir.
 23 Q. When you consulted and talked to Dr. Harris,
 24 you knew he was a psychologist?
 25 A. Yes, sir.

1 Q. Okay. And you were there seeking his help,
 2 weren't you?
 3 A. Yes, sir.
 4 Q. And did you understand in speaking with him
 5 and seeking his counseling that you should give him as
 6 full and complete information and as accurate
 7 information as you could?
 8 A. Yes, sir
 9 Q. And did you do that?
 10 A. Yes, sir
 11 Q. Have you ever read his records?
 12 A. I reviewed them prior to today, yes, I have
 13 Q. Okay. And when did you do that?
 14 A. It would have been Saturday, Sunday, and again
 15 last night.
 16 Q. Were there any other records that you've
 17 reviewed in preparation for your deposition?
 18 A. I reviewed my statements to the
 19 interrogatories
 20 Q. And did you -- so you reviewed Dr. Harris's
 21 records?
 22 A. Yes, sir
 23 Q. All right. And you reviewed your
 24 interrogatory answers. Correct?
 25 A. Uh-huh

1 Q. That's true?
 2 A. Yes, sir.
 3 Q. Have you reviewed any other records in
 4 preparation for this deposition?
 5 A. I think those -- I think those are it, the
 6 interrogatories and Dr. Harris's statements. Pardon
 7 me. I did read Father Fleming's deposition.
 8 Q. And when did you do that?
 9 A. I'm trying to think. About two -- two,
 10 three weeks ago, I believe. I think that's when it
 11 was. It could be as long as a month, month and a half
 12 Q. And did you read any other documents regarding
 13 your case that were provided to you to read in
 14 preparation for your deposition?
 15 A. Other than -- if you're describing legal
 16 documents --
 17 Q. I'm talking about any documents.
 18 A. Newspaper articles -- I haven't tried to find
 19 anything on the internet or newspapers for some time
 20 But from September of 2005, I did read the newspaper
 21 articles that came out about the situation and about
 22 the allegations
 23 Q. Okay. I'm going to hand you --
 24 MR. GOLDENHERSH: Jerry, can we take a quick
 25 break before we do that?

1 So when I got those, I opened them up, saw
 2 what they were. I may have glanced at them. I did not
 3 review them in detail.
 4 Q. Okay. And I don't want to know what Mr. Craig
 5 told you.
 6 A. Sure.
 7 Q. Can you identify what those records were that
 8 he provided?
 9 A. One of them would have been -- I think it was
 10 a packet for like medical releases that I had to sign,
 11 release of information documents, and I signed those.
 12 And then there was one that I got that was for today's
 13 events.
 14 Q. A notice of the deposition or something like
 15 that?
 16 A. Exactly
 17 Q. Anything else?
 18 A. Not that I -- I mean, I've gotten so many
 19 legal documents, you know, recently with all the ones
 20 that we've described that I'm not discerning one from
 21 the other.
 22 Q. Do you keep those in a file?
 23 A. I keep them at my house, yes.
 24 Q. And are they back in Kansas City?
 25 A. Some of them are here, like the records I

1 MR. NOCE: Sure
 2 MR. GOLDENHERSH. Are you okay with that?
 3 MR. NOCE. Sure
 4 VIDEOGRAPHER: We're going off the record at
 5 10:59 a.m.
 6 (A break was taken)
 7 (Defendant's Exhibit A was marked for
 8 identification)
 9 VIDEOGRAPHER: We're back on the record at
 10 11.07 a.m.
 11 Q. (By Mr Noce) Mr Visnaw, I want to make sure
 12 you read Father Fleming's deposition, you read the
 13 interrogatory answers, and you read Dr Harris's
 14 records in preparation for your deposition?
 15 A. Uh-huh.
 16 Q. Is that true?
 17 A. Yes.
 18 Q. And did you read any other records of any
 19 kind?
 20 A. There were some things that my attorney had
 21 sent me, but those would have been -- you know, he
 22 would have talked to me on the phone, hey, I'm going to
 23 send you something about your deposition, a schedule
 24 for your deposition. I'm sending you something in the
 25 mail

1 reviewed last night which were my interrogatories and
 2 Dr Harris's records I did bring along with me.
 3 Everything else is at home in Kansas City.
 4 Q. Okay And when you say you brought them with
 5 you, did you bring them here with you today?
 6 A. No, I did not.
 7 Q. Did you leave them at mom's house?
 8 A. Yes, I did. Actually, I left them in the car
 9 at my mom's house
 10 Q. All right Did you come here by cab, or did
 11 your lawyer bring you down?
 12 A. My attorney, we met, and he drove me down.
 13 Q. Okay I'm going to hand you what we've marked
 14 as Defendant's Exhibit A. It's a copy of the petition
 15 that's been filed in this case.
 16 Take your time and take a look at that I
 17 just want to ask you if you have at any time read and
 18 reviewed that?
 19 A. Yes, I have That was actually towards the
 20 beginning of this year that I received a copy of this
 21 from my attorney
 22 Q. Do you know whether you reviewed it before or
 23 after suit was filed?
 24 A. I would have -- I would have obtained a copy
 25 of this This exact document I believe is the -- a

1 copy of this is what I got after the suit was filed.
 2 Q. Had you read it at any time before the suit
 3 was filed?
 4 A. I don't recall, but I believe my attorney and
 5 I discussed everything.
 6 Q. And I don't want to know about things such as,
 7 you know, as is listed in Paragraph 2, because that
 8 would be something your lawyer would check for you as
 9 to where these entities are located.
 10 A. Sure.
 11 Q. They're legal things. And essentially the
 12 same would be true as to 3, Paragraph 3 and Paragraph 4
 13 and Paragraph 5, and you know, Paragraph 6 are things
 14 that the lawyer would throw in. That's part of his
 15 job.
 16 But I do want to ask you some of the things --
 17 the allegations that are listed in this petition and
 18 make sure to see if they're accurate.
 19 It says in approximately -- I'm looking at
 20 Paragraph 7 -- 1984 Defendant Brother William Mueller
 21 repeatedly assaulted and/or battered the plaintiff
 22 Now I don't know if you have an understanding
 23 of what those terms mean. Sometimes they have a common
 24 meaning, and sometimes they have a legal meaning Did
 25 something like that occur to you in 1984?

1 in April?
 2 A. Yes, sir.
 3 Q. So you'd have been 17, almost 18 years old
 4 during these events?
 5 A. Correct.
 6 Q. Did any of these events take place while you
 7 were 18 years old to your knowledge?
 8 A. No
 9 Q. Can you tell me -- strike that.
 10 It took place during your senior year which
 11 would have commenced in late August probably?
 12 A. On or about August I want to say 22nd, 25th.
 13 Q. And then your senior year would have probably
 14 ended about May 15th?
 15 A. I believe we graduated Mother's Day
 16 Q. Mother's Day, so mid May?
 17 A. 1985.
 18 Q. Okay And when was the first event that
 19 you're complaining about in this lawsuit? When did it
 20 take place?
 21 A. Well, Brother Mueller in late September/early
 22 October had asked me if I would be willing to assist
 23 him with his master's degree. He was doing a thesis on
 24 fear
 25 So it would have been right around that time

1 A. That I can recall?
 2 Q. Yes, sir.
 3 A. At the time that I had discussions with my
 4 attorney --
 5 Q. And, again, I don't want to know what was said
 6 between the two of you.
 7 A. Yes
 8 Q. I just want to know --
 9 A. Is it an issue if I try to address this as
 10 best I can?
 11 Q. Well, I want you to tell me did something
 12 happen to you in 1984 at the hands of William Mueller?
 13 A. Yes
 14 Q. All right. And at that time, how old were
 15 you?
 16 A. 17.
 17 Q. Did you have a driver's license?
 18 A. Yes
 19 Q. Had you ever been -- strike that
 20 And was that in -- during your senior year of
 21 high school?
 22 A. Yes.
 23 Q. And you would have turned 18 in 1985?
 24 A. Correct
 25 Q. So you were 17 I believe your birth date is

1 that he had come to me and said, you know, if you're
 2 willing to do this, I have the okay from the order to
 3 do it
 4 So if you're okay with it, come by, you know,
 5 after school or in the evening hours, and we'll get
 6 started
 7 Q. Okay And as I understand it, that would
 8 have -- there would have been four occurrences?
 9 A. In my case, yes
 10 Q. Okay And the first one, like you say, late
 11 September/early October?
 12 A. Correct
 13 Q. Had you had any interaction whatsoever with
 14 William Mueller before he asked you to take part in
 15 this experiment?
 16 A. Other than seeing him in the hallway and
 17 saying hi to him, again, he was an assistant
 18 vice-principal, so we saw him every day Personal
 19 interaction, no It was more of a school official and
 20 a senior
 21 Q. How did he contact you?
 22 A. He just -- he came up to me in the hallway
 23 after school We were there -- at that time -- around
 24 that time, we would start going to Chaminade for swim
 25 practice

1 Q. Well, I was going to ask you that. Did
 2 Vianney have its own pool then?
 3 A. No, sir.
 4 Q. Okay. Where did you train?
 5 A. Chaminade
 6 Q. How did you get there?
 7 A. Drove.
 8 Q. Would it be team members driving, or was there
 9 a coach that drove or how?
 10 A. You were responsible to get there, either
 11 through car pooling with somebody that had a car or mom
 12 and dad would pick you up and take you there or you
 13 would take the bus
 14 Q. And you were driving at this time?
 15 A. Yes
 16 Q. Did you have people who would ride with you?
 17 A. Occasionally, but not on a regular basis.
 18 Q. And was that strictly after school?
 19 A. The?
 20 Q. Training.
 21 A. Yes
 22 Q. So after what, 3 00?
 23 A. I want to say it started -- I mean, we got out
 24 of school at about 3, 3.30 and we would pick up
 25 training around 5, maybe 6

1 A. In a study for his master's degree which
 2 included these tests.
 3 Q. And was that during school hours that he
 4 contacted you or pulled you aside or whatever he did?
 5 A. The first time, it was after school.
 6 Q. And what was your occasion for being there
 7 after school?
 8 A. It -- you know, like I said earlier, it was
 9 several of us would play -- stay around and play chess
 10 or Dungeons & Dragons, you know, after school on
 11 occasion, and it just happened to be on one of those
 12 occasions.
 13 Q. And did it take place -- the experiment take
 14 place that day?
 15 A. Not that day. He caught me again in the hall
 16 and say, hey, do you remember what we talked about,
 17 yeah, and can you come by tonight. And I don't
 18 remember how long after that, but that's how it was --
 19 how that subject was broached
 20 Q. And come by where?
 21 A. Actually come by his office after school. It
 22 was more towards the evening hours after dusk, so --
 23 Q. So this is late September/early October?
 24 A. Yes, sir
 25 Q. And so he's asking you to come by after dusk

1 Again, the time frame -- the exact times I
 2 couldn't give you, but it was shortly after school,
 3 maybe an hour after school, an hour and a half after
 4 school that we would drive
 5 When I say we, anybody after school that
 6 needed a ride to swim practice, we would go
 7 Q. I mentioned earlier Dr. Harris, the counselor
 8 through EAP, that you've been seeing about this.
 9 A. Uh-huh
 10 Q. And you've reviewed his records?
 11 A. Yes, sir
 12 Q. Did you see anything inaccurate in those
 13 records at all?
 14 A. Not that I can -- not that I can recall
 15 Again, his reading was -- his handwriting is a little
 16 bit hard for me to discern, but I think -- I think for
 17 the most part it was accurate. I didn't see any
 18 discrepancies
 19 Q. In other words, when he recorded in the
 20 records and in the notes what you had told him, you
 21 thought he recorded what you told him accurately?
 22 A. Yes, sir
 23 Q. All right So the first incident with
 24 Mueller, you knew who he was, and he asked you to
 25 participate in an experiment?

1 and see him?
 2 A. Uh-huh
 3 Q. Correct?
 4 A. Yes, sir.
 5 Q. All right And what time would that be?
 6 A. 6 I mean, at that time, just like if we
 7 weren't on daylight savings time here, it would be
 8 getting pretty -- fairly dark or after dusk around 6,
 9 6:30
 10 Q. So he asked -- and you came by his office 6 or
 11 6.30?
 12 A. Yes, sir.
 13 Q. Was there anybody -- now strike that.
 14 Where was his office located?
 15 A. I have to go back to -- I think it was
 16 located -- if we walked in the main doors, it was
 17 straight back.
 18 I almost want to say it was to the right of
 19 the main entrance, not near the gymnasium but up
 20 towards the administrative office. It was co-located
 21 with like the secretaries' area
 22 Q. Would it be the president's office was located
 23 in the general vicinity and the vice-principal, the
 24 secretaries, and the administrative offices all in one
 25 sort of location?

1 A. Well, when you say the president, do you mean
 2 the principal's office?
 3 Q. The principal or president. Did they have a
 4 president then, do you know?
 5 A. You know, I don't remember
 6 Q. Well, Brother Grieshaber was the principal at
 7 the time?
 8 A. Correct. It was located in that same general
 9 area up there.
 10 Q. So you have -- and now they have a president.
 11 That's why -- I don't know how long that's been the
 12 case.
 13 But they had Brother Grieshaber's office, you
 14 had Brother Mueller's office, you had some
 15 administrative offices, and then you had the
 16 secretaries' offices?
 17 A. Yes, sir.
 18 Q. And then the library across the hall?
 19 A. Down the hall.
 20 Q. Down the hall?
 21 A. It was at the intersection, at the
 22 T-intersection
 23 Q. And when you would go by those offices, were
 24 there windows?
 25 A. At the administrative section, yes. There was

1 Q. Do you recall what day of the week it was?
 2 A. No, I don't.
 3 Q. Was there anybody still at the offices,
 4 Brother Grieshaber or any of the secretaries?
 5 A. No, sir
 6 Q. Was there anyone there other than William
 7 Mueller and yourself?
 8 A. Not that I know of
 9 Q. I mean in the offices?
 10 A. In that general area?
 11 Q. Yes, sir.
 12 A. No, there was no one.
 13 Q. And the athletic department, that's not
 14 located right there, is it?
 15 A. No, it's at the opposite end of the building.
 16 Q. And there were no coaches still walking around
 17 the hall?
 18 A. No, sir.
 19 Q. How about maintenance staff at all?
 20 A. By that time, any students that were involved
 21 in say cleaning the classrooms, chalkboards or
 22 whatever, were gone. Maintenance staff I believe would
 23 have been gone as well
 24 Q. Okay. You walk in, in past the glass windows
 25 and wall and the doors into that area and you have the

1 a -- you were actually partitioned off from the
 2 administrative section.
 3 There was a little -- I won't say it was a
 4 hallway, but there were two doors at the end with glass
 5 windows. You would go into there and contact the
 6 people sitting behind another wall.
 7 Q. Okay. And Brother Mueller's office at the
 8 time, were there windows in that office also?
 9 A. I don't recall.
 10 Q. And at dusk, at 6 or 6:30, did -- you went to
 11 his office?
 12 A. Yes, sir
 13 Q. And when you say dusk, you mean it was almost
 14 dark outside?
 15 A. It was getting dark or already there, you
 16 know. It wasn't as light as it is out now. It was
 17 darker. You know, sunset, it just gets dark very
 18 quickly
 19 Q. Was this after football practice was already
 20 over and the team was gone?
 21 A. I'd have to say yes, I mean, just because of
 22 the time frame
 23 Q. And soccer practice and the team was gone?
 24 A. Usually about that time, all the practices
 25 were done

1 two -- the secretaries' desks?
 2 A. Yes, sir.
 3 Q. Okay. And then you'd have
 4 Brother Grieshaber's office and then Brother Mueller's
 5 office?
 6 A. Correct.
 7 Q. And did they have windows in those offices
 8 also?
 9 A. I don't think they had -- I don't know if they
 10 had windows that projected out to the secretaries'
 11 area, but I'm pretty certain that they would have had
 12 windows looking over say like the football field, but
 13 they kept those with blinds. I mean, it was --
 14 Q. And when you went into William -- or where was
 15 Mueller when you arrived there?
 16 A. He met me at the main entrance right there in
 17 the foyer and unlocked the doors or let me in. I can't
 18 say if the doors were chained or not, but opened the
 19 door for me
 20 Q. You mean into the building?
 21 A. Yes
 22 Q. Had you gone home that day?
 23 A. No
 24 Q. So you got off of school at 2:30, and then
 25 what did you do?

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1 A. I went to swimming practice, diving practice,
2 and then went back.
3 Q. So you went up to Chaminade, did your diving
4 practice. How long did that last?
5 A. For me, it would only last about an hour, hour
6 and 15 minutes, only because I was also -- I had the
7 Craig Tapperson that would be my coach, and I was
8 diving all year long, so Mr Corbin was like get your
9 workout in, and then you can take off.
10 Q. So that's done by 4 30?
11 A. Oh, no. We didn't usually start, like I said,
12 until about 5
13 Q. Okay. So what did you do from the time school
14 got out until the time you went to Chaminade?
15 A. Well, on occasion, we -- some of us would stay
16 behind and play chess. And when I say some of us,
17 there were other students that were there.
18 Q. Do you recall that occasion?
19 A. No, not necessarily, no.
20 Q. So you started your practice up at Chaminade,
21 and practice is over. Did you go directly from
22 Chaminade back to Vianney?
23 A. Yes.
24 Q. Did you have anything to eat or anything like
25 that?

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1 A. I don't know
2 Q. How long were you with William Mueller on that
3 first occasion?
4 A. I could not tell you
5 Q. Was it a matter of hours?
6 A. No, I can't tell you. During that -- during
7 that first time that I was with him, when everything
8 was said and done and I left, time was -- to me was
9 irrelevant because I was confused, I was -- you know, I
10 was leaving and I didn't really -- at the time, I don't
11 think I wore watches at all.
12 But I could not put if I was there for a half
13 an hour, ten minutes, five minutes, or whatnot. I know
14 when I left, it was considerably darker than when I
15 came
16 Q. And did you have an after school job during
17 that time period?
18 A. No
19 Q. During the season, you didn't work or --
20 A. During -- from school up until I graduated --
21 I mean, during the school year, no. It was during the
22 summers that I had my jobs, just so that I had some
23 spending money
24 And during the school year, I mean, you could
25 say literally it was school, diving, homework, school,

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1 diving, homework, and occasionally on the weekends
2 going out with, you know, whomever, a school dance or
3 however it was at that point.
4 Q. So you went back to Vianney, and Mueller let
5 you in the building?
6 A. Yes, sir.
7 Q. And then took you back to his office?
8 A. Yes, sir.
9 Q. And you didn't see anybody from when you
10 arrived to when you reached his office?
11 A. Correct.
12 Q. Did you see anybody from when you were
13 finished in his office to when you left?
14 A. No, sir.
15 Q. When he invited you or asked for your
16 assistance in this experiment or with this study, was
17 there anybody there present at the time he asked you to
18 take part in it?
19 A. He was -- he would never -- and speaking for
20 myself, he would never ask you to either come to the
21 office or come see him if there was other people
22 around. He would make sure that you were -- it was one
23 on one.
24 Q. And was that the situation when he asked you
25 that occasion?

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1 A. That was the situation every single time he
2 asked me to come and have a session with him
3 Q. Were you aware back then of any other people
4 taking part in these experiments?
5 A. At the first -- at the first one, no.
6 Through -- at one of the four sessions, the later
7 three, Brother Mueller did mention two names of
8 individuals that he wanted me to talk to and say that,
9 you know, here's -- I'm doing these studies along with
10 Brother Mueller. There's nothing to worry about.
11 Q. He wanted you to vouch for the studies?
12 A. Yes, sir.
13 Q. And who were the individuals?
14 A. One is Matthew Eddy and the other one -- I'm
15 going to get his last name probably wrong -- is Daniel
16 Finnegan, F-I-N-N-E-G-A-N.
17 Q. Do you know Dan Finnegan now?
18 A. No, I do not. I haven't had contact with him
19 since graduation
20 Q. High school graduation?
21 A. Yes, sir.
22 Q. Okay. And Matt Eddy, were they both in your
23 class?
24 A. They both graduated with me, yes
25 Q. And did you actually talk to them about it?

1 A. I did not talk to Dan Finnegan. And I want to
 2 say I said something to Matt Eddy, but I don't recall
 3 what his response would have been. Really, I think it
 4 was just something in passing, and that was it.
 5 Q. What happened at that first incident?
 6 A. We went into his office, and he had asked
 7 me -- he'd gone through the same thing he had said
 8 before is that the reason he was actually brought to
 9 Vianney was to try to find out why brothers were
 10 leaving the order, that he was put there by the order
 11 itself to talk to them as -- find out why are these
 12 people leaving the order when they shouldn't be, when
 13 everything seemed to be happy-go-lucky then.
 14 So he then said he had the permission of the
 15 order to use students to complete his master's degree,
 16 and he explained that it was a thesis on fear and the,
 17 you know, various types of fear, what was being done.
 18 He had asked me if I'd ever been -- I'd ever
 19 passed out, and I said no. He asked if I'd ever been
 20 rendered unconscious, and I said no. He goes, well, I
 21 can do that. Do you have any problem with that? No, I
 22 don't.
 23 And he then unstructured me to bend over at the
 24 waist and begin breathing very, very, very quickly.
 25 And that went on, I don't know, maybe 30, 40 seconds.

1 A. The school was dark when I came in.
 2 Q. The school was dark?
 3 A. There was enough light to see where we were
 4 going because of the ambient light from outside.
 5 Q. Were there lights on in the office when you
 6 entered the office?
 7 A. No.
 8 Q. Were there lights on in Brother Mueller's
 9 office when you entered that?
 10 A. Again, they were -- it was very low lit. It
 11 could have been a desk light or -- it was not the
 12 fluorescent lights in the ceiling.
 13 Q. Would it be light enough in the office that
 14 you could see where you were going but not light enough
 15 in order to read, something like that?
 16 A. I think that would be a fair estimate.
 17 Q. So you didn't have any problem entering,
 18 avoiding, you know, desks or anything else?
 19 A. No, sir.
 20 Q. But you wouldn't want to read in that
 21 lighting?
 22 A. Correct.
 23 Q. Are you able to testify under oath that any
 24 foreign material or substance of any kind was used on
 25 you that day on the first instance?

1 Again, time was irrelevant at that point
 2 And then he said, when I tell you to, stick
 3 your thumb in your mouth, hold your nose, and blow
 4 against your thumb. And he said, go ahead. And I
 5 stuck my thumb in my mouth, held my nose, and blew
 6 against my thumb, and that was it until I woke up
 7 Q. And you don't know how long you were passed
 8 out?
 9 A. No, sir.
 10 Q. Do you know of anything that took place while
 11 you were unconscious?
 12 A. No, sir.
 13 Q. Were you administered any materials,
 14 substances at any time on that occasion that you know
 15 of?
 16 A. I don't know
 17 Q. Did you ever see any evidence of any materials
 18 or substances being used on you on that first occasion?
 19 A. None that I saw. That was -- if there was
 20 anything there, he kept his office very low lit and
 21 dark, so if there was anything there, if I was to wake
 22 up, I would be confused enough to where I probably
 23 wouldn't even notice it
 24 Q. Were there lights on in the hall when you
 25 entered the school?

1 A. I don't know if there was anything used on me
 2 because I was unconscious
 3 Q. For that reason, you can't say that one way or
 4 the other?
 5 A. Correct.
 6 Q. And was there any -- when you came to or
 7 awoke, tell me, you know, what were the circumstances?
 8 Were you on the ground, were you standing, were you
 9 sitting?
 10 A. Well, obviously I was standing up when he had
 11 me pass out the first time. There were several -- on
 12 that first instance, there were several instances of
 13 hyperventilating, passing out, hyperventilating,
 14 passing out
 15 When I came to, I was seated. And his
 16 question immediately to me was how long do you think
 17 you've been out. And not knowing, I'd say, oh, 10, 15,
 18 maybe 30 seconds. And he'd be, exactly, that's how
 19 long you were out.
 20 Then he would ask questions about, well, while
 21 you were passing out, how did you feel. I would answer
 22 that with it was very weird to all of a sudden become
 23 very helpless and just limp
 24 While you were passing out, what did you see?
 25 And, you know, what colors did you see? Did you see

1 any patterns of colors? And, you know, we'd -- I'd
 2 answer yes. Or like maybe one time I think I said I
 3 saw red, a very vibrant red or I saw zebra stripes,
 4 that type of thing. He would say, good, okay
 5 Then we would sit and just kind of idle
 6 chitchat, and then he said let's do it again. And I
 7 think there was on that first instance maybe four or
 8 five repetitions of that.
 9 Are you afraid? No, I'm confused but not
 10 afraid. And this same pattern of questioning would
 11 happen each and every time. And, again, the very first
 12 question when I awoke and while I was confused was how
 13 long were you out.
 14 Q. Was he taking notes of your responses?
 15 A. I didn't see him write anything down.
 16 Q. Was he recording anything in any way that you
 17 know of?
 18 A. Not that I saw.
 19 Q. And if you had to testify, could you give us a
 20 number as to how many instances on that occasion he had
 21 you pass out?
 22 A. The number of repetitions?
 23 Q. Yes, sir.
 24 A. I'd say four or five
 25 Q. Can you testify today that you were sexually

1 MR. CRAIG: Again, Bob, if you need any
 2 breaks, just say so. Okay?
 3 MR. NOCE: That's exactly correct. That's the
 4 deal
 5 Q. (By Mr. Noce) This first situation or first
 6 incident, have you explained it completely?
 7 A. To the best of my recollection, yes.
 8 Q. Have you always recalled what happened at
 9 that -- on that instance?
 10 A. I've always recalled the passing out and
 11 waking up with the questions, but I've always recalled
 12 it as part of the quote/unquote test or experiments.
 13 Q. So you recall what took place. You don't know
 14 obviously what happened while you were unconscious?
 15 A. Correct.
 16 Q. Other than that, you recall the incident
 17 itself?
 18 A. Yes
 19 Q. And everything that took place while you were
 20 conscious?
 21 A. I recall everything up to the point of passing
 22 out, nothing after passing out, waking up, again, the
 23 idle chitchat, passing out, not knowing what happened.
 24 Q. And do you know anything that took place while
 25 you were unconscious?

1 abused on that occasion?
 2 A. No. I was unconscious.
 3 Q. Did you -- did he have his hands on you that
 4 you know of on that occasion in any respect, Mueller?
 5 A. Yes, he did
 6 Q. How was that?
 7 A. When -- with all the hyperventilation or the
 8 repetition of fast breathing, he would stand behind me.
 9 And while I was bent over at the waist, he would -- as
 10 I was breathing very heavily, he would grab my head and
 11 start moving it side to side and say keep moving your-
 12 head, and he would actually have his hand in my hair.
 13 And I'm about to cry, so hold on And then he
 14 would say go ahead and blow on your thumb and hold your
 15 nose, and then he would grab me about the waist I would
 16 assume to let me down easy I was 140 pounds,
 17 150 pounds of dead weight. It's pretty hard for
 18 someone to grab instantly.
 19 Q. To your knowledge, were you injured in any
 20 way -- injured physically during that first instance?
 21 A. Not that I can recall
 22 Q. Other than him holding you so as you wouldn't
 23 fall, do you know of any other touching that he did of
 24 you?
 25 A. Not on that first session, no

1 A. No, I don't
 2 Q. Is there any -- and I'm talking about the
 3 first incident. Is there any evidence that you had or
 4 have or recall or can testify to that would indicate
 5 that you were in any way sexually abused on that first
 6 incident?
 7 A. No
 8 Q. That's true, there is no such evidence?
 9 A. That's correct.
 10 Q. And as far as you know, you sustained no
 11 physical injury on that occasion?
 12 A. To the best of my knowledge, yes, sir.
 13 Q. Did you consider or after you left that night,
 14 did you consider the incident to be -- I mean, did you
 15 believe it was a test or experiment?
 16 A. I believe -- pardon me I believed it right
 17 up until September of 2005 that that's what it was I
 18 had no reason to believe otherwise
 19 Q. You mean every incident was?
 20 A. I thought every incident of -- out of the
 21 four sessions that I partook of was done as part of his
 22 master's degree
 23 Q. As far as you could tell, did it seem to be a
 24 bona fide type of series of tests to you?
 25 A. At 17 years old, I took him at his word. I

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1 mean, he was the assistant vice-principal. He was part
2 of the order that was instructing me, giving me a great
3 education. I had no reason to believe otherwise.
4 Q. Did you find any of the -- anything that
5 occurred on that first instance to be or first incident
6 to be physically offensive to you?
7 A. No.
8 Q. Harmful to you?
9 A. No.
10 Q. Injurious to you?
11 A. No.
12 Q. As far as you know, did you sustain any injury
13 from that first incident?
14 A. No.
15 Q. Did you discuss William Mueller and these
16 incidents with your father at some point in time?
17 A. We were -- after I got out of basic training,
18 I had gone home for a short period of time, and then I
19 went out to the Presidio of Monterey.
20 And that July, I flew home to get my car so
21 I'd have a mode of transportation out in California
22 And on that trip, he said, oh, I forgot to give you
23 this. It was a letter from Brother Mueller.
24 I said, oh, you know what, just go ahead and
25 throw those away. I mean, if you get any more, I quit

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1 writing him back a long time ago
2 He's like, well, you know, why is he writing
3 to you? I said he -- he writes to everybody. He still
4 keeps in contact with a lot of students that I
5 understand that he had at Vianney
6 Q. When would this be?
7 A. July of '91 shortly before his death.
8 Q. Before your dad's passing?
9 A. Yes, sir.
10 Q. Okay.
11 A. And I had said, you know, he was -- while he
12 was at Vianney, he was working on a master's degree.
13 And he had been given permission by the order to -- if
14 he wanted to enlist students to help him in conducting
15 whatever he needed to, it was okay
16 And that's exactly how I presented it to my
17 dad And he was like, okay, well, if anything else
18 comes in the mail, we'll just go ahead and toss it.
19 Q. So you discussed what these experiments were
20 with your dad?
21 A. No, no. I just told him that he had a group
22 of students that were assisting him in -- as part of
23 his master's degree, and I was one of those students
24 And he kept in touch -- from what I was --
25 what I believed, because he was writing me, I figured

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1 he was writing other students as well, that he tried to
2 keep in touch with those students.
3 Q. Did you ever confirm that with anybody,
4 whether he continued to write people even up to 1991?
5 A. After the news came out in September of 2005,
6 I -- after I spoke with Bryan Bacon and he had stated
7 that there was some attempt at communication with him
8 after he left Vianney.
9 And he related the same thing, that other
10 students had had the same experience where
11 Brother Mueller had tried to contact them either, you
12 know, letter or what have you, telephone or whatnot.
13 Q. Did you receive letters yourself and actually
14 read them that were sent to you from Mueller after you
15 graduated from Vianney?
16 A. Uh-huh, yes, sir
17 Q. For how long a period of time?
18 A. I was receiving them right up until 1991 that
19 I know of Sporadically -- they would not come on a
20 regular basis. They would just come out of the blue.
21 But that's how I found out he left the order.
22 He didn't talk to me over the phone about it. He put
23 it in --
24 Q. Did he call you also on occasion?
25 A. On a couple, but not very often.

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1 Q. Did you know he left Vianney at about the time
2 he left?
3 A. He -- in one of his letters to me, he stated
4 he had left Vianney He was leaving Vianney, not the
5 order, to go down and be near his mother in San Antonio
6 and that he was still going to be part of the order
7 down in San Antonio. That was the reason he gave me
8 for leaving Vianney
9 Q. Did he ever tell you that he actually left the
10 order?
11 A. He in a subsequent letter or telephone
12 conversation -- excuse me -- he had called or written
13 me and said he was leaving the order because he could
14 not care for his mother while being part of the order.
15 And I remember at that point kind of feeling,
16 you know, why would you be leaving the order? You're
17 close enough to your mom You know, I don't think the
18 order would have any problem with you having to tend to
19 your ailing mother, so I was kind of bitter about him
20 leaving the order
21 But you've got to do what you've got to do,
22 and that's how I looked at it at that point, that he
23 was leaving so he could better care for his mother
24 Q. Did you ever write him back or respond?
25 A. I did on occasion It wasn't like it was, you

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1 know, I'd get a letter and write back immediately. I'd
 2 get a letter and see it and go, okay, set it aside,
 3 read it, and if I felt like it, I would write back to
 4 him.
 5 Q. How many times did you write him?
 6 A. Three, maybe four. I don't recall an exact
 7 number.
 8 Q. During -- what would be the time period or
 9 time frame of these letters back to Mueller?
 10 A. After graduation, after he left Vianney,
 11 probably for the next several years after that.
 12 Q. Three to four?
 13 A. Maybe five. Again, like I said, they wouldn't
 14 come on a consistent basis. It was, you know, every
 15 now and then I'd get a letter from him out of the blue.
 16 Q. Did you consider him to be a friend of yours
 17 during that time period that you were writing him?
 18 A. I wouldn't say a friend. I looked at it as
 19 somebody that I had developed a relationship with
 20 because of, you know, thinking that I was part of his
 21 master's degree and he wanted to continue with the
 22 communication
 23 I wouldn't call him a mentor or a friend. It
 24 was casual acquaintance I guess using -- as I say in
 25 adult terminology, he was a casual acquaintance type of

1 communication distance. I went into the Army at 24.
 2 I had some -- again, some friends that I had
 3 made in Spain that lived here in the United States that
 4 lived in California that I would communicate either
 5 telephonically or in letter form
 6 Q. When you were at UMSL, did you graduate with
 7 honors?
 8 A. No, I did not
 9 Q. What was your grade point average?
 10 A. 2.3.
 11 Q. Have you been tested for IQ?
 12 A. No, sir
 13 Q. Do you have any idea what it is?
 14 A. No, sir
 15 Q. Me neither. I'm afraid to look for mine,
 16 so -- okay I want to go back on this. Aside from
 17 these people in Spain -- by the way, do you know the
 18 names of the people in Spain that you corresponded to?
 19 A. They were my house mother I couldn't
 20 remember her last name, but her first name was Maria.
 21 And then -- Maria De Los Dolores. I don't remember her
 22 last name.
 23 Christina Voght or Voght, V-O-G-H-T, her
 24 father was the minister or he was the head of the
 25 Evangelical Mission in Spain, and I met her and

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1 relationship.
 2 Q. So it would have been up until about when you
 3 were 23 years old, something like that?
 4 A. I believe so, yes.
 5 Q. And up to that age, you considered that what
 6 he was doing was a bona fide master's study, and you
 7 considered that he was an acquaintance to whom you'd
 8 write?
 9 A. I -- until -- like I said, until September
 10 2005, I thought it was a legitimate study. We stopped
 11 communicating, so you know, it wasn't always
 12 acquaintance, you're correct. It was casual
 13 acquaintance communication. That was it.
 14 Q. How many other people say other than family
 15 members did you actually write letters to from age
 16 18 to 23 other than members of your family?
 17 A. I wrote to people in Spain because I had
 18 studied in Spain.
 19 Q. Did you study abroad?
 20 A. I studied in school over there, yes.
 21 Q. While you were in high school?
 22 A. While I was in college
 23 Q. College, okay.
 24 A. From -- for the most part, I didn't have to
 25 write anybody else, because they all lived within

1 communicated with her. And she actually came to the
 2 United States to go to school, but after he came here
 3 we lost touch, because I went into the military and
 4 whatnot
 5 The ones from California that I had met, her
 6 name was Leslie Lamson. We were in classes together.
 7 And then just various other people
 8 MR. NOCE: It's 10 till. Do you want to take
 9 a break now for lunch?
 10 MR. CRAIG: That's fine.
 11 VIDEOGRAPHER: We're going off the record at
 12 11:47 a.m.
 13 (A break was taken)
 14 VIDEOGRAPHER: We're back on the record at
 15 12:52 p.m.
 16 (Defendant's Exhibit B was marked for
 17 identification)
 18 Q. (By Mr. Noce) Mr. Visnaw, we're back on the
 19 record. We're going to discuss -- I think we've fully
 20 discussed the first incident that you referred to as it
 21 related to William Mueller and that incident, and that
 22 happened in late September/early October of your senior
 23 year
 24 When was the next incident relative to that
 25 first incident? Was it a matter of days later, weeks

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1 later, or what?
 2 A. It probably would have been several weeks
 3 after that.
 4 Q. Okay Can you tell me whether it was in the
 5 month of October or November?
 6 A. I'm not certain. The two middle times, the
 7 second and third time, I don't know of an exact date,
 8 because there's nothing for me to really associate with
 9 those times.
 10 But it would have been I think three, maybe
 11 even a month after -- three weeks, maybe a month after
 12 the first one.
 13 Q. When was it that Mueller asked you to speak to
 14 Matt Eddy and to the other young man that --
 15 A. If I remember correctly, it would have been --
 16 Q. Finnegan.
 17 A. Either the second session or the
 18 third session. I'm leaning more towards the second
 19 session.
 20 But, again, he had asked me to -- if I have an
 21 opportunity to talk to these two individuals, and as
 22 you had said earlier, pretty much vouch for them -- for
 23 him with them
 24 Q. Now as of September/October of your senior
 25 year, had you already taken the SAT or other college

1 father and I weren't getting along -- we were getting
 2 along at that time -- to try to carry on that
 3 tradition.
 4 Q. You were still getting along with your dad
 5 throughout your senior year of high school do you
 6 think?
 7 A. For the beginning of my senior year
 8 Q. Was your dad -- by this time, was he disabled?
 9 A. He was disabled prior to this time.
 10 Q. When did that occur relative to your high
 11 school?
 12 A. It was while I was in high school, maybe right
 13 before I started. I don't know how long he worked for
 14 Steak 'N Shake after returning from Memphis, but I
 15 think at that particular time he was in the process of
 16 becoming -- you know, going through all the exams and
 17 whatnot.
 18 Q. Did he have a lawyer help him on that process
 19 or do you know?
 20 A. No, I don't know.
 21 Q. But he was disabled under the Navy guidelines
 22 or whatever?
 23 A. Correct. He was considered 100 percent
 24 disabled according to the Veterans' Administration.
 25 Q. Did he also get disability as far as you know

1 entrance exams?
 2 A. I don't think I took those until the winter or
 3 spring quarters
 4 Q. Had you made application for college?
 5 A. Not at that time, no.
 6 Q. Had you decided at this point that you did
 7 intend to attend college?
 8 A. Yes
 9 Q. And had you decided where you would attend
 10 college?
 11 A. No.
 12 Q. As of September?
 13 A. No
 14 Q. Were you considering a number of schools or
 15 what?
 16 A. Yes
 17 Q. And what schools were you considering?
 18 A. University of Arkansas, Kirksville -- what was
 19 known as -- what we called Kirksville at that time I
 20 guess it's Northeast Missouri State
 21 Q. Truman?
 22 A. Or Truman University is what they call it now
 23 I had -- I even anticipated trying to get an
 24 appointment to the Naval academy to kind of carry on
 25 the tradition of the Navy in my family, even though my

1 through Social Security?
 2 A. That I don't know I believe he did, but it
 3 would be speculation
 4 Q. Did your mom work outside the home while you
 5 were in high school?
 6 A. Yes, she did I'm trying to see if it was --
 7 Q. Who did she work for?
 8 A. She worked for Maloney -- the same person she
 9 works for now, Maloney & Jackson It's an accounting
 10 firm
 11 Q. Where are they? South County?
 12 A. Yes, they're on Gravois -- near Sappington and
 13 Gravois I believe it is.
 14 Q. And what type of work did she do?
 15 A. She was a staff accountant.
 16 Q. Is she a CPA?
 17 A. No, she is not.
 18 Q. Is she a college graduate?
 19 A. I don't know if she graduated or not I know
 20 she attended Missouri for a while, but I don't know I
 21 don't think she is a college graduate
 22 Q. She works under their direction?
 23 A. Correct
 24 Q. On bookkeeping work and tax preparation?
 25 A. Exactly

1 Q. And she did that even back then?
 2 A. I believe she started right around the time we
 3 came back. I don't know the time frame in which she
 4 started or how long she's been there. I couldn't tell
 5 you.
 6 Q. And your sisters, I know one of them is a
 7 teacher? One of them is a teacher?
 8 A. Correct.
 9 Q. One sister is a nurse?
 10 A. Right.
 11 Q. And did your other sister work outside the
 12 home?
 13 A. She was a nurse as well.
 14 Q. And when we say nurse, registered nurse?
 15 A. A RN, BSN, bachelor of science in nursing.
 16 Q. When your dad was disabled while you were in
 17 high school, in other words, he was not working
 18 anywhere outside the home?
 19 A. No.
 20 Q. And was he able to do anything, get around,
 21 drive a car, things of that nature?
 22 A. Yes.
 23 Q. Attend your sporting events?
 24 A. Yes.
 25 Q. And did he do that?

1 Q. And when did you -- and I may have read in
 2 between the lines on this. I kind of concluded that by
 3 the time you graduated college you were no longer a
 4 practicing Catholic. Is that correct?
 5 A. Correct. That actually happened while I was
 6 in college. I got away from the church.
 7 Q. And was that just an unconscious decision of
 8 not wanting to get up Sunday morning, or was it based
 9 upon anything?
 10 A. I had started to become disenchanted with the
 11 institution known as the Roman Catholic Church. I did
 12 not and to this day I'm not -- I don't attend a
 13 Catholic church, but I still believe very strongly in
 14 my Catholic faith in the fact that there's God, Jesus,
 15 and the Trinity and the teachings of the Catholic
 16 faith.
 17 But as an institution, I lost -- I became
 18 disenchanted with them as an institution because of how
 19 the pastors were reacting to things that were going on
 20 at Assumption Parish for my high school career
 21 Well, for as long as I was in high school, I
 22 was a member of the CYC, and after we -- after
 23 everybody graduated, then the pastor changed.
 24 Q. From high school?
 25 A. Correct. The pastor started to enforce some

1 A. On occasion. He wasn't always a regular
 2 visitor there, because I -- when I was in high school,
 3 my sister -- my youngest sister was still kind of in
 4 grade school and had just started Cor Jesu like my -- I
 5 think it would have been my junior/senior year, she
 6 started Cor Jesu
 7 So he would -- he was pretty much a
 8 stay-at-home dad because of the disability when my mom
 9 worked outside the home. So on occasion he would come,
 10 but I'd say he was infrequent at best
 11 Q. Was he a member say of the father's club at
 12 Vianney if you know?
 13 A. Not that I know of
 14 Q. Did he have anything to do with like attending
 15 events at Vianney other than maybe your sporting
 16 events?
 17 A. No.
 18 Q. Was dad a practicing Catholic?
 19 A. No. He had -- we were all -- everybody in my
 20 family was raised Catholic. Of probably the six people
 21 that were in my family, my mom, my sister Tere, and
 22 myself were considered the practicing Catholics at that
 23 time
 24 Q. Is mom still?
 25 A. I believe so

1 things that really didn't feel right as far as, you
 2 know, how they treated the CYC
 3 Every May, we would have the May Day
 4 Coronation of the Blessed Mother, and he just said
 5 we're not going to have that this year
 6 Q. Was that Monsignor Dempsey that did that or do
 7 you know?
 8 A. I don't recall which person it was, but he was
 9 very -- he was very -- he became very strict in his
 10 observance of certain things
 11 And I at that point was like, you know, I'd
 12 already -- already become I think a little bit -- and I
 13 found this out through counseling that I'd already
 14 become a little bit non-tolerant of the clergy to begin
 15 with, and that didn't come out until I was in
 16 counseling. So I believe that that had a little bit to
 17 play in why I walked away from the Catholic church.
 18 But, again, it was also the attitude that we
 19 saw, that when I say we, my generation saw of how we
 20 felt we were being treated
 21 We thought that things that had been tradition
 22 in Assumption Parish for decades was now, you know, you
 23 can't do that anymore because I say so. That's when I
 24 kind of started to actually feel myself walk away.
 25 Q. Okay. That would have been, at least as far

1 as you knew in those days, unrelated to Vianney?
 2 A. Correct, at that time.
 3 Q. And even after you left the church which would
 4 have been while you were in college or shortly after
 5 graduating high school, you still had the situation
 6 where you were writing letters to Father -- or to
 7 William Mueller?
 8 A. Correct, on occasion.
 9 Q. The second incident which occurred several
 10 weeks after the first, what led -- how were you
 11 notified or how -- what did he do? Did he send you a
 12 message, or how did he get in touch with you?
 13 A. Pretty much the same way as the first. He
 14 would find you in between classes to say hold up a
 15 minute until the halls cleared.
 16 And then he'd walk with us to -- walk with me
 17 to the class to kind of tell the teacher, hey, it's
 18 okay. He's with me. Or he'd find you in the hallway
 19 after school and say, hey, can you come by tonight.
 20 Q. Okay. So it would have been a time period
 21 while you're still participating in driving?
 22 A. Correct.
 23 Q. And it would have been during that -- either
 24 during class time which ended when, 2:40 or 3:00?
 25 A. I think at that time it was around 3:15.

1 pleased as there were things involved, but on the
 2 nights that I had occasion to meet with
 3 Brother Mueller, you have to understand that I was told
 4 don't let anybody know about what's going on, so --
 5 Q. Did you think that was odd at all?
 6 A. No, I didn't, because here's a man that I --
 7 because of his position and what he did, he was
 8 religious. You know, we're taught from knee high
 9 catechism classes that you should be able to trust
 10 somebody.
 11 Q. Did anybody ever tell you at any time during
 12 your upbringing that when an adult tells you don't tell
 13 anybody else what's going on that you should follow
 14 that direction?
 15 A. I was always taught to respect authority.
 16 Q. And my question is were you ever told one way
 17 or the other that when anyone tells you not to tell
 18 anybody else what's going on that you should alert
 19 people to that?
 20 A. No.
 21 Q. Okay.
 22 A. But then again, that goes to my upbringing in
 23 a military family that you respect the authority
 24 presented to you
 25 Q. Did you think that was odd at age 17 1/2 that

1 Q. Okay So it would have either been before
 2 3 15 while you're still in class or in the halls
 3 between classes, or it would have been after 3:15
 4 during that time but before you'd go to Chaminade to
 5 practice?
 6 A. Correct
 7 Q. And what did he say to you on that occasion?
 8 A. He would just say can you come by tonight and
 9 just meet me -- on that particular one, can you meet me
 10 down by the gym.
 11 Q. You know, after the first incident, you would
 12 have driven home after that?
 13 A. Uh-huh
 14 Q. Correct?
 15 A. Yes
 16 Q. And you don't recall how long that took?
 17 A. Huh-uh
 18 Q. Correct?
 19 A. Correct
 20 Q. Would your normal day have been -- but for
 21 going to see Brother Mueller that night, would it have
 22 been go to Chaminade, practice, complete practice,
 23 drive home for dinner, and do your homework, or what
 24 would it have been?
 25 A. Well, I was pretty free to come and go as I

1 somebody would give you that direction?
 2 A. At age 17 1/2 presented with -- the way it was
 3 presented to me?
 4 Q. Yes, sir
 5 A. No
 6 Q. Okay
 7 A. But now yes
 8 Q. Okay. So on the night of the first incident,
 9 do you know what time you got home that night?
 10 A. No, I couldn't tell you
 11 Q. Do you know whether -- you mentioned it was
 12 darker when you got home, so it was nighttime?
 13 A. Uh-huh.
 14 Q. Certainly after dusk, completely dark out?
 15 A. Correct
 16 Q. Okay. And did your mother, father, any of
 17 your sisters ask you, you know, how come you're home
 18 thus late?
 19 A. No
 20 Q. Or what you were doing or anything?
 21 A. Huh-uh
 22 Q. That's a no?
 23 A. That would be a no. Yes, I'm sorry.
 24 Q. Now did your -- what would your dad while he
 25 was disabled and not working outside the home, what

1 would he do during the day, if you know?
 2 A. While I was in school?
 3 Q. Yes, sir.
 4 A. I have no clue. I know that he attended
 5 classes at Meramec. What they were, I believe they
 6 centered around art, because he had learned to paint
 7 while he was in San Diego in the Navy, so he took
 8 classes on that.
 9 Q. Was he an officer?
 10 A. No, he was enlisted.
 11 Q. So he took classes, and were those during the
 12 day, do you know, or at night?
 13 A. They were at various times. I couldn't tell
 14 you. I think some were during the day. Some were in
 15 the evening. I don't know.
 16 Q. Did he take care of say cooking for the family
 17 or anything like that?
 18 A. Once he became disabled, he would cook, he did
 19 laundry, he cleaned, you know, the household duties,
 20 the household chores.
 21 Q. And would you be -- you know, would people ask
 22 you are you coming for dinner or things like that?
 23 A. No, because usually I would be home after they
 24 ate because of swim practice, so it would be I'd either
 25 eat leftovers or I'd fend for myself.

1 how that's changed since they've reconstructed it. And
 2 went back to the locker room.
 3 Q. And did the incident itself take place in the
 4 locker room?
 5 A. Yes, it did.
 6 Q. Was there -- now which locker room would it
 7 be? Was there more than one locker room at the time?
 8 A. We had two locker rooms. One would have been
 9 say the guest or the visiting team locker room, and the
 10 other one was the -- what we called the varsity locker
 11 room.
 12 Q. And was the visiting team locker room, was
 13 that used by the B team, C teams during the week?
 14 A. It could have been.
 15 Q. You don't know one way or the other?
 16 A. No, sir.
 17 Q. All right. So did the incident take place in
 18 the varsity or in the visiting locker room?
 19 A. In the varsity.
 20 Q. Do you have a recollection of there still
 21 being football equipment hung in the room?
 22 A. No, I don't, because when we walked in, we
 23 didn't go all the way into the locker room. We went
 24 to -- there was a row of lockers, and every student
 25 had -- you know, had a locker if they were taking PE,

1 Q. I'm kind of jumping around here. Let's go
 2 back to the second incident. He asked you to come by.
 3 And when? Did he tell you when to come by?
 4 A. He just said come by tonight, and I understood
 5 that to be after practice.
 6 Q. And so you go to practice, and then you came
 7 back straight from Chaminade to Vianney?
 8 A. Uh-huh.
 9 Q. Correct?
 10 A. Uh-huh, yes, sir. I'm sorry.
 11 Q. That's okay. And did he -- was he there when
 12 you got there?
 13 A. Yes.
 14 Q. Did he have to open the front door?
 15 A. He was out -- outside the gymnasium entryway.
 16 Q. Were they still playing football at that time,
 17 do you know?
 18 A. I don't recall. I think if they were, the
 19 session was during the week, not on a weekend, and
 20 practices would have been over at that point.
 21 Q. Was there anybody around at all?
 22 A. No, sir.
 23 Q. So where did the second incident take place?
 24 A. We walked in from the gymnasium door, walked
 25 into the -- what I call the trophy area. I don't know.

1 if they were doing physical education at the school.
 2 So we walked in through the doors to the first row of
 3 lockers that was separated by a bench.
 4 Q. And what happened then?
 5 A. He had asked me if I was -- if I was
 6 comfortable, and I'm like yeah. There's -- what -- are
 7 we going to do some more stuff? And he's like, yeah,
 8 but I'm going to have you pass out -- I'm going to make
 9 you pass out right away.
 10 And he had me bend over, and I remember
 11 standing up, bending over. Again, he placed his hand
 12 on my head and started moving my head in various
 13 directions.
 14 And I don't know how long that went on for,
 15 but I was -- I was breathing very rapidly and started
 16 to get dizzy. Then he said on the count of three go
 17 ahead and make yourself pass out, and I did that.
 18 And from that point on, I remember very little
 19 as far as when I was unconscious. I mean, in fact,
 20 there's nothing that I can remember from the point that
 21 I stuck my thumb in my mouth and blew against my hand
 22 until the point where I started to wake up.
 23 Q. Did -- on any of these occasions after they
 24 took place, any of the four occasions you reference in
 25 the interrogatory answers, did you ever notice anything

1 in your hair?
 2 A. Yes.
 3 Q. What did you notice?
 4 A. Let me clarify that. On one of the
 5 occasions --
 6 Q. And I mean hair on your head.
 7 A. Yes, sir. On one of these occasions after
 8 waking up, and I believe that was the third one, he had
 9 asked me to put hair gel in my hair.
 10 I didn't understand why, but I remember him
 11 having me put hair gel in my hair and leaving it in for
 12 several minutes, and then he asked me to go to the
 13 shower and wash it out.
 14 Q. And were you passed out from the time you had
 15 the hair gel in your hair until when you washed it out
 16 at all?
 17 A. I was unconscious prior to putting the hair
 18 gel in my hair. It was I woke up, how long have you
 19 been out, 10, 15 seconds, okay, how do you feel, a
 20 little, you know, disoriented or whatnot, and then,
 21 hey, could you put some hair gel in your hair. Those
 22 are the sequence of events as I remember them.
 23 And I put it in. He put -- I even see the VOS
 24 on the tube, if that's even the right one. But he put
 25 some in the palm of my hand, I massaged it, and then I

1 felt somebody massaging my groin.
 2 And I didn't -- I thought, well, maybe he's
 3 just trying to help me get up. And that's when I
 4 realized I was actually kind of laying down on
 5 something. I didn't know what it was.
 6 The locker room was dark, and as I started to
 7 open my eyes, I could see Brother Mueller up kind of at
 8 my shoulder level with his hand extended down, and at
 9 that point I realized what he was doing.
 10 Q. What was he doing?
 11 A. He was massaging my genitals. And as I
 12 started to wake up, I thought I heard moaning or sounds
 13 associated with sexual activity to use an adult phrase.
 14 And as I was trying to come to, I saw him with
 15 his penis in his hand. And he either sensed that I was
 16 waking up or that I was already awake, and he stopped
 17 immediately.
 18 And because I was in a sweat suit, in my sweat
 19 suit from diving, there was nothing I had to pull up or
 20 anything.
 21 And he sat me up very quickly, and that's when
 22 I realized I was laying on the bench, and I had
 23 something underneath my head or underneath my neck.
 24 Q. What was it?
 25 A. It was like a rolled up towel. And as soon as

1 put it in my hair.
 2 We talked for a couple minutes, and he said go
 3 ahead and take your shirt off and go ahead and wash it
 4 out in the shower.
 5 Q. And is that the only occasion on any of these
 6 incidents where you recall anything going into your
 7 hair?
 8 A. Yes, sir.
 9 Q. Did he touch your head at all while you had
 10 that stuff in your hair?
 11 A. Not that I can recall.
 12 Q. You can't testify that he did is what you're
 13 telling me?
 14 A. Yes, sir.
 15 Q. That's true?
 16 A. Yes.
 17 Q. All right. So you're in the locker room, and
 18 you pass out on the second incident?
 19 A. Yes, sir.
 20 Q. And what took place after that?
 21 A. I remember beginning to fall when I started to
 22 pass out, and I remember him grabbing me. And, again,
 23 I don't know how long I was out for.
 24 As I started to -- you know, I started hearing
 25 noises and whatnot, and I was waking up. That's when I --

1 I sat up, he said how do you feel? And I said, afraid.
 2 He said, good, that's the response I wanted. He said,
 3 that's perfect. That's the response that I need for my
 4 paperwork for my thesis.
 5 And I walked out, and I was kind of like -- I
 6 was freaked out by it, but again, here -- I looked at
 7 it as here's this guy that is telling me to trust him,
 8 and I'm trying to trust him believing that he's not
 9 going to cause me any harm, so I took him at his word
 10 that this was all part of his tests.
 11 Q. Is -- did you have a discharge at that time?
 12 A. I don't know. I don't recall I did. I don't
 13 think I did. I mean, there was nothing to indicate
 14 that I had.
 15 Q. You didn't have any sperm or anything in your
 16 underwear?
 17 A. Not that I'm aware of, no.
 18 Q. Or anything like that afterwards?
 19 A. No, sir.
 20 Q. All right. And do you know whether he had a
 21 discharge?
 22 A. I don't know.
 23 Q. And is this something that you recalled at the
 24 time?
 25 A. No. I mean, as far as what had happened?

1 Q. Yes, sir.
 2 A. No. I didn't -- this didn't come to light
 3 until I was going through my counseling in September of
 4 2005.
 5 Q. This didn't -- you didn't remember this?
 6 A. No, I did not.
 7 Q. So you think, what, you repressed it?
 8 A. Based upon the definition of repressed memory
 9 that I've been told since I started counseling, yes
 10 Q. Is that what some counselor told you?
 11 A. Well, I was -- that's how it was defined to
 12 me, something that would be traumatic enough for you to
 13 bury it as deeply as possible so not to relive it.
 14 Q. Okay. So -- all right. And what happened
 15 after that?
 16 A. After that, he -- we talked for a little bit,
 17 probably maybe five, ten minutes after that He said
 18 are you okay to --
 19 Q. Do you remember that, talking to him?
 20 A. Talking to him?
 21 Q. Sure.
 22 A. Yeah, I do. I mean, talking to him after this
 23 happened, I remember it now. I didn't remember it in
 24 conjunction with what happened.
 25 Talking to him and just, you know, him being

1 Q. Is it about sexual abuse?
 2 A. It's about sexual abuse in which a male child
 3 was abused by a step-father for a period of time.
 4 Q. How old was the child in that book?
 5 A. Probably 9, if I remember correctly from
 6 reading the book. But it was more of a tool to say
 7 here's how we start the healing process. Read it and
 8 see if you acknowledge that this happened to you, that
 9 you were sexually abused, and it will start the healing
 10 process.
 11 It wasn't used as a tool to -- for anything
 12 other than that, I believe is that here's a guy who was
 13 sexually sodomized, sexually abused for an extended
 14 period of time over years and how he went through his
 15 healing process. So acknowledge that it happened, and
 16 let's start the healing process.
 17 Q. Did Mueller on any other occasion other than
 18 this second occasion ever touch any part of your body?
 19 A. Yes
 20 Q. What other occasion?
 21 A. Well, on each occasion, he would control my
 22 head during the hyperventilation.
 23 Q. Okay.
 24 A. He would grab me as I fell. He would assist
 25 me when I got up.

1 the person to try to calm me down from what just
 2 happened, reassuring me that this was part of the
 3 process for him to get his master's degree, that
 4 this -- you know, Bob, I told you this is a study in
 5 fear, and that's the feeling that I wanted to provoke
 6 Q. Was this a painful event, physically painful?
 7 A. At the time?
 8 Q. Yes, sir.
 9 A. I can't vouch for when I was unconscious
 10 When I was coming to, he stopped fairly quickly, I
 11 guess
 12 Like I said, he either realized I was awake or
 13 that I was in the process of waking up, so there was no
 14 pain associated with what he was doing to me at the
 15 time
 16 Q. Are you telling us that what you're recalling
 17 now is what took place while you were unconscious?
 18 A. No This is what I remember as I was starting
 19 to wake up
 20 Q. And you only recalled it as a result of some
 21 counseling you had received?
 22 A. I had gone through some -- I had started
 23 counseling. Dr. Harris had given me a book to read
 24 Q. What's the name of that book?
 25 A. I wish I could tell you. I don't recall...

1 Q. Did he ever on any other occasion touch any
 2 part of your genitals?
 3 A. Yes.
 4 Q. What other occasion?
 5 A. That was on the fourth and final session.
 6 Q. Whose decision was it that that was the final
 7 session?
 8 A. That was mine
 9 Q. Why?
 10 A. Because we were getting close to graduation.
 11 I had other things -- this would have been in -- it was
 12 after the state diving competition, so I want to say
 13 late February, early March.
 14 There was lesser and lesser contact with him
 15 at school, and I was trying to get into colleges I
 16 was making applications and whatnot
 17 Q. Were you trying to avoid him?
 18 A. No, not intentionally, but maybe
 19 subconsciously yes, but I wasn't trying to avoid him,
 20 you know, see him in the hallway and turn around and
 21 walk the other way I just went about my business at
 22 school
 23 Q. Would it have been on the first visit to
 24 Dr. Harris that you had your recollection of what
 25 occurred with William Mueller?

1 A. No.
 2 Q. Okay. Did Dr. Harris ever use any medicines
 3 in his treatment?
 4 A. No, sir.
 5 Q. He's not a medical doctor, is he?
 6 A. No, sir.
 7 Q. He's not prescribing any medicines for you?
 8 A. No, sir.
 9 Q. You haven't had any kind of traumatic event
 10 that caused you to have this recollection come back,
 11 have you?
 12 A. Define traumatic.
 13 Q. An injury of any kind that's associated with
 14 your recalling these incidents.
 15 A. No.
 16 Q. Okay. And you didn't recall it until those
 17 newspaper articles in September of 2005, did you?
 18 A. I had always known about the sessions, and I
 19 had always looked at those as part of his testing
 20 process for his master's degree
 21 It wasn't until September of 2005 that I
 22 realized what was really going on as part of those
 23 Q. So in September 2005 is when you realized that
 24 you'd been sexually abused?
 25 A. That's when I realized at least there was

1 cause to believe that I was.
 2 Q. And what do you mean by that, cause to believe
 3 there was sexual abuse?
 4 A. Having read Bryan Bacon's statement in the --
 5 Q. Did you read the statement where he said there
 6 was nothing sexual and he always remembered everything?
 7 A. Yes
 8 Q. Okay.
 9 A. When I read --
 10 Q. Do you have this statement --
 11 MR. CRAIG. Jerry, let me object here You
 12 guys are doing a real good job of not talking over each
 13 other
 14 MR. NOCE. I understand
 15 MR. CRAIG. I know you're chomping at the bit
 16 here to see if this guy's making up this stuff
 17 MR. NOCE. Well, I'm just asking --
 18 MR. CRAIG. You're cutting me off now All
 19 I'm asking is let him fully finish his answer I want
 20 you to fully finish your answer, and if he cuts you
 21 off, let him know you haven't finished your answer
 22 You do a good job of letting him finish his question,
 23 and I think we'll be able to move on with this. Okay?
 24 THE WITNESS. Would you like me to answer your
 25 question -- ask your question again

1 Q. (By Mr. Noce) Sure. Was it the statement
 2 where he said that there was nothing sexual that
 3 occurred and that he always remembered it, is that what
 4 triggered your recollection of sexual misconduct?
 5 A. No, it was not.
 6 Q. What was it then? What about what Bryan Bacon
 7 said triggered it?
 8 A. What I -- there was nothing that Bryan Bacon
 9 had said that triggered my recollection. It was having
 10 read -- what he had said was almost identical to my
 11 fourth session as far as being blind-folded and taking
 12 clothes off down to the underwear.
 13 And when I was reading that, I was like, oh,
 14 my gosh. Here's somebody that I didn't know that I'd
 15 never heard -- you know, heard his name in conjunction
 16 with these tests before saying the same thing that had
 17 happened to me on my fourth and final session.
 18 At that point, I made a call to him and said,
 19 hey, what's my next step. I don't know, you know,
 20 where to go from here And he directed me to the
 21 Kirkwood Police Department.
 22 I spoke with the detective there who said,
 23 well, there was no contact, so there's really no crime
 24 that we have at this time. He then directed me to his
 25 attorney, and I talked to his attorney very quickly.

1 Q. Ken Chackes?
 2 A. I think Chackes or Chackes And he felt at
 3 this particular time there was no -- he could help me
 4 out, but he wasn't too, you know, overzealous about
 5 helping me out I think zealous is a bad word.
 6 Q. Did he tell you he didn't think you had a case
 7 or what did he say?
 8 A. No. He just said, you know, let's see how --
 9 when I spoke with him and I told him what happened, he
 10 goes, well, you were unconscious during that time. You
 11 have no recollection And I said that's fine. That's
 12 okay.
 13 That's when I had contacted my current
 14 attorney and found out that there were more people out
 15 there that were saying I was unconscious for four or
 16 five sessions So I spoke with him and chose my
 17 counsel to go through there
 18 Through starting the counseling and, you know,
 19 having to relive everything that was going on, more and
 20 more, you know, a piece would come here, a piece would
 21 come there And it would be almost -- I hate to use
 22 the word an epiphany, but it would all gel
 23 And, you know, I had been very upset, very
 24 grumpy, very distracted from my family ever since I
 25 found out about what was going on with the other

1 people
 2 And it turned out that one night my wife and I
 3 were just having a real simple argument over nothing,
 4 and I blurted out, I said, you have no clue what that
 5 man did to me. And she goes what do you mean?
 6 I said he was fondling me and masturbating
 7 while I was unconscious. And she's like, well, how did
 8 that happen? And I said I don't know. I was
 9 unconscious. I remember laying on the bench, and when
 10 I was waking up, his hand was down my pants.
 11 Q. You said he was masturbating, he being
 12 Mueller, while he was fondling you?
 13 A. Yes.
 14 Q. And thus took place while you were
 15 unconscious?
 16 A. It would have had to have been initiated while
 17 I was unconscious.
 18 Q. Did you see him actually masturbate while he
 19 was fondling you?
 20 A. I saw him with his penis in his hand. He was
 21 on my left side with his left hand down my pants, and
 22 he had his penis in his right hand.
 23 Q. Have you had any treatment as a result of
 24 these incidents from anyone other than Dr. Harris?
 25 A. My primary care physician has put me on

1 A. Yes, sir
 2 Q. When do you take it?
 3 A. I usually take it in the morning.
 4 Q. What's the dosage?
 5 A. It's the lowest dosage possible. I think it's
 6 75 milligrams.
 7 Q. Does it help you?
 8 A. Yes.
 9 Q. Was there any family history of depression?
 10 A. Not that I know of, not that's been known to
 11 me.
 12 Q. Have you ever told that to a physician, that
 13 there's a family history of depression?
 14 A. Again, I don't know of any family history of
 15 depression.
 16 Q. Okay Have you ever reported being depressed
 17 to any treating physician on any occasion prior to
 18 September 2005?
 19 A. No, but my general practitioner, Dr. Bernard,
 20 at the request of my wife had me take a little -- I
 21 don't know It's a little color in the dots test.
 22 And it showed -- the answers off of that, he
 23 said, you're fine. Don't worry about it. I have never
 24 asked to be diagnosed as depressed or have any social
 25 anxiety or anything like that.

1 anti-depressants.
 2 Q. And what anti-depressants are you on?
 3 A. Effexor.
 4 Q. Have you ever been on that in the past?
 5 A. No, sir
 6 Q. Before September of 2005?
 7 A. No, sir
 8 Q. Have you ever been on any anti-depressants at
 9 any time in your life before 2005, September?
 10 A. I don't recall. I know that -- I think the
 11 only medication I'd been on prior to that was high
 12 blood pressure medicine
 13 Q. The Effexor, you have a prescription for it
 14 now?
 15 A. Yes, I do. Well, I'm on samples They've
 16 just been -- he's been giving me samples of it. He has
 17 a prescription written
 18 Q. Have you ever filled a prescription for it?
 19 A. I have not
 20 Q. When was the first time you took that?
 21 A. Shortly after this all became known in
 22 September of 2005
 23 Q. Is it an as needed?
 24 A. No, it's daily.
 25 Q. So you've been taking it daily since then?

1 Q. Is there any history in your wife -- of your
 2 wife having depression?
 3 A. My wife is also on anti-depressants
 4 Q. How long has that been going on?
 5 A. Since prior to our meeting when she got
 6 divorced from her first husband because it was a very
 7 traumatic divorce
 8 Q. Is she on Effexor?
 9 A. No The exact medication, the only one that
 10 comes to mind is Adderall, and I don't know if that's a
 11 daily one. I know she's got at least one other
 12 medication she takes, and I don't know the name of it.
 13 Q. Paxil?
 14 A. It's not Paxil I really couldn't tell you,
 15 sir
 16 Q. So we kind of got off of the plan here We
 17 were talking about the second incident, and you've told
 18 me about what happened there, that you woke up and he
 19 was massaging you and massaging himself?
 20 A. Correct
 21 Q. And then spoke about what was going on and
 22 then you left?
 23 A. Yes
 24 Q. All right Did you go home that night?
 25 A. Directly -

1 Q. And did you talk to -- did anybody ask where
 2 you'd been?
 3 A. No.
 4 Q. And when was the next incident? Was it in
 5 1984 or '85?
 6 A. I'm trying to think. February -- it would
 7 have been closer -- I think it would have been closer
 8 to Christmas, sometime right before the Christmas
 9 break.
 10 Q. And were you still involved in diving?
 11 A. Yes, sir.
 12 Q. All right. And what happened on that
 13 occasion?
 14 A. He -- and I don't remember if it was right
 15 after school or right before the end of school. He
 16 caught me and had said, you know, can you come by
 17 tonight so we can do some more tests. And I was like,
 18 sure, I can do that.
 19 I went to diving practice. I went from there.
 20 I met him at the main entrance of the school. He let
 21 us in, and we went back to the locker room the long way
 22 from one end to the other.
 23 Q. Was there anybody in the school at the time?
 24 A. No, sir, and the school was dark.
 25 Q. And what time of day or night was this?

1 into the locker room.
 2 And I woke up. The question came out, how
 3 long do you think you've been out. My standard answer,
 4 10, 15 seconds because that's how long I thought I was
 5 out. When I woke up --
 6 Q. Did you still not wear a watch at these
 7 things?
 8 A. You know, I didn't start wearing a watch, sir,
 9 until I was in the military.
 10 Q. Did you have any -- can you tell us now about
 11 what time of day or night you would have gotten home
 12 after these incidents?
 13 A. I would probably say 7, 7 30, around in there,
 14 you know, maybe towards 7 30.
 15 Q. Okay.
 16 A. Getting back --
 17 Q. What happened?
 18 A. Getting back to that, I -- when I woke up, I
 19 was sitting on the floor with my knees brought up to my
 20 chest.
 21 Q. Were you still clothed?
 22 A. Yes, I was. And he had said, are you okay?
 23 He helped me get up and put me in -- it was either the
 24 bench that was there or the chair from the back door.
 25 And he asked how I was doing. I'm fine, kind

1 A. This would have been around the same time,
 2 around 6, 6 30, closer to dusk, around sunset. We went
 3 back to the locker room, and this time we walked all
 4 the way to the back of the locker room.
 5 And there's a door that leads from the locker
 6 room to the football field so you wouldn't have to go
 7 through the gated area behind the bleachers, and we
 8 were back there.
 9 He had me stand up. There was a chair in
 10 front of me next to the door. He had me stand up in
 11 front of the chair.
 12 And he said go ahead and start the
 13 hyperventilation. I took that -- I knew what that
 14 meant, go ahead and bend over, start the
 15 hyperventilation.
 16 He grabbed my hair or grabbed my head and
 17 started to agitate my head, I guess, move it from side
 18 to side in circles or whatever it may have been. That
 19 went on for a period of time, seconds, minutes. I
 20 don't know how long.
 21 And he said, okay, go ahead, you know what to
 22 do. And I did that. And I made myself pass out. And
 23 when I woke up, I was at the front of the gym or at the
 24 front of the locker room closer to where the showers
 25 would have been by the front -- by the door leading --

1 of a little disoriented. He said, okay, just sit here
 2 for a moment or two to catch your breath. And I said,
 3 fine.
 4 And when it seemed like I was able to stand up
 5 or do what I needed to function properly, that's when
 6 he asked if I would be willing -- he said, hey, here
 7 put this in your hair. And I'm like, what is it? He
 8 said, it's just hair gel.
 9 Q. This is the V05 incident?
 10 A. Correct. I put it in my hair. We talked for
 11 a couple more minutes maybe. It could have been just a
 12 minute or two. He said, okay, go ahead, take your
 13 shirt off, go ahead into the shower and wash it off.
 14 I said, well, I don't have a towel. He said,
 15 well, you can use the paper towels at the sinks. And I
 16 said, okay, so that's what I did.
 17 I got dressed. I put my shirt back on. And I
 18 even think he had a comb or brush, and he said, here,
 19 go ahead and brush your hair. And after that, I was
 20 done. I left.
 21 Q. Okay. Was there any sexual misconduct that
 22 you're aware of that took place on the third incident?
 23 A. At that particular time?
 24 Q. Yes, sir.
 25 A. No, sir.

1 Q. Well, I mean, at any -- I'm talking about the
 2 third incident.
 3 A. That's what I'm saying.
 4 Q. Right. There was no sexual misconduct that
 5 took place on the third incident?
 6 A. That I can recall.
 7 Q. Okay. And the same is true for the
 8 first incident?
 9 A. Correct.
 10 Q. And, in fact, as far as you're concerned, your
 11 lawsuit really doesn't involve whatever happened to you
 12 on the first incident, does it?
 13 A. I believe it does, because under the guise of
 14 doing something professionally and then masking it as
 15 this is my master's degree, I need this for my thesis,
 16 all those years I kept those memories as a master's
 17 degree
 18 And it wasn't until I started seeing things --
 19 the true nature of what happened in September of 2005
 20 that I realized that, hey, here's an issue. Maybe
 21 something did happen to me
 22 And I believe that, you know, through
 23 depositions of other people, I think we're going to
 24 find out that something did happen to me I just don't
 25 recall it because I was unconscious

1 Q. All right. Were there any witnesses other
 2 than you and Mr Mueller?
 3 A. No, sir.
 4 Q. All right. Would the same be true as it
 5 relates to the third incident?
 6 A. Having any knowledge of any sexual contact at
 7 that time on the third incident, no.
 8 Q. Correct. That's the incident that occurred at
 9 or before the Christmas break where there was this
 10 reference to the VO5 cream?
 11 A. Yes, sir
 12 Q. Now we've covered three of the four, and
 13 there's a fourth incident?
 14 A. Yes, sir
 15 Q. There's only four incidents?
 16 A. Yes, sir.
 17 Q. When did the fourth incident take place?
 18 A. This happened shortly after the swimming and
 19 diving championships which were held February -- late
 20 February. I want to say it was around like
 21 February 22nd. I'd say it was a Saturday.
 22 They were held at Mizzou in the auditorium at
 23 Mizzou. I came back, and Brother Mueller had gone to
 24 great lengths to have posters and banners put up about
 25 me winning the state championship, you know, Vianney's

1 Q. Well, I'm asking about your case. Are you
 2 telling me there's anything that injured or damaged you
 3 for which you're bringing this lawsuit that occurred on
 4 the first incident?
 5 A. Well, at the time that it happened, no, but --
 6 Q. I mean now as you sit here today
 7 A. That's what I'm getting to, sir.
 8 Q. Right. Was there any -- let me ask you this:
 9 Was there any sexual misconduct that you're aware of
 10 that occurred on the first incident that you've talked
 11 about here in your deposition?
 12 A. Nothing that I know of that happened on that
 13 first incident. I believe because I was unconscious, I
 14 don't know.
 15 So for me to say that nothing happened I think
 16 would be probably either speculation on my part or an
 17 assumption on somebody else's part. I don't know
 18 Q. Let me put it this way: Can you testify under
 19 oath that you were in any way sexually abused at the
 20 first incident that you've talked about today?
 21 A. No, sir, I can't, but I can't say that I
 22 wasn't.
 23 Q. Okay. Well, the thing is you have to be able
 24 to say you were. And can you say that?
 25 A. No

1 first individual state champion, so he --
 2 Q. How did you know that he did it?
 3 A. He told me
 4 Q. Okay. That's --
 5 A. Yeah
 6 Q. Sorry.
 7 A. He told me that day that he had done this. He
 8 contacted the art teacher and whatnot and gotten it
 9 done.
 10 It wasn't -- it wasn't immediately right after
 11 that. It was more into March where he just asked me to
 12 come by and meet him at -- there was a spring dance
 13 that night, so it would have been, I believe, on a
 14 Friday night.
 15 Q. A spring dance at Vianney?
 16 A. At Vianney
 17 Q. And it wasn't the prom or anything?
 18 A. No, it was a, you know, let's welcome spring
 19 in kind of dance. And I didn't really want to go, but
 20 he said, oh, come on, just show up
 21 Q. Is it one of these deals where seniors --
 22 you're ready to go to college and you don't really want
 23 to go to a high school dance?
 24 A. I just didn't want to go
 25 Q. Okay.

1 A. I mean, there was no -- I didn't want to go.
 2 I didn't want to go to a dance that night. I didn't
 3 really want to do much. So he had said -- he convinced
 4 me to come, so I did.
 5 Q. Where was it held?
 6 A. It was held, I believe, in the gymnasium.
 7 Q. And what happened?
 8 A. He had asked me -- he said, well, when you
 9 come up, meet me at the main entrance after the dance
 10 has begun. I said, okay, fine.
 11 Q. Do you know what time that was?
 12 A. No, sir. I think the dance would have started
 13 like around 8. I couldn't tell you what time it was
 14 Q. It was dark?
 15 A. It was dark. I mean, it was definitely
 16 nighttime when I showed up at the dance
 17 Q. Did you go there -- drive to the dance by
 18 yourself?
 19 A. Yeah, I did
 20 Q. You didn't have a date or anything like that?
 21 A. No, sir.
 22 Q. Okay
 23 A. I drove there. I parked my car
 24 Q. Where did you park?
 25 A. In the parking lot in front of the school.

1 one away from Lindbergh?
 2 A. It's the closest.
 3 Q. It's the closest? Okay.
 4 A. At least it was at my time. They've done so
 5 many changes to it, I don't know where it's at now.
 6 Q. All right. So were people out in the parking
 7 lot all entering the gym at the time?
 8 A. I don't remember.
 9 Q. Okay. So what happened?
 10 A. I pulled in, walked to the main doors at the
 11 administrative -- by the flag pole. And he was
 12 outside. And he said, come on in. And I said, okay,
 13 no problem.
 14 We walked in. I started heading towards the
 15 administrative area, and he says, no, we're going to go
 16 over here. I was like, okay
 17 So we went to -- there was a small office
 18 where the bookstore -- I believe where it used to be.
 19 I don't know if it's still in the same place now.
 20 There was a small teachers' office there, and
 21 I remember that because I believe that was
 22 Ms. O'Connell's office.
 23 And we went in -- we went into the hallway
 24 there, and he said, you comfortable? I'm like, yeah.
 25 He says, well, as part of the experiment, would you

1 Q. Okay.
 2 A. And I went to the main entrance near the
 3 administration center. He was waiting outside for me
 4 And --
 5 Q. Where do people enter, Mr. Visnaw, to go to
 6 the dance?
 7 A. The gymnasium entrance
 8 Q. So that would be around the side of the
 9 building?
 10 A. No, sir, that would be -- there's two front
 11 entrances, at least there was when I was at Vianney
 12 There were three front entrances.
 13 There was one on -- if I'm looking at the
 14 school, there would have been one to my right and
 15 behind. It was just a side door near the chapel
 16 There was the main entrance where the administrative
 17 staff you would see
 18 Q. A circle drive in front of it or --
 19 A. I don't think we had a circle drive when I was
 20 at Vianney
 21 Q. Okay
 22 A. The main doors where the flag pole was at, if
 23 it's still there, and then the gymnasium entrance. You
 24 would enter through the gymnasium entrance
 25 Q. Is the gymnasium entrance the furthest

1 have any problem with taking your clothes off down to
 2 your underwear?
 3 Well, why do you want that to happen? He
 4 said, well, it's part of the test if you're
 5 comfortable. If you are afraid to do so, that would be
 6 fine, because that would be one of the responses that
 7 we would elicit.
 8 And I said, no, if it's -- nothing's going to
 9 happen, you know, no big deal. So I did. I walked
 10 into -- I was in the office. He stepped out of the
 11 office. I took my clothes off.
 12 When he came back into the office, he told me
 13 to face away from him, so I did. From the time I
 14 walked into that office and took my clothes off, I
 15 never saw him again through the course of that
 16 quote/unquote session
 17 And I turned my back to him, and he put a
 18 blindfold on me. And he then put his hand on my
 19 shoulder and asked me if I was afraid, and I said no.
 20 Why not? Because right now I trust you. Okay
 21 And then he would squeeze my shoulder, and at
 22 that time -- there were several instances of are you
 23 afraid, no, why, because right now I trust you.
 24 And then he placed a knife to my throat and
 25 pulled me -- pulled either me closer to him or he

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1 stepped up to me. Either way, the gap was closed. And
2 as he held the knife to my throat, I remember me
3 putting my hands on the table.

4 Q. Did you remember the knife at all times?

5 A. Yes, I did.

6 Q. You never repressed that recollection?

7 A. The knife, no.

8 Q. So you -- from 198 --

9 A. 5.

10 Q. 5 all the way through 2006, you always were
11 aware that at some point in time he put a knife to your
12 throat?

13 A. Yes, sir.

14 Q. Did you find that -- were you injured at all
15 as a result of that?

16 A. As far as having been cut?

17 Q. Yes, sir.

18 A. I don't believe I was cut.

19 Q. Did you find that to be an offensive action by
20 him?

21 A. I found it to be strange, but when I
22 questioned him, again, he covered it up under this is
23 all part of the test. This is everything that we --
24 your fear is understandable. That's what I'm testing
25 for. That's what I'm working on with my thesis

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1 Q. Would it be fair to say that that would be an
2 unwelcomed touching?

3 A. Yes.

4 Q. And that's how you felt then, wasn't it?

5 A. I didn't -- I won't say it was -- that I felt
6 unwelcomed.

7 Q. No, that you didn't -- you felt him touching
8 you with the knife to your throat was an unwelcomed
9 touching of your body?

10 A. It was a shock that this -- that the blindfold
11 and then the knife I was shocked. Again, it was are
12 you afraid. And I said a little, but not to the point
13 where -- this is strange Why are you doing this?
14 Again, it's all part of the test.

15 And when I would say I'm not afraid, then the
16 knife would get pressed further, and the gap would be
17 closed even further

18 Q. And was that more offensive to you as the
19 knife got pressed further?

20 A. I think it -- it was the same reaction. As
21 the knife was pressed harder, it was more of, okay,
22 what's going on? Again, he'd ask me are you afraid A
23 little That's fine That's what we're hoping to get
24 How do you feel? And --

25 Q. You didn't like that, did you?

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1 A. No, I didn't. But I did it because I thought

2 I was helping the man get a master's degree

3 Q. Okay. What else happened then?

4 A. As he went on and carried on with the knife,
5 he had pulled me literally to where his stomach and my
6 back were touching, and my hands were on the desk. And
7 I remember pushing very hard against the desk because I
8 didn't know what was going on.

9 And this -- this came out just recently in my
10 counseling session is that as I was -- as I was being
11 pulled in to Brother Mueller or as he was stepping into
12 me, I feel skin on skin on my back, not his hand on my
13 back, not, you know, an arm

14 This was skin on skin which is what I would
15 assume to have been his stomach at that time. And I
16 remember becoming very -- at that point very afraid.
17 Why is this happening? And then --

18 Q. Is that something you always remembered, too?

19 A. No, it's not

20 Q. When did you remember being very afraid?

21 A. When -- this was about three months ago I
22 went in to my counselor because I thought I was doing
23 really well, and he said, you know, come back as
24 needed

25 And I started having just these feelings of

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1 just over -- you know, I was being overcome with
2 emotion, and it would always be -- the times would
3 always be when I would start to think about the case,
4 about Brother Mueller Everything was triggered on
5 that

6 And then, again, it was a little piece here, a
7 little piece there And everything kind of fell in
8 one day, and I lost it I mean, I sat at home and
9 cried I went in to my counselor as soon as I could
10 get in to see him, and I lost it

11 And to be more exact, I was on detail. I can
12 tell you exactly. It was in April of 2006 I was on
13 detail for training class in Denver, Colorado, and I
14 was watching TV

15 And I just remember very vividly what happened
16 at that fourth session, and I remember turning the TV
17 off and just starting to bawl my eyes out about how
18 could this have happened and I don't -- I just didn't
19 do anything to stop it.

20 And as he was pulling me in closer or as I say
21 closing the gap, he pushed the knife even harder to me,
22 to my throat, and he said are you afraid? And I'm
23 like, yes, I am because what's going on?

24 And he stuck his hand down my pants and
25 started massaging, and I just remember the very -- from

1 the tips of my fingers to the tips of my toes just
 2 being totally, totally, totally scared to death about
 3 what was happening.
 4 And I don't know how long I was there. I have
 5 no clue at all. And all of a sudden, it stopped.
 6 Q. What stopped?
 7 A. Everything that happened in that office, it
 8 just stopped. I remember waking up at -- in the
 9 hallway fully clothed and then him taking me out to the
 10 track and saying, okay, you still have the blindfold
 11 on.
 12 We're going to walk around the track, and I
 13 want you to tell me where you're at on the track. I'm
 14 going to tell you where we're at. That's where your
 15 starting point is going to be, and then we're going to
 16 walk around the track, and you're going to try and tell
 17 me where you think you are on the track.
 18 I don't know if I was right. We stopped
 19 three or four times on the track, and we got back
 20 around to one of the rear entrances to the school. He
 21 took the blindfold off and said there's the gate. Go
 22 through the gate, and go to the dance.
 23 And I never saw him from the time I had my
 24 clothes taken off. It was as if he was always behind
 25 me. Never, never did I see him -- did I see him after

1 A. No, sir.
 2 Q. Did you avoid him?
 3 A. Consciously, no, I did not.
 4 Q. Did you avoid him?
 5 A. I did not go out of my way to avoid him
 6 Q. Did you have any conversations with him on any
 7 occasion after the fourth incident? And I mean
 8 conversations.
 9 A. Maybe. While we were at school, it would be
 10 just casual conversation in the hall. He knew who my
 11 mom was. He knew who my dad was. A lot of teachers
 12 know at Vianney know the parents
 13 Q. How did he know your mom and dad?
 14 A. From diving. You know, he -- I don't want to
 15 say he took an interest in me because I was an athlete,
 16 but knew who my parents were from the sporting
 17 activities.
 18 Q. Did you ever have any occasion to be with him
 19 at any time after you graduated from high school?
 20 A. No.
 21 Q. Did you have any telephone conversations with
 22 him on any occasion after you graduated from high
 23 school?
 24 A. Yes.
 25 Q. And when did those take place?

1 that point. Once he told me to walk in the room, I
 2 never saw him again
 3 Q. Were you conscious or unconscious when this
 4 was taking place in the office?
 5 A. I was conscious
 6 Q. Did you have a sexual discharge at that time?
 7 A. Not that I can recall. I know that I -- I
 8 know that I had an erection. I had the erection when I
 9 woke up.
 10 Q. And when you woke up, you were clothed?
 11 A. Yeah. When it stopped, when he -- when it all
 12 just -- I mean, it was just whatever happened, he just
 13 stopped
 14 And I do recall putting the clothes back on,
 15 but it was all such a blur. And the next thing that I
 16 can definitively say is that I woke up out in the
 17 hallway
 18 And we walked down the hallway to the gate or
 19 to the door that would have been the farthest from
 20 Lundbergh on the back side of the building
 21 It was just a single door that would let
 22 people in if they were out walking from the cafeteria
 23 to that side of the building
 24 Q. Did you ever have any other incidents with
 25 William Mueller on any occasion after that?

1 A. All I know is that I've talked to him -- I
 2 talked to him a couple times on the phone, and we
 3 corresponded in writing on occasion.
 4 Q. And when you talked to him on the phone, were
 5 you still in college?
 6 A. Yes.
 7 Q. Did you call him or he call you?
 8 A. It would be -- I'd get a letter that would
 9 say, hey, it'd be nice to talk to you. How are things
 10 going? Give me a call. I did not proactively seek him
 11 out.
 12 Q. He would write you and ask you to call him,
 13 and would you call him?
 14 A. Yeah, if you have time, drop me a line type of
 15 thing. One -- one phone call or letter, I can't
 16 remember which one it was, he said he was coming in
 17 town for a classmate of mine's wedding, and he wanted
 18 to get -- he wanted to see me, and I said I can't. I'm
 19 not going to be available then
 20 Q. Were you -- do you recall whether it was
 21 before or after you graduated college?
 22 A. It was before
 23 Q. Who was the classmate?
 24 A. Bruce Kellerman, K-E-L-L-E-R-M-A-N
 25 Q. Did you go to the wedding?

1 A. No, I did not.
 2 Q. Do you know whether you -- did you get an
 3 invitation?
 4 A. No, I didn't get an invitation.
 5 Q. And -- okay. Kellerman was your classmate?
 6 A. Correct. And from what I understand,
 7 Brother Mueller was very close to the Kellerman family.
 8 Q. Did you know where Brother Mueller at the time
 9 when he was at Vianney where he actually resided?
 10 A. It's my understanding he would have resided in
 11 the brother housing there on the grounds.
 12 Q. Were you ever inside that residence at all?
 13 A. Not in conjunction with Brother Mueller. I
 14 had gone in there while I was doing the work during the
 15 summer, but --
 16 Q. He never had you inside there?
 17 A. No, sir.
 18 Q. Are you -- do you talk or correspond in any
 19 way with any of the other people who filed suit? You
 20 mentioned Bryan Bacon, but any of the other people who
 21 filed suit against William Mueller?
 22 A. Bryan Bacon and -- there's Bryan Bacon and
 23 through my attorney two additional plaintiffs that he
 24 has in the case.
 25 Q. Are these people who went to Vianney or other

1 be best for you to give him a call, because you and I
 2 are not the only ones that have these types of
 3 recollections.
 4 And he gave Dan a call, and that was actually
 5 the one and only time I spoke with him about it.
 6 Q. Have you -- you mentioned that you did some
 7 internet research or at least looked up some things on
 8 the internet, and you mentioned the *Post-Dispatch* with
 9 regard to Mueller. Did you do any additional research
 10 regarding Mueller?
 11 A. I had done -- I wanted to see what was
 12 happening out in Colorado, and so I just -- I Googled
 13 Brother William Mueller and got a lot of extraneous
 14 stuff.
 15 But some of the -- I think it's the *Pueblo*
 16 *Chiefton* newspaper out there had some articles, and I
 17 just read the accounts of what those students are
 18 claiming out there.
 19 Q. Did you speak with any of the reporters or
 20 editors of the *Chiefton*?
 21 A. No, sir.
 22 Q. Have you given an interview to anybody with
 23 any media outlets or sources regarding William Mueller?
 24 A. No, sir, I have not been contacted by anybody
 25 for -- for an interview

1 schools?
 2 A. They went to another school
 3 Q. St. Mary's?
 4 A. Correct.
 5 Q. Gaygoing and Clumpers?
 6 A. Yes, sir.
 7 Q. Okay
 8 A. There is one other student that actually got
 9 ahold of -- I think he had originally called Bryan the
 10 same way that I did, and Bryan said, well, you probably
 11 need to speak with Robert or Bob about it and see if
 12 you -- you know, talk to him about what he's doing
 13 And that was Greg Stork who was a classmate of mine as
 14 well.
 15 Q. Was Greg -- did you know him from grade school
 16 or --
 17 A. No, sir It was strictly high school
 18 Q. And was he a friend of yours?
 19 A No, sir
 20 Q. Just somebody in the class?
 21 A Just somebody in the class He ran track,
 22 played football He was a fellow athlete And when I
 23 spoke with him, I said you know what, I don't want to
 24 get into any details
 25 Here's my attorney's name I think it would

1 Q. Have you -- are you a member of any kind of
 2 support group?
 3 A. No. I go through my counselor, and I use my
 4 family as my support group, my wife I guess there's
 5 some organization SNAP
 6 Don't ask me what it stands for, but I just
 7 got an e-mail from them saying we're having a meeting
 8 in Kansas City You're more than welcome to come if
 9 you want to come
 10 Q. Do you know how they got your name?
 11 A When one of the -- in the article I think it
 12 was -- I'm not sure if it was Kevin Bacon's article or
 13 one of the articles I read from the *Chiefton*, they had
 14 mentioned the name of Mr. Clossey
 15 Q. David Clossey?
 16 MR. GOLDENHERSH Clossey
 17 THE WITNESS Clossey And the same day I had
 18 spoken with Bryan, I had tried to get ahold of
 19 Mr Clossey first because of the type of work it
 20 appeared that he did based upon what was said in the
 21 news article to figure out where I could go
 22 He called me and, you know, just very quickly
 23 talked to me about it and said, well, do you have an
 24 e-mail address that we can send -- you know, if we have
 25 meetings in Kansas City

1 We have a branch or whatever they want to call
 2 it in Kansas City. If you can get to a meeting or they
 3 invite you to a meeting, can we just send you some
 4 information. I said yes. I gave them my work e-mail.
 5 Q. (By Mr. Noce) Are you on a list now with
 6 SNAP?
 7 A. I've only received one thing from them since
 8 September of 2005, sir, so --
 9 Q. Did he recommend a lawyer for you out of
 10 Minneapolis to handle your case?
 11 A. Do you have a name?
 12 Q. Anderson & Associates?
 13 A. No, sir.
 14 Q. Or Chackes? Did he recommend Chackes to you
 15 or Rebecca Randall in Kansas City?
 16 A. Those names don't sound familiar to me at all.
 17 Chackes does, and that's because of Bryan Bacon.
 18 The attorney out of Miami because -- the day
 19 that all this really sank in, I was just at a loss. I
 20 didn't know what to do, who to contact, who to call
 21 Q. What day was that?
 22 A. I want to say it was a Monday after it hit the
 23 paper in St. Louis.
 24 Q. So sometime in September of 2005?
 25 A. Yes, sir. So I had called Mr. Clossey. I had

1 any of that to you, did he? And I said -- at first I
 2 said no, because she didn't know about the tests or the
 3 experiments or the master's degree.
 4 I had said no. I said, well, he must have
 5 done it to some people at Vianney because here's
 6 one from Vianney that's coming forward.
 7 And then it took probably two to three months
 8 before I was able to tell her that, yes, I was a victim
 9 of that.
 10 But that night I just saw the newspaper
 11 article, and then that morning -- the following Monday
 12 morning I went into my office and really -- you know, I
 13 wanted to find out what was going on and if, in fact, I
 14 may have been a victim.
 15 Q. So your mom brings this up to you with the
 16 voice mail message and you call her back, but you
 17 didn't even discuss with her the fact there'd been
 18 these experiments?
 19 A. Correct.
 20 Q. So she didn't even know any of that took place
 21 even as of last September?
 22 A. Correct.
 23 Q. But you had told your dad about that?
 24 A. Correct.
 25 Q. And you did that, of course, sometime at least

1 tried to get ahold of Bryan. Then I had called --
 2 what's the attorney's name down in Miami? Horowitz?
 3 Q. Horowitz.
 4 A. And his whole guidance to me was I'll send you
 5 some paperwork and sign it and I'll represent you. I
 6 was like, you know, that just doesn't seem right. I'd
 7 like to try to find somebody that I can deal with here
 8 locally, and that's what I did
 9 Q. When you say it all sank in in September 2005,
 10 what do you mean?
 11 A. With going -- I had gotten the message from my
 12 mom on the answering machine.
 13 Q. Did you keep that message?
 14 A. No, sir
 15 Q. Oh.
 16 A. No. It was really simple. It was just a
 17 couple seconds long. Hey, Bob, Brother Mueller -- I
 18 think she said Brother Mueller is in the news. Do you
 19 have any reason -- do you know why?
 20 And I had -- I was like, okay, no, but popped
 21 open the computer to see what was going on, and that's
 22 where I saw that.
 23 Then I called my mom. She says, why do you
 24 think he's in the news? I said, well, sounds like
 25 child molestation. And she goes, well, he didn't do

1 before the early 90's?
 2 A. It would have been in the early 90's. Well,
 3 it was on the road trip from St. Louis to Presidio,
 4 Monterey in July, over the 4th of July weekend.
 5 Q. Did he drive with you?
 6 A. He drove with me, yes, sir.
 7 Q. And you say that was in July when?
 8 A. It would have been over the 4th of July
 9 weekend in 1991.
 10 Q. 19 --
 11 A. 1991
 12 MR. NOCE. '91, okay. Can we take a break
 13 real quick?
 14 VIDEOGRAPHER. We're going off the record at
 15 2:02 p m
 16 (A break was taken)
 17 VIDEOGRAPHER. We're back on the record at
 18 2:17 p m
 19 Q. (By Mr. Noce) You had mentioned, Mr. Visnaw,
 20 about the fact in July of 1991 you rode with your dad
 21 out to the Presidio, a cross-country trip?
 22 A. Yes, sir
 23 Q. And where did you start that trip, St. Louis?
 24 A. At our house at 4825 Bankfield Court.
 25 Q. And was it you and your dad? -

1 A. Yes, sir.
 2 Q. And how many days did it take you to get
 3 there?
 4 A. Approximately three. I mean, we drove -- we
 5 didn't stop, so --
 6 Q. Was your dad -- I know he was on disability at
 7 the time, but was he able to drive a vehicle without
 8 problems?
 9 A. Uh-huh, yes, sir.
 10 Q. I mean, like maybe drive 500 miles and then
 11 you drive 500 and then whatever?
 12 A. Yes, sir.
 13 Q. Did you split pretty much evenly the driving?
 14 A. We tried to.
 15 Q. Did it give you a chance to talk to your dad?
 16 A. It sure did.
 17 Q. And during that three day trip, did you have
 18 occasion to talk about some of this?
 19 A. As I stated earlier, it was, you know, a
 20 really quick conversation about -- we got a letter from
 21 Brother Mueller to you.
 22 And as I stated earlier, I was like, I don't
 23 respond back to him. He was curious as to why
 24 Brother Mueller would continue to write I was like,
 25 I'm sure he writes to a lot of students who helped him

1 And I didn't find him writing me six years
 2 later -- because I did tell him that we did correspond
 3 occasionally with a letter here or there or a phone
 4 call to say, hey, how are things going. I'll be in
 5 town for the Kellerman wedding was one example.
 6 You know, but it would never -- we never got
 7 into exactly the nature of the assistance provided or
 8 anything along those lines.
 9 Q. Did you tell your dad that there were these
 10 experiments?
 11 A. No.
 12 Q. Did you tell your dad on that -- I mean, did
 13 you always remember the fact that Mueller told you
 14 don't tell anybody about this?
 15 A. Yes. I mean, that's one of the things that he
 16 ingrains -- ingrains is probably a bad word, but one of
 17 the things that at each session he would say.
 18 Now -- and he would even ask have you told
 19 anybody about what's going on here, because you know if
 20 you do and the brothers here at the school find out, it
 21 will ruin my purpose of having been sent here by the
 22 order.
 23 Q. So you always know -- you always knew and
 24 never forgot on any occasion the fact that he told you
 25 do not tell anybody about the experiments?

1 out with his master's degree.
 2 Q. In 1991 was he still signing correspondence as
 3 Wilham Mueller, SM?
 4 A. If I remember correctly, it would be all just
 5 Bill --
 6 Q. Bill?
 7 A -- is how he would sign off.
 8 Q. It was Bill and his address in San Antonio?
 9 A. You know, as far as that is concerned, I don't
 10 know. I don't recall that. I know that he would
 11 always sign it Bill.
 12 Q. Did you still think in 1991 he was a member of
 13 the order?
 14 A. I knew in 1991 that he was not. He -- as I
 15 said earlier, I don't know if it was a phone
 16 conversation or a letter in which he stated that he was
 17 leaving the order so he could better take care of his
 18 mother
 19 Q. Tell me everything that you spoke to your dad
 20 about as it related to Mueller
 21 A I've already told you everything
 22 Q. Everything?
 23 A Exactly. Just that, you know, we helped him
 24 out Some of the students helped him out with his
 25 master's degree.

1 A Correct.
 2 Q. Although you knew other people were involved
 3 in the experiments?
 4 A. I -- he had mentioned names to me. And then
 5 he had on occasion alluded to he had several students
 6 that assisted him with his master's degree.
 7 And only on one time did he ever mention
 8 anybody else's name, and that was Matt Eddy and Dan
 9 Finnegan
 10 Q. So you knew from some source, probably him,
 11 that several students were also going through these
 12 experiments?
 13 A I was told by him that there was more than
 14 just me
 15 Q. And were there any occasions when other
 16 students were present during the experiments that you
 17 participated in?
 18 A. No, sir
 19 Q. And I think you told me this, and I just want
 20 to make sure You never forgot on any -- at any time
 21 since 1985 the fact that he put a kufe to your throat?
 22 A Correct
 23 Q. You always remembered that?
 24 A Yes, sir
 25 Q. And did you also always remember the fact that

1 on one occasion, I think it was the fourth incident,
 2 that he had you take your clothes off down to your
 3 underwear?
 4 A. Yes, sir.
 5 Q. You always remembered that?
 6 A. Yes, sir.
 7 Q. And did you also always remember waking up on
 8 one occasion with an erection? Did you always remember
 9 that?
 10 A. No, sir.
 11 Q. Did you always remember the fact that he was
 12 fondling you on one occasion?
 13 A. No, sir.
 14 Q. That's something you forgot?
 15 A. Yes.
 16 Q. Did you --
 17 A. I think the word forgot in that particular
 18 instance is a bad word to use. It was just something
 19 that I either suppressed or chose not to recall through
 20 some state.
 21 Knowing -- having it surface since all this
 22 has come about, I believe that it wasn't forgotten. It
 23 was definitely buried deep enough to where I didn't
 24 have to relive it.
 25 Q. Okay. Well, let me ask you about that. On

1 actually had his hand on his penis?
 2 A. Yes, sir.
 3 Q. Was he touching you above or below your
 4 underwear?
 5 A. His hand was actually underneath my pants. I
 6 had a sweat suit on with gym shorts on because I had
 7 come straight from practice.
 8 My actual school clothes were still in the car
 9 because I didn't feel like getting them all wet from
 10 practice.
 11 Q. Okay. So what you recall now is him actually
 12 physically touching your penis and his own penis, his
 13 right hand on himself, his left hand on you?
 14 A. Yes, sir.
 15 Q. Did you remember that as you drove home that
 16 night?
 17 A. No.
 18 Q. You did not?
 19 A. No.
 20 Q. Okay. Did you remember it as you walked out
 21 to your car that night?
 22 A. That -- after that episode and the
 23 fourth episode, a lot of things that happened were kind
 24 of a blur for me.
 25 Q. What do you mean a blur?

1 the date of the second incident, you recalled that he
 2 was fondling you now? I mean, you've testified to
 3 that?
 4 A. Yes, sir.
 5 Q. And did you recall on the day it occurred that
 6 that happened?
 7 A. In the fact that it happened then, I would
 8 have to say I know that it happened. But, again, as
 9 far as did I consider myself molested or along those
 10 lines? Is that what you're trying to get at?
 11 Q. No. What I'm asking you is on this date -- I
 12 think the second incident took place in November?
 13 A. Early November, yes.
 14 Q. And that's the first incident where you can
 15 testify that there was sexual contact?
 16 A. Correct.
 17 Q. All right. And what you told me was that when
 18 you came to, you realized that he was massaging your
 19 genitals?
 20 A. Uh-huh.
 21 Q. That's true?
 22 A. Yes, sir.
 23 Q. That's what you recollect?
 24 A. Yes, sir.
 25 Q. And you heard him moaning also, and he --

1 A. As if it was surreal. I'm looking at it from
 2 an adult standpoint now trying to articulate it as a
 3 17 year old. It was almost as if it didn't -- I
 4 can't -- here I am walking out. I'm afraid. Did it
 5 really happen?
 6 I'm starting to tell myself, okay, that just
 7 didn't happen, that just didn't happen. So I convinced
 8 myself that it didn't.
 9 And it wasn't until I went through counseling
 10 that it came out that, yes, it did happen and you
 11 buried it so you didn't have to relive it again.
 12 Q. Well, let me just make sure I understand what
 13 you're telling me here. In other words, after it
 14 occurred, you recognized what occurred? You knew it
 15 happened, and you appreciated it happening?
 16 A. No. What I'm saying is that from the time
 17 that I went into the locker room until the time that
 18 I -- the next recollection I have after being made to
 19 pass out is him saying how long were you out, are you
 20 afraid, and the answers that I gave at that point and
 21 then leaving.
 22 Until I went through counseling and really
 23 started examining everything in my own mind why things
 24 were happening did I realize that there was a part that
 25 -- was missing that I couldn't account for in my own mind

1 from the time that I was waking up until the time that
 2 I was fully cognizant of what was going on around me.
 3 That was missing, and that came through counseling.
 4 Q. Well, what you're telling me was it occurred
 5 and it was a blur?
 6 A. Correct.
 7 Q. Okay. And what you did after that is in your
 8 mind you said -- you convinced yourself what just
 9 happened did not happen?
 10 A. That's what I said. And what I mean by that
 11 is from the time that it happened for 20 years, if you
 12 were to ask me, tell me about the sessions that you had
 13 with Brother Mueller, that was something that would
 14 never even come to my mind to relate to anybody.
 15 Q. So it happened, and then you consciously
 16 suppressed it is what you did?
 17 A. I don't know if it was consciously or
 18 subconsciously, but I can tell you that until I sat
 19 down with my counselor and started going through -- you
 20 know, not reliving everything but just openly
 21 discussing it and having time to reflect on what
 22 happened, there was a time period there that was lost,
 23 and it was found
 24 Q. So in September of 2005 when you read about
 25 what was being reported in the paper in St. Louis, did

1 A. At that time when I first found out about it,
 2 no.
 3 Q. Did you --
 4 A. It was through counseling that that -- that
 5 happened. You know, it wasn't -- as I related to it my
 6 Dr. Harris, it was Robert, something happened. We need
 7 to address that, and we need to move on to get you
 8 healthy.
 9 Q. Was it only as a result of counseling then
 10 that you have come to a conclusion that you were
 11 sexually abused?
 12 A. I have come to the realization that I was
 13 sexually abused. There's no conclusion involved.
 14 Q. Okay Only through counseling?
 15 A. Through counseling
 16 Q. And so did you ever claim that you were
 17 sexually abused before the counseling started?
 18 A. Prior to September of 2005?
 19 Q. No, at any time prior to your commencement
 20 with counseling, did you ever claim to be sexually
 21 abused?
 22 A. I made no statement of being sexually abused
 23 prior to finding out about Brother Mueller and what was
 24 going on and what had transpired.
 25 Q. Now my question is you found out about

1 you believe you were sexually molested then?
 2 A. Yes
 3 Q. In September 2005?
 4 A. Yes
 5 Q. Okay And that was even before you went
 6 through any counseling?
 7 A. Yes
 8 Q. And you believed that because you remembered
 9 it?
 10 A. No, I believed -- I believed that I was at the
 11 very least a victim A victim of what, I needed to go
 12 figure that out That's why I started making phone
 13 calls as far as who can help me
 14 Because of, one, the training that I received
 15 through the government, through my particular job now,
 16 as these things started progressing, as I read Bryan
 17 Bacon's account and from what I understand Bryan only
 18 had the one account, then I went back and said, okay,
 19 here's what happened to me It's identical to my
 20 fourth session
 21 I need to do -- I need to get help to figure
 22 out if I truly am a victim from the other ones, from
 23 the other three
 24 Q. Did you have a recollection in September of
 25 2005 that you were sexually abused?

1 Brother Mueller in September of 2005?
 2 A. Correct
 3 Q. Okay And just from what you read in the
 4 paper, did that make you believe you were sexually
 5 abused?
 6 A. It made me aware that there was reason for me
 7 to believe that I was and that I needed to seek the
 8 answers to either confirm or deny that
 9 Q. But you only have realized that sexual abuse
 10 occurred I think you said as a result of being -- of
 11 going through counseling?
 12 A. Of sitting down and talking with Dr. Harris,
 13 examining -- you know, not -- examining is not a good
 14 word
 15 But telling him what I know and then having
 16 those memories come back to me through the counseling,
 17 through the fact of being told constantly by Dr. Harris
 18 you know something happened, dig it up, find it out,
 19 and let's get past it so we can heal you
 20 It's not dig it up and find it out so we can
 21 profess to the world that you are a victim, but we've
 22 got to get past what has caused you your damages or
 23 whatever has happened from the time that it happened
 24 until the time of today We've got to heal you.
 25 Q. But until Dr- Harris helped you make that

1 realization through counseling, did you believe you had
 2 been sexually abused?
 3 A. I had no need to.
 4 Q. Okay. Did you claim to be sexually abused
 5 before these counseling sessions?
 6 A. I had no need to claim sexual abuse.
 7 Q. Did you claim it?
 8 A. May I finish?
 9 Q. Did you claim it?
 10 A. May I finish?
 11 Q. Sure. Now I'm going to ask you, did you claim
 12 it? Go ahead.
 13 A. I did not have a need to claim sexual abuse
 14 until September of 2005, because prior to that point,
 15 it was my recollection and my understanding that I was
 16 being used as an individual who partook to assist
 17 somebody in getting their master's degree, that it was
 18 purely legitimate.
 19 It was not until after that time when I saw
 20 the statements by other people that, hey, you were part
 21 of this. This happened to you Let's find out the
 22 answers.
 23 Q. Now let me ask the question again. Did you
 24 claim before you started counseling with Dr. Harris
 25 that you were a victim of sexual abuse? Did you make

1 recollection was I was unconscious. And through
 2 counseling, these other -- these other things
 3 manifested themselves.
 4 So I believed when I went to Dr. Harris, yes,
 5 I was a victim of sexual abuse based upon the
 6 information that had been printed, his history, and the
 7 history of the recollections and recounts of other
 8 people's statements that I had read.
 9 So that led me to believe that even if I
 10 cannot recall me being a victim of sexual abuse, I
 11 believed I was.
 12 Q. What evidence did you have before you went
 13 through counseling that you were actually sexually
 14 abused, if any?
 15 A. Prior to the recollections being made?
 16 Q. Right.
 17 A. The memories being brought back up?
 18 Q. Yes, sir.
 19 A. None.
 20 Q. Then what was the basis for your claiming to
 21 be sexually abused if you had no evidence of it?
 22 A. Well, after reading -- after reading all of
 23 these statements and putting two and two together, the
 24 fact that I assisted this individual in the same manner
 25 in which he was having people from the 1960s through

1 that claim? Yes or no?
 2 MR. CRAIG Well, or do you recall?
 3 Q. (By Mr Noce) Well, did you make the claim?
 4 That's all I'm asking you. Did you make the claim that
 5 you were sexually abused before you went through
 6 treatment with Dr. Harris?
 7 A. I believe I started treatment before or right
 8 after -- right before or right after I contacted your
 9 office, before we met for the first time, so I would
 10 say yes.
 11 Q. You did --
 12 A. Based upon the fact that circumstances
 13 happened so quickly after I found out about it, for me
 14 to say definitively that prior to meeting Dr. Harris
 15 for the first time that I believed I was a victim of
 16 sexual abuse or meeting with my counsel afterwards, it
 17 happened very quickly For me to say on Monday, yes, I
 18 did. Oh, wait a minute, that was Tuesday I met with
 19 Dr. Harris
 20 Q. Before you met with Dr. Harris, what evidence
 21 did you have that you were sexually abused?
 22 A. I took to him here's the circumstances of what
 23 I recall.
 24 Q. Before you went to see Dr. Harris --
 25 A. I was unconscious, so for the most part, my

1 the 1980s, the early 80s assist him, it was my
 2 understanding that I should be considered a victim and
 3 that I should take appropriate steps to protect myself,
 4 and that's what I did.
 5 Q. Did you -- did you mention to your dad during
 6 that three day trip that William Mueller had held a
 7 knife to your throat?
 8 A. No.
 9 Q. Did you mention to your dad during the
 10 three day trip that he asked you to take your clothes
 11 off?
 12 A. No.
 13 Q. Did you mention to your dad during that
 14 three day trip that he had blindfolded you with?
 15 A. No.
 16 Q. With your clothes off?
 17 A. No.
 18 Q. You knew all that at that time, though?
 19 A. I knew that as part of the master's degree
 20 program that he was working on, yes
 21 Q. Did you know that he was removed from Vianney
 22 in November of 1985?
 23 A. No. He told me he left voluntarily, that he
 24 went down to -- he had asked for a request to go to
 25 San Antonio to be closer to his mother

1 Q. Did you know -- did you know any of the
 2 circumstances under which he left Vianney?
 3 A. No, sir.
 4 Q. We had marked as Defendant's Exhibit A --
 5 A. You're talking this one here?
 6 Q. Yeah, Exhibit A. We gave you a copy. We were
 7 going through this.
 8 A. Uh-huh.
 9 Q. Did you sustain any physical injury that you
 10 can recall as a result of any of these incidents
 11 involving William Mueller?
 12 A. I don't recall.
 13 Q. Did you have any medical treatment on or
 14 following the dates of any of the incidents as a result
 15 of the incidents?
 16 A. I would say when I went to my primary care
 17 physician in September of 2005. Or are you talking
 18 immediately thereafter?
 19 Q. I'm talking about, you know, as a result of
 20 any of these incidents which you've described as
 21 assaults and batteries that took place in 1984, did you
 22 receive any medical treatment or counseling or care at
 23 that time?
 24 A. In 1984 or 1985?
 25 Q. Right.

1 THE WITNESS: Correct.
 2 Q. (By Mr. Noce) And then the incident with the
 3 knife, you were fully conscious?
 4 A. Correct.
 5 Q. Have you had occasion to read the petition?
 6 A. I read it when it first came to me, and it was
 7 stuck in the file from that point forward.
 8 Q. Was there anything that you read in there that
 9 you thought was inaccurate or that you needed explained
 10 to you?
 11 A. No, sir.
 12 Q. We have marked Exhibit B which are your
 13 interrogatory answers that I asked you to take a look
 14 at those. I think that's the supplemental which I
 15 think is the latest answers, and --
 16 MR. CRAIG: Do you want him to read the whole
 17 document?
 18 MR. NOCE: Yeah, take a look at those, would
 19 you, please?
 20 MR. CRAIG: Take as much time as you need.
 21 MR. NOCE: Yeah I'll step out to get copies
 22 made here.
 23 (Defendant's Exhibit C was marked for
 24 identification.)
 25 MR. CRAIG: Done?

1 A. No.
 2 Q. Did you -- did you notice anything about your
 3 body in the form of an injury after any of these
 4 incidents?
 5 A. No.
 6 Q. When you were on the diving team, did you
 7 shave your body?
 8 A. No, sir.
 9 Q. On each occasion, each of these four occasions
 10 that you've mentioned that -- did Mueller always render
 11 you unconscious prior to assaulting you?
 12 A. I was always rendered unconscious at some
 13 point during the process
 14 Q. Did all of these assaults that were
 15 perpetrated on you take place while you were
 16 unconscious?
 17 A. With the exception of the fourth one, yes
 18 Q. Which is the knife?
 19 A. Correct
 20 Q. So on each and every other occasion, you were
 21 unconscious during the assaults?
 22 A. Yes.
 23 MR. CRAIG Well, I want to object.
 24 Notwithstanding his previous testimony about coming out
 25 of sleeping and being abused, so --

1 THE WITNESS: Yeah.
 2 Q. (By Mr. Noce) I'm going to hand you
 3 Exhibit C. I gave you a copy, Dan. I'm just going to
 4 direct your attention to the answers
 5 If you look at B and C and just confirm for me
 6 that the answer given to Interrogatory 10 -- and I'll
 7 tell you this is kind of a tricky deal, but B is your
 8 supplemental answers and C would be your answers, which
 9 it looks to me like your original answers to the
 10 interrogatories are C, and like I said, B are your
 11 supplemental answers.
 12 And would you take a look at the answers that
 13 you made to No. 10 in each set and confirm for me that
 14 it's the same answer?
 15 MR. CRAIG: You mean just word for word that
 16 it's the same?
 17 MR. NOCE: I think --
 18 MR. CRAIG: I can confirm that for you
 19 MR. NOCE: Okay
 20 MR. CRAIG: What I did for the supplemental
 21 was, I just -- and I think even in the letter I wrote
 22 to you -- where it's italicized is the information
 23 that's supplemented which really had to do with
 24 personal information that we had to wait for the
 25 -- protective order

1 MR. NOCE: Okay.
 2 MR. CRAIG: So unless it's italicized, it's
 3 the same.
 4 MR. NOCE: Then we can stipulate, Dan, that
 5 the answers -- the answer to No. 10 in the -- in
 6 Exhibit C is verbatim to the answer to No. 10 in
 7 Exhibit B?
 8 MR. CRAIG: Yes.
 9 MR. NOCE: All right. That's all I need.
 10 Q. (By Mr. Noce) Now talking about Exhibit C
 11 which is the -- I'm sorry -- Exhibit B which is the
 12 supplemental set of interrogatory answers, we took some
 13 time. Mr. Visnaw, did you have a chance -- I think you
 14 had a chance to read these?
 15 A. Yes.
 16 Q. Did you see anything in there that you think
 17 is inaccurate or incorrect?
 18 A. The one thing on Answer No. 10 is that when I
 19 was writing these, the second and third sessions as I
 20 listed them here are reversed. I put the
 21 second session down. It actually should have been the
 22 third, and the third session should have actually been
 23 the second session.
 24 Other than that, I don't -- I don't see
 25 anything that would catch my eye other than that to say

1 you know, what does that got to do with what's going
 2 on.
 3 Q. Did you -- had you heard from any other person
 4 involved in any of this litigation involving William
 5 Mueller any allegations related to hair gel?
 6 A. Not that I can recall.
 7 Q. Okay. Is there any medical treatment that
 8 you've received that you believe is related to whatever
 9 happened back in 1984 and 5 while you were enrolled at
 10 Vianney other than the treatment and care provided by
 11 Dr. Harris, the psychologist?
 12 A. My -- the treatment that I've received from
 13 my -- Dr. Bernard and the prescribing the Effexor, the
 14 anti-depressant.
 15 Q. So there's the treatment from Dr. Bernard
 16 which would primarily be referring you or prescribing
 17 the anti-depressant, and also then there's the
 18 treatment by Dr. Harris?
 19 A. Yes, sir.
 20 Q. And that's it?
 21 A. Yes, sir.
 22 Q. Have you been hospitalized?
 23 A. For this particular incident?
 24 Q. Yes, sir.
 25 A. No

1 that there's an error
 2 I mean, my son obviously -- or the birth of my
 3 third child isn't listed here in the interrogatories as
 4 they were written, but I don't see anything that would
 5 be glaringly out of place.
 6 Q. And as far as you're concerned, these -- the
 7 answers are still -- they were accurate when you signed
 8 them, and they're still accurate?
 9 A. I believe that they're accurate to the point
 10 that at the time that I signed them the hair gel issue
 11 hadn't come out and that the complete history of the
 12 fourth session was not -- I didn't recall that until
 13 after these were signed.
 14 Q. Okay. And that was after that April session?
 15 A. When you say the April session, you're --
 16 Q. With Dr. Harris
 17 A. The --
 18 Q. I'm sorry. Strike that. Let me start over.
 19 The April incident while you were working in Denver.
 20 A. That was when the -- when my full recollection
 21 or realization of the fourth incident came about. And
 22 the hair gel incident came about just through --
 23 through the conversations with Dr. Harris.
 24 And it didn't strike me as hard, because I
 25 looked at it as he had me put hair gel in my hair, so-

1 Q. Or for anything related to your litigation
 2 here?
 3 A. No.
 4 Q. Have you lost any wages?
 5 A. Outside of using leave to go to -- using
 6 vacation time or sick leave to go to these doctors'
 7 appointments and to come here.
 8 Q. Okay. Well, I don't know that coming here
 9 counts, so --
 10 A. Well, the question was had I lost wages. I
 11 answered the question.
 12 Q. Have you lost wages that are related to the --
 13 you say you did lose some wages related to the
 14 treatment?
 15 A. Well, for me, I look at that as saying if I
 16 have to take sick leave or personal time, personal
 17 vacation time that could be used elsewhere to go to the
 18 counseling sessions or to go talk to Dr. Bernard about
 19 either, you know, monitoring my anti-depressant
 20 medication, I believe that that could be -- in my mind
 21 is considered lost wages.
 22 Q. In -- and how many occasions would that be
 23 that you've been to see Dr. Harris do you think? Ten
 24 or less?
 25 A. I think it's over ten. I don't know the exact-

1 number.
 2 Q. Have you had any out-of-pocket expense --
 3 A. I have.
 4 Q. -- seeing Dr. Harris?
 5 A. I have copays. I've paid -- right now, I've
 6 only paid \$90, but that total is going to go up
 7 dramatically.
 8 He just hasn't -- he hasn't submitted me a
 9 bill, but through my health insurance, I can show where
 10 I have a \$30 copay for every time that I see him, and
 11 also the medications from Dr. Bernard.
 12 Q. And you first went to see Dr. Harris on
 13 November 3rd, 2005?
 14 A. I don't know if it was November 3rd, 2005. I
 15 thought it was in October.
 16 Q. I'm looking at the record. It looks like the
 17 personal data sheet --
 18 A. No, what those were is when I signed -- I had
 19 to sign those because he was actually asking -- I
 20 believe he was asking for an extension on the EAP
 21 program. That's how I recall those.
 22 I do recall going to see him in October. I
 23 had three visits in October, and he had asked for an
 24 extension.
 25 And in order to get the extension -- we'd

1 I think it's about Brother Mueller. I don't know the
 2 exact content of that e-mail.
 3 I think he was trying to get some information,
 4 background information, but again, you'd have to ask
 5 him that.
 6 Q. And why don't I show it to you and you just
 7 tell me if you understand what that's doing in your
 8 medical record?
 9 MR. CRAIG: Again, he doesn't want you to
 10 speculate, so if you don't know, you don't know.
 11 Q. (By Mr. Noce) I'm just asking if you have any
 12 explanation for a record regarding Reverend Osborne
 13 that's in your medical record?
 14 A. Okay. During one of sessions -- and I don't
 15 know why this particular e-mail is in there, if it does
 16 reference Father Osborne.
 17 But during one of the sessions, I had
 18 mentioned that I had heard that Father Osborne had an
 19 allegation levied against him.
 20 Q. Do you know him?
 21 A. Father Osborne?
 22 Q. Yes, sir.
 23 A. He -- I don't know him personally. I do know
 24 that he had things to do with Vianney when I was there,
 25 but I -- you could put him in a room, and I wouldn't be

1 already gone through several sessions, additional
 2 sessions, and he said that I needed to sign those that
 3 day
 4 Q. All right. Now were you referred to him by
 5 Dr. Bernard or by somebody else or by EAP?
 6 A. By EAP
 7 Q. And that's through work?
 8 A. Correct.
 9 Q. You have had a chance to see Dr. Harris's
 10 records?
 11 A. Briefly, yes.
 12 Q. Were you aware that the records include
 13 contact by David Clossey and Barbara Doris?
 14 A. To --
 15 Q. They're in his records. I'm -- do you know
 16 who H. Freidman is?
 17 A. No, sir.
 18 Q. Or Helen Freidman?
 19 A. No, sir. I know that there's -- I know when I
 20 reviewed it, I saw there was an e-mail in there. But I
 21 didn't -- I don't remember who the sender of that
 22 e-mail is.
 23 Q. Okay. Do you know what it's doing in your
 24 medical records?
 25 A. If -- like I said, I just briefly reviewed it.

1 able to pick him out.
 2 So -- then I had brought that up simply just
 3 to say, you know, and here was another instance of the
 4 clergy that was associated with Vianney when I was
 5 there that has an allegation
 6 So if this is in here, I can't speculate, but
 7 I would -- I think it was just to do some research on
 8 it.
 9 Q. Okay. So you would have made that mention to
 10 the -- to your counselor, here's another incident of
 11 abuse involving Vianney?
 12 A. It was -- it was brought up -- and I can't
 13 remember the exact way that it was brought up, but it
 14 was brought up as, you know, if it did happen, here's
 15 just another example of, you know, the church trying to
 16 hide something or the order trying to hide something.
 17 So I don't -- you know, again, I'm
 18 speculating. I don't want to speculate why this is in
 19 here. That's a question you'll have to ask him.
 20 Q. Dr. Harris?
 21 A. Yes, sir.
 22 Q. All right. Do you know who Barbara Doris is?
 23 A. I believe Barbara Doris is -- her name sounds
 24 very familiar. I believe she's associated with SNAP
 25 either in Kansas or the Kansas City, Missouri side

1 I'm not -- I'm not -- I think I may have had
2 one conversation with her where she called me shortly
3 after I spoke with Mr. Clossey, and that was it.

4 She just wanted to invite me to a meeting in
5 the future if they had one, and I haven't had any
6 contact with her or Mr. Clossey.

7 Q. And that contact was by phone with both of
8 them?

9 A. When she called me?

10 Q. Yes, sir.

11 A. Yes.

12 Q. Did she call you at home or at work?

13 A. I believe it was on my cell phone, but I'm
14 not -- I give my cell phone number out for everything.
15 It's the easiest way to get ahold of me.

16 Q. And do you know who Helen Freidman is at all?

17 A. No, sir.

18 Q. And you -- before today, you've never read
19 this other than maybe to glance at it?

20 A. Correct.

21 Q. And you knew it was in your records, but you
22 really didn't have any explanation for why?

23 A. I didn't even know it was in my records until
24 I reviewed them with my attorney

25 Q. Okay. Did you ask Dr. Harris in February of

1 helping you?

2 A. Yes.

3 Q. And as part of this process, you're wanting to
4 get back to church and feel safe?

5 A. I would like to go back and believe that not
6 everybody in the Catholic church has this way, and
7 that's one of the things that he's helping me to
8 understand is that I don't need to look at people that
9 way. I don't need to look at an adult male as someone
10 who's going to hurt me.

11 Q. On this session for February 23rd, '06, it
12 says you were very upset yesterday answering
13 interrogatories

14 And the only reason I ask that, is that
15 about -- do you believe that would have been about the
16 time that you answered these written questions to fill
17 in the information?

18 A. I believe so

19 Q. You don't have any reason to doubt that's
20 about the date?

21 A. I don't, no.

22 Q. Were you ever prescribed Paxil?

23 A. I think I had tried Paxil initially, but it
24 gave me a very numb feeling, and it wasn't -- I would
25 go through the day extremely numb.

1 '06 to help you get through the legal process related
2 to the abuse?

3 A. What I had asked him is that there was
4 additional stresses being put on me emotionally and
5 psychologically because of what was going on, and I
6 needed to find a way to cope with that, not so much to
7 help me get through the litigation but to help me deal
8 with the extra pressures and stresses that were -- that
9 are associated with going through the legal process.

10 Q. So you didn't ask him specifically to help you
11 get through the legal process related to the abuse?

12 A. I had asked him to help me cope with it, to
13 help me deal with all the extra tension and whatnot
14 that was going on, because it was starting to take a
15 toll on my family.

16 Q. Did you tell him you were anxious and
17 traumatized by the legal process arising from or
18 delving into abuse?

19 A. I told him that because of what had happened
20 to me, the fear of having to relive it over and over
21 and over again had placed additional strains on me,
22 stresses that would manifest themselves just in being
23 quiet or being quick to anger, like that, and I just
24 said help me get through it

25 Q. Do you think that Dr. Harris' counseling is

1 As my wife would say, you're not yourself,
2 there's something wrong, so that was at the very
3 beginning

4 Q. Did you provide Dr. Harris with some of the
5 newspaper articles involving Mueller that were running
6 in the Post?

7 A. He had asked me if -- how they could be found
8 on the web, and I told him how I had -- was able to
9 Google them, and he wasn't able to because he was
10 spelling Mueller M-I-L-L-E-R and not M-U-E-L-L-E-R.

11 So once he found them, I believe he printed
12 them off or did whatever he had to do

13 Q. Did you tell Dr. Harris in November of 2005
14 that you were upset because, quote, why I kept quiet
15 for 20 years? Did you make that statement to him?

16 A. I made the statement to him having been able
17 to realize that I was a victim and that these things
18 had happened to me that if I could have been able to do
19 something, you know, in 1986 -- if I had thought -- if
20 I had thought that these were incidents of child
21 molestation or abuse back then, why didn't I speak up
22 and say something.

23 And he said, well, because you didn't -- you
24 didn't think like that back then. You thought that you
25 were doing something okay.

1 Q. What was it that you could have said 20 years
2 ago that you're upset about?

3 A. Well, if I had -- if I had known then what I
4 know now, I probably could have kept, you know, Bryan
5 from going through the things that he went through and
6 countless other students from going through what they
7 had done.

8 If I had -- if I had as a 17 year old thought
9 as a 39 year old today, I could have kept that from
10 happening.

11 And potentially through my job, I know that
12 pedophiles or people that are involved in actions like
13 this, you just don't cure them overnight. Who else has
14 he traumatized since then?

15 I mean, so that -- that weighs on me a lot,
16 that I could have maybe nipped this in the bud in '85
17 as opposed to having other people go through it for
18 20 years since then.

19 Q. When you say why I kept quiet for 20 years,
20 exactly tell me what it is you kept quiet.

21 A. Just about the experiments, not -- nothing
22 about -- just saying, hey, this is what he was doing.
23 You know, he was having us go unconscious and then wake
24 up and ask us all these stupid questions and go through
25 those -- make that known.

1 as they were naked in a bathtub or when I was changing
2 them

3 It made me literally walk away from any
4 clergyman, any man of the cloth that ever came near me.
5 I could not be around them. I still not can be around
6 them, because I'm afraid that they are going to do
7 something to me or my children.

8 It made me look at every -- once everything
9 was brought up, it made me look at every adult male
10 that was around my kids as somebody who was going to
11 take them and commit nasty crimes to them.

12 It has cost me five years of relationship with
13 my father who died months after we reconciled, so there
14 was five years that wasn't there.

15 It cost me -- looking back now, it cost me a
16 chance to get a higher GPA, to graduate at a higher
17 class ranking at Vianney, because around the time that
18 I went from the gold honor roll to the silver honor
19 roll, it would be right around that time that all that
20 started.

21 You know, there's just a whole myriad of
22 things that, I mean, I can try to talk about. It will
23 get to me. It will have me break down. I don't want
24 to get to that point, but that's where my damages is,
25 not in the fact that he made me pass out.

1 Q. So if you would have -- did you feel what you
2 knew for 20 years was something you should have
3 mentioned in 1985?

4 A. No, I didn't believe that until after -- after
5 it had been made public and the remorse or the anxiety
6 about, you know, why couldn't I put two and
7 two together then like I am now

8 If I had, you know, said something to somebody
9 about, hey, you know, he's making us pass out and
10 whatnot to an adult -- because as a 17 year old, you
11 think you're invincible. The world can't hurt you

12 You know, if I had said just something in
13 passing, maybe somebody would have done that. But
14 that's me thinking about it now, not me thinking about
15 it 17 or 20 years ago

16 Q. And that -- and you always knew he made you
17 pass out?

18 A. I think that's been established, yes

19 Q. And that's part of the damages you're claiming
20 here, that he made you pass out?

21 A. I think my damages are the fact that as an
22 adult now, those things that have happened to me back
23 in 1984 and 1985 have, one, made me walk away from a
24 faith that I thought I was, you know, pretty sound in

25 It made me afraid to look at my own children

1 Q. You knew that -- you've always known that he
2 took you through these experiments and made you pass
3 out?

4 A. That's been established

5 Q. And you knew that was wrong when he did that?

6 A. No, I didn't

7 Q. You didn't?

8 A. Not at the age of 17

9 Q. You thought it was okay for an adult to make
10 you pass out when you were 17 1/2 years old?

11 MR. CRAIG: Hold on

12 Q. (By Mr. Noce) That's what you thought?

13 MR. CRAIG: We have been over this several
14 times. I mean --

15 MR. NOCE: No, I don't think I've asked that
16 question before, but I'm asking now

17 Q. (By Mr. Noce) You thought it was okay for an
18 adult to make you pass out at age 17 1/2? That's your
19 testimony?

20 A. At the age of 17, 17 1/2, an individual who's
21 in a position of authority in my school who's also a
22 man of the cloth comes to me and says I need your help
23 conducting my master's program and I have the okay of
24 my superiors to do so, yes, I thought it was okay.

25 -Q. -But that's what you kept quiet about for

1 20 years, and that's what you're telling frustrated you
2 when you made that comment to Dr. Harris in November of
3 '05?

4 A. The comment that I made to Dr. Harris is
5 knowing what I know now versus knowing what I knew
6 then, I'm beating myself up about it, because knowing
7 now through my job and through just being an adult, I
8 should have known better.

9 And Dr. Harris's statement is, you were
10 17 years old. You had no idea. You went with what you
11 were told, and you believed it because you had no
12 reason to believe otherwise.

13 Now that you're 39 years old, you have a whole
14 world of experience behind you, you have training by
15 the federal government in child pornography,
16 pedophilia.

17 You know better now, but you're beating
18 yourself up over what a 39 year old male would do
19 versus what a 16, 17, 18 year old male would do put in
20 the same situation.

21 Q. That's what you kept quiet about? That's what
22 you kept quiet about?

23 A. That statement, and again, that statement
24 right there is -- apparently, he put it in quotes. I'm
25 telling you how that statement -- one, why that

1 record. You need to ask him why he wrote it down.
2 MR. NOCE: That's right. I'm asking him is it
3 accurate. No, no, I'm asking --

4 MR. CRAIG: May I please lodge an objection
5 for the record so the court reporter can get it down?
6 Okay You're asking him to speculate on a record he
7 did not create. You're trying to impeach him -- may I
8 please finish?

9 MR. NOCE: I haven't said a word.

10 MR. CRAIG: You were preparing to say a word.

11 MR. NOCE: I was

12 MR. CRAIG: There you go. And so trying to
13 impeach him with a record he did not create Why those
14 things were written and for the purpose for which they
15 were written, those are things you can direct to
16 Dr. Harris.

17 You can certainly ask the witness did you say
18 these things, yes or no, and that's all he can do for
19 you.

20 Q. (By Mr Noce) All I'm -- okay Subject to
21 your attorney's objection, did Dr Harris accurately
22 record what you told him?

23 A. If he recorded it having discussed the
24 hyperventilation or the passing out on quite a few
25 occurrences, if he put it in his notes, we talked about

1 statement was put into quotes

2 Because I'm beating myself up about what a
3 39 year old male would have done as opposed to the
4 17 year old kid 22 years ago

5 Q. And did you also tell on November 3rd, 2005
6 Dr Harris that you had only told your father about
7 what occurred at age 17?

8 A. As I've already stated, yes

9 Q. But he died in 1991?

10 A That's correct

11 Q. In fact, did you make this statement to him.
12 "Had only told father occurred at age 17 about
13 Brother Mueller, four incidents, 'experimented' by
14 having Robert hyperventilate and pass out? What
15 happened while passed out?" Is that what you told him?

16 A. I told Brother Mueller -- I'm sorry I told
17 Dr Harris that I had told my father that I was
18 assisting Brother Mueller with his master's degree, and
19 that was that

20 What he put in that report, you know, we had
21 talked about the hyperventilation often and the passing
22 out often through my counseling sessions.

23 Q Did he -- did he record it accurately I guess
24 is what I'm asking you?

25 MR.-CRAIG.-Strike that That is Dr-Harris's

1 if

2 Now is it accurate to that particular date I
3 did tell him that I told my father, that I told my
4 father that I assisted Brother Mueller with his
5 master's degree, yes, that's accurate.

6 The hyperventilation, we talked about it quite
7 often.

8 Q. I wasn't going to mark it, but it's a part of
9 your records. It's November 3rd, '05 Could you take
10 a look, and just under the part where it says history
11 of problems, can you just tell me is there anything in
12 that part of the record that you believe is not
13 accurate?

14 MR. CRAIG: All I can say and interject while
15 he's looking is we are presuming that Dr Harris wrote
16 in this record that Robert told him that he
17 specifically told his father specific details about the
18 assaults that Robert does not recall telling his
19 father

20 And we were presuming that from a witness that
21 is not here testifying That said, review the record
22 You can answer the question as best as you can I
23 don't want you to speculate

24 THE WITNESS. Well, if I may, reading thus, it
25 doesn't state that I told my father at the age of

1 17 Brother Mueller had four incidences.
 2 Q. (By Mr. Noce) No, it says only told my
 3 father?
 4 A. No, it says, had only told my father, done.
 5 Occurred at 17 years old. I mean, that could have been
 6 from us going back and rehashing some of the old stuff.
 7 I can't say why he put it the way he did. So
 8 you're asking me to verify if any of this is
 9 inaccurate I mean, I can't say yes or no to that.
 10 MR. NOCE: Okay. That's fine That's an
 11 answer. Is -- I better have this one marked.
 12 (Defendant's Exhibit D was marked for
 13 identification.)
 14 Q. (By Mr. Noce) Exhibit D, Mr Visnaw, is that
 15 your handwriting?
 16 A. Yes, it is.
 17 Q. Let me see it just for a minute.
 18 A. I'm sorry.
 19 Q. Thanks. I want to know if this is a record
 20 that you filled out on the first time you saw the
 21 doctor or on November 3rd, 2005. I'll ask you, do you
 22 remember?
 23 If you look at the record, both before and
 24 after that Exhibit D in the doctor's file, they're both
 25 dated November 3rd, '05.

1 A. Yes, sir.
 2 Q. Did you do that?
 3 A. I don't recall. I don't think there would
 4 have been a cause for me to underline may.
 5 Q. Was there anything written on this page that's
 6 not in your handwriting?
 7 A. No, sir.
 8 Q. On Exhibit D? Okay Can you say that you did
 9 or did not underline it?
 10 A. I don't recall if I underlined it or not. I
 11 mean, like I said, sir, there's no cause for me to have
 12 underlined it.
 13 Q. And as of the date, whenever the date was that
 14 you gave this record to Dr Harris, would it be that it
 15 was still a question in your mind that you didn't know
 16 whether you'd been abused?
 17 A. Yes, sir.
 18 Q. And did your dad actually pass away in 1991?
 19 Was that the date? Yes, that's true.
 20 A. That's been firmly established, yes.
 21 MR. CRAIG: 15 years ago today.
 22 THE WITNESS: That's right.
 23 Q. (By Mr. Noce) Do you believe that you have
 24 any depression as a result of these incidents?
 25 A. I know I have depression because of this

1 A. If I remember correctly, I think that this
 2 was -- this was done as the renewal of the EAP program,
 3 and I don't know if he used the same one that I had
 4 originally filled out. As you know, there's no date on
 5 this, so --
 6 Q. I don't know --
 7 A. I know that I filled out something similar to
 8 this when I had to go in to my initial counseling with
 9 him.
 10 Q. Let me just see it real quick. Thanks On --
 11 there's a series of three questions The second one
 12 is, "What would you like to be the outcome of
 13 counseling (what would you like to accomplish or
 14 resolve? What are your goals for counseling?)" Would
 15 you go ahead and read what you wrote there in your
 16 handwriting?
 17 A. You want me to read it out loud?
 18 Q. Yes, sir, please
 19 A. "I had left the Catholic church and not have
 20 attended any church since then Treat religious
 21 figures rudely and do not trust them around my children
 22 or children in general Also because I was
 23 unconscious, I need to come to terms with the fact that
 24 I may have been abused "
 25 Q. And is the word may underlined?

1 Q. Have you been diagnosed with that by anyone?
 2 A. By Dr John Bernard.
 3 Q. Have you ever had any depression at any time
 4 before this?
 5 A. No, sir.
 6 Q. And Dr Bernard's been your primary physician
 7 for an extended period of time, hasn't he?
 8 A. Yes, sir.
 9 Q. Five or so years?
 10 A. Yes, sir.
 11 Q. And when you first came under his care, like
 12 most doctors, did he ask you to go ahead and fill out a
 13 long questionnaire?
 14 A. Yes
 15 Q. I'm going to mark this as a group exhibit.
 16 These are the 160 pages of records provided to us by
 17 doctor -- by the CPFCC?
 18 A. College Park Family Care Center
 19 Q. Is that where Dr Bernard is?
 20 A. Yes.
 21 Q. And that's where your wife worked at
 22 one point?
 23 A. She used to, yes
 24 MR. NOCE: Go ahead and mark that.
 25 (Defendant's Exhibit E was marked for

1 identification.)
 2 MR. NOCE: We've got Exhibit E. Do you got
 3 these, Dan?
 4 MR. CRAIG: Not here, no
 5 MR. NOCE: Do you guys want me to make a copy
 6 of them to follow along?
 7 MR. CRAIG: Uh-huh.
 8 THE WITNESS: All right.
 9 THE WITNESS: Do you mind if we take a break?
 10 MR. NOCE: Sure, absolutely.
 11 VIDEOGRAPHER: We're going off the record at
 12 3.24 p.m.
 13 (A break was taken.)
 14 VIDEOGRAPHER: We're back on the record at
 15 3.36 p.m.
 16 Q. (By Mr. Noce) Mr. Visnaw, I've handed you a
 17 copy of Exhibit E. I gave a copy to your lawyer.
 18 These are the records, 160 pages from CPFCC, with
 19 actually an affidavit telling us that these are all the
 20 records at that medical facility regarding treatment
 21 and care provided to you, and you've already told us
 22 you know who that entity is. What is that again?
 23 A. College Park Family Care Center.
 24 Q. And that's where Dr. Bernard practices?
 25 A. Correct.

1 the top?
 2 A. Yes, sir.
 3 Q. And you were treating with that physician
 4 for -- what was the problem you were having?
 5 A. A bulging disk in my back.
 6 Q. Okay. Did you ultimately have surgery for
 7 that?
 8 A. No, sir.
 9 Q. Are you still treating with him for that?
 10 A. No, sir, I'm not.
 11 Q. What -- how was that resolved?
 12 A. I went to a chiropractor. And the bulging
 13 disk still gives me pain, but he wanted to do another
 14 epidural, and I already had one epidural done.
 15 And I don't know how women do it when they're
 16 pregnant, but it's the worst thing I ever felt, so I
 17 just decided you know what, I'd rather live with the
 18 minor pain it causes than go back and have an epidural
 19 done again.
 20 Q. When you filled out this form, was it your
 21 intention to fill it out as fully, completely, and
 22 accurately as possible?
 23 A. Yes
 24 Q. And I direct your attention under the heading
 25 of head and neck. There was a place for depression or

1 Q. And he's been your physician since at least
 2 about 2000. Right?
 3 A. I think it's actually '99, right after -- it
 4 was either right before or right after I got married to
 5 my wife
 6 Q. And I'm going to direct your attention to some
 7 of these records and go through it with you to see if
 8 you can verify certain parts of the records as being
 9 accurate or whatever
 10 So if you look at the second page -- actually,
 11 it would be the third page. It's a series of
 12 questions. I think it starts at -- on the first page
 13 and then you keep continuing
 14 Do you recall that on occasion the physician
 15 would ask you to fill out these records?
 16 A. This was actually I think in regards to some
 17 back pain that I was suffering from a bulging disk, but
 18 yes
 19 Q. Okay. And the only reason I'm directing your
 20 attention to Page 3, was it your understanding you were
 21 there and you're supposed to go through these and tell
 22 him whatever problems you have?
 23 A. Yes
 24 Q. And was there a place -- and the date on this
 25 record, I believe, is January 10th, 2005 if you look at

1 anxiety. It's on the third page. Did you check that
 2 you had any problems with that as of January 10th,
 3 2005?
 4 A. No, I didn't
 5 Q. Was that accurate?
 6 A. I believe so at that time, yes
 7 Q. And there's -- it continues with some more
 8 questions. I think if you keep turning pages with me,
 9 there's a page that looks like this
 10 The top of it says please answer the following
 11 questions about other symptoms you may have. It's that
 12 page. Do you see the one -- it's about the fifth page?
 13 A. Uh-huh, this one here?
 14 Q. Let's see if that's the one. Yes, sir.
 15 A. Okay
 16 Q. On that, does it ask the question again --
 17 well, strike that. Let me ask you this. Had you
 18 filled this out all at about the same time back in
 19 November -- or January of '05?
 20 A. It was all part of the in processing for that
 21 particular doctor
 22 Q. Okay. And on that page, there's a question
 23 under psych. It says, does your pain cause you to feel
 24 sad or depressed on a regular basis, and you answered
 25 no. Correct?

1 A. That's what's there, yes.
 2 Q. Okay. And was that correct?
 3 A. Yeah, yes, sir.
 4 Q. Thank you. On the next page, it lists -- it
 5 indicates -- and you're asked to fill out and relate
 6 the medicines you're taking. Do you see that?
 7 A. Yes, sir.
 8 Q. List all of the medications you currently
 9 take, and it says Paxil, 12.5 milligrams?
 10 A. Yes, sir.
 11 Q. One a day?
 12 A. Uh-huh.
 13 Q. And is that a medicine that you were taking as
 14 of January 10th, 2005?
 15 A. Yes.
 16 Q. And what was that for?
 17 A. Again, as I stated earlier, at the request of
 18 my wife I had gone in to the doctor. And he gave me a
 19 little written test as far as to see if I was
 20 depressed.
 21 And, I mean, everybody has bad times,
 22 whatever, so he would have prescribed that. If I
 23 remember correctly -- I'm sure it would be in here
 24 somewhere, the purpose for that.
 25 But if I recall, it was because I was having

1 looking from November 2004 to December 2005 or when,
 2 sir?
 3 Q. Well, I don't know. How long were you taking
 4 Paxil once a day?
 5 A. As I said, I was prescribed it. I don't know
 6 how long I actually took it. I don't recall the amount
 7 of whether it was weeks, days, or whatnot.
 8 But it's always been my belief that unless you
 9 have a true reason to be depressed, I shouldn't be on
 10 anti-depressants. So I made -- I made a judgment call
 11 on my own and just stopped taking the medicine.
 12 Q. Is it Bernard or Berard?
 13 A. Bernard.
 14 Q. Bernard, okay. And was Dr. Bernard the first
 15 physician who had prescribed Paxil or any other
 16 anti-anxiety medication for you?
 17 A. I believe so.
 18 Q. And it was your understanding you were taking
 19 it because of some problems at work causing you anxiety
 20 and depression?
 21 A. Like I said, everybody has bad days. I mean,
 22 it was at the request of my wife that I go in and talk
 23 to him.
 24 And he gave me a test and said, you know, I
 25 don't -- I don't think that you are, but just in the

1 some difficulties at work. You know, just at that time
 2 in 2005, I was working for an individual that I didn't
 3 really care for that was pretty much being extra harsh
 4 on me as an agent and just wasn't dealing with it all
 5 that well.
 6 Q. Who was that?
 7 A. Doug Bemis.
 8 Q. Is he still in your office?
 9 A. No, sir. He has since left the agency.
 10 Q. And as a result of that, who was the physician
 11 who prescribed Paxil for you?
 12 A. I'd have to say it was Dr. Bernard, but I
 13 can't --
 14 Q. And how long were you on that medicine?
 15 A. I believe I didn't even -- I mean, I was
 16 supposed to take it once a day. I don't think I took
 17 it at all. He had given me some samples, and I don't
 18 even think -- I don't recall even taking the medicine.
 19 Q. So is the record you filled out accurate or
 20 not accurate?
 21 A. That was -- yes, it's accurate, I mean, at the
 22 time.
 23 Q. And for what period of time is that answer
 24 accurate then?
 25 A. Rephrase the question. I mean, are you

1 event that, you know, you should have some issues.
 2 Q. Did he actually give you a prescription, or
 3 was it just --
 4 A. I don't -- I don't recall. I'm sure it would
 5 be in the medical records.
 6 Q. And do you remember -- and I don't mean to be
 7 repetitious, but do you remember what the period of
 8 time was that you were on --
 9 A. No, sir, I do not.
 10 Q. On Paxil.
 11 MR. CRAIG. Also, Jerry, I'm not sure we're
 12 clear on these dates here. I mean, I'm not trying --
 13 I'm just trying to help you out really.
 14 I don't know if this January stuff is
 15 connected to this stuff where it says Paxil, because it
 16 looks like the date might be, I don't know,
 17 November 30th of '05 or something like that if you
 18 look.
 19 MR. NOCE. Well, I don't know. That's why I'm
 20 trying to ask him if he recalls.
 21 MR. CRAIG. Do you see this?
 22 THE WITNESS. Yeah, I see right here, but --
 23 MR. CRAIG. It looks like it's the end of this
 24 whole section, this whole back pain section.
 25 THE WITNESS. Right, that's --

1 MR. CRAIG: I'm not trying to interject.
 2 MR. NOCE: No, no.
 3 MR. CRAIG: I'm assuming it's all from January
 4 '05, but.
 5 MR. NOCE: Well, let me just ask.
 6 MR. CRAIG: I don't know if it is.
 7 Q. (By Mr. Noce) You do recall being prescribed
 8 Paxil as a result of some anxiety caused at work?
 9 A. I didn't recall it until I just saw it here on
 10 this -- on this -- on this in processing sheet for this
 11 doctor. I mean, I don't recall it until I saw this,
 12 and then --
 13 Q. Do you -- you know, were you prescribed Paxil
 14 for something happening at work?
 15 A. I can't guess. I can't say yes or no. There
 16 was tensions, anxieties at work. It may have been, but
 17 without actually talking to Dr. Bernard and
 18 reconfirming that, I couldn't say yes or no on that.
 19 Q. Okay. Now do you see the next page? And this
 20 is the one -- I'm not sure. I guess it is November 30,
 21 '05. Do you see that page?
 22 It's two after the one we just talked about --
 23 or three after the one that mentioned the Paxil. Do
 24 you see the one I'm pointing to?
 25 A. Yes, sir. This one here?

1 we're looking at -- I'm going to go ahead and mark that
 2 specific page as Exhibit F.
 3 A. I mean, that's how I would look at it. Again,
 4 I would have to say that the -- that the official thing
 5 would be in here somewhere.
 6 Q. And the only reason I'm asking you is you
 7 signed it and it's your record. I'm just -- it's a
 8 record from your doctor regarding treatment for you.
 9 A. Sure.
 10 MR. NOCE: Mark that Exhibit F.
 11 (Defendant's Exhibit F was marked for
 12 identification)
 13 Q. (By Mr. Noce) There's Exhibit F which is a
 14 part of the Group Exhibit E. Correct?
 15 A. Correct.
 16 Q. All right. And it has your signature. Now
 17 the best you can recall for us, what's the date that
 18 you signed that exhibit, that Exhibit F?
 19 A. It appears here to be January 30th, 2005, but
 20 again, I can see how it would be construed as maybe
 21 November 30th, 2005, but I believe it would have been
 22 January 30th, 2005
 23 Q. And you have checked above your signature on
 24 the first box sexual abuse, and you checked yes?
 25 A. Yes, I do.

1 Q. It's this one. Yeah, that's it.
 2 A. Yes, sir.
 3 Q. All right. And all these records are a part
 4 of Exhibit E, correct, Mr. Visnaw?
 5 A. (Witness nods head.)
 6 Q. Okay. And is that your signature there on
 7 that page?
 8 A. Yes, it is.
 9 Q. And can you read the date for us? Is that
 10 November 30?
 11 A. You know, it almost looks like to me that when
 12 it was copied -- if these were actually copies. Do you
 13 have an original, or was it a copy of an original?
 14 It would appear to me that it would more
 15 likely be a smudge or something nobcing all the other
 16 additional things. It could have very well been a
 17 smudge
 18 I remember seeing this doctor in January of
 19 2005 or early February and having to fill out the
 20 intake sheet, and it's probably possible that I filled
 21 out the intake sheet on January 5th, 2005 and didn't
 22 consent to his treatment until January 30th
 23 Q. Of?
 24 A. Of 2005
 25 Q. Okay. So do you believe this record that

1 Q. Okay And --
 2 A. Well, that doesn't make sense The date
 3 doesn't make sense
 4 Q. And, yes How long ago? 20 years ago.
 5 A. 20 years ago
 6 Q. Okay And is that in your handwriting?
 7 A. Yes, it is, but what I think is that this
 8 is --
 9 Q. Take your time Tell us what you think.
 10 That's why I'm asking you, because it's your record.
 11 A. I think this is something that I completed for
 12 Dr. Bernard, and this was not -- these records here are
 13 not for Dr. Bernard. These are for a Dr. Wheeler, the
 14 pain management specialist for College Park Family Care
 15 Center
 16 This would have been something in November --
 17 now I -- November 30th of 2005 is when I believe my
 18 first -- when I went to Dr. Bernard and let him know
 19 what was going on and whatnot.
 20 And he would have administered -- I wouldn't
 21 say administered He would have given me this to fill
 22 out to say, you know, as part of the quote/unquote
 23 depression/anxiety consultation that I had with him.
 24 These records here are from Dr. Wheeler and
 25 the pain management therapy that I was going to seek

1 through him, and --
 2 Q. Was that for your back?
 3 A. That was for my back. And what he described
 4 to me was that it more than likely was not my back or
 5 my neck, so to speak. It was the way -- the position
 6 of the muscles in my scapula were rehabbed incorrectly
 7 after my surgery, therefore, causing them to spasm
 8 occasionally and cause me the pain in my neck -- in my
 9 neck and my back.
 10 And I believe -- I'm going to make a leap of
 11 faith here -- that this is a document that I would have
 12 completed for Dr. Bernard with regards to what had
 13 happened with Dr. -- with Brother Mueller and going
 14 through counseling and so on.
 15 Q. And I just want to make sure we're getting it
 16 accurate. Does it look to you -- and take your time
 17 and read it, whatever you need to do. Does this look
 18 like one complete record?
 19 Because -- and the only reason I mention that
 20 is none of the other pages have a signature line at the
 21 bottom until we get to the last one, Exhibit F
 22 I mean, does Exhibit F appear to you to be the
 23 last record in a series of, you know, questions that
 24 you answered for -- in order to get treatment from a
 25 physician?

1 A. It is the same. It would be part of that same
 2 record.
 3 Q. And how about the fourth page? Do you think
 4 that is the back of Page 3?
 5 A. Yes, sir.
 6 Q. And the fifth page where it says please answer
 7 the following, etc, that we talked about, is that
 8 still a part of this first record?
 9 A. Yes, sir.
 10 Q. And how about the next page that says please
 11 answer the following about your past medical history?
 12 Is that all again part of the same record?
 13 A. Again, as well, yes, sir
 14 Q. And the next page, do you take any of the
 15 following: Aspirin, etc, do you see that page? Is
 16 that all still a part of the same record?
 17 A. That is -- I think -- I don't think so. I
 18 think it's a different -- I think it's a different part
 19 of that.
 20 Q. We'll have to ask him probably.
 21 A. I don't know.
 22 Q. Okay. But what is your best recollection as
 23 it relates to Exhibit F? When do you believe you would
 24 have filled out Exhibit F?
 25 A. This one?

1 A. Well, let's make another discussion here
 2 This is actually January 10th, 2006 on the front of
 3 this one It's January 10th, 2006.
 4 Q. Okay Are you sure that's '06 or is that an
 5 '05?
 6 A. I believe from what I see here, it looks like
 7 an '06.
 8 Q. Okay. And if we start with that one, where
 9 does that first one -- because if you look at it, it
 10 says -- and let's -- we need to try to keep them in the
 11 order we received them from Dr. Bernard's office.
 12 A. Well, this is how it is here
 13 Q. Sure. The one you're saying '06 at the bottom
 14 says over. Do you see that?
 15 A. Yes, sir.
 16 Q. So do you think the second page is a part of
 17 the first page?
 18 A. I believe that what we see as -- what we're
 19 identifying as the first and second page --
 20 Q. Yes, sir
 21 A. -- are actually front and back of the same
 22 page.
 23 Q. Is the third page a part of that same record,
 24 or is that a different record do you think, the
 25 one with the bodies at the bottom?

1 Q. Yes, sir
 2 A. It very well could have been November 30th,
 3 2005 after seeing this I was looking at it from this
 4 point of view, so yes
 5 MR. NOCE. All right. Now I'm going to -- if
 6 you keep going after F, do you want to go ahead and
 7 mark G? Mark it on his if you would. And it's Page 2,
 8 and it's dated 9/3/05 -- wrong one. Sorry. Looks
 9 like -- there you go Would you mark that one as
 10 Exhibit G
 11 (Defendant's Exhibit G was marked for
 12 identification)
 13 Q. (By Mr Noce) Again, Exhibit G is a part of
 14 the records we received from Dr. Bernard's office which
 15 is -- the general exhibit is Exhibit E.
 16 And it's with regard to -- it's kind of
 17 confusing, because the date printed if you look at the
 18 top is 10/6/06 or 10/2/02, but I think the actual
 19 treatment date is 9/23/05?
 20 A. Yes, sir
 21 Q. All right And this was treatment for you
 22 with Dr. Bernard, and it says here he is married times
 23 6 years as of that date Is that accurate?
 24 A. Yes, sir
 25 Q. Okay Previously married for about 6 months

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1 He has a 10 year old stepdaughter, etc., etc., and it
 2 goes down, criminal investigator for immigration, and
 3 then it says he has filed a workers' -- he has filed
 4 for workers' comp. Is that accurate? Did you have a
 5 comp claim going?
 6 A. On this, I think what he's referring to is
 7 the --
 8 Q. The back injury?
 9 A. No, the EAP, going through EAP for counseling,
 10 because it's right around that same time as when the
 11 Brother Mueller stuff was made public.
 12 Now not to confuse that with back in '99, I
 13 was injured on the job and did file a workmen's comp.
 14 Q. What was -- what was that about?
 15 A. That was for my back.
 16 Q. Okay Now it says -- and let me ask you, did
 17 you relate this information to Dr. Bernard as is stated
 18 in the record: Never has been victim of emotional or
 19 physical abuse. Is that a true statement? I'm going
 20 to read the next one, too, but --
 21 A. Yes, but as far as the context that he would
 22 have written that in, I can't --
 23 Q. And it says he was a victim of sexual abuse
 24 20 years ago?
 25 A. Yes.

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1 Q. And when you told him that, were you referring
 2 to what occurred with William Mueller?
 3 A. Yes, sir
 4 Q. And did you tell him that September 23rd,
 5 2005?
 6 A. I can't speak for the date. I don't know if
 7 that's the date that it was, you know, put into the
 8 system or what. I can't speak for the date, but
 9 those -- that last statement there is accurate.
 10 Q. Okay. And let me just ask you this: Do you
 11 have any reason to dispute the date?
 12 A. I don't know.
 13 Q. You don't know one way or the other?
 14 A. No.
 15 Q. If the doctor's office says that's the date of
 16 the record for your visit, would you dispute it?
 17 A. Probably not, no, because they'll be able to
 18 check it out
 19 Q. So as of -- as of September 23rd, 2005, did
 20 you have information and evidence that you had been
 21 actually a victim of sexual abuse 20 years ago?
 22 A. I used the information that I obtained from
 23 the media and all the information that was available to
 24 make the leap of faith that yes, I was
 25 Q. In other words, you were suspecting that had

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1 occurred?
 2 A. Correct, but there was no answer on there
 3 suspected, are you a victim of sexual abuse, yes, no
 4 suspected, so I had to go with the more affirmative of
 5 the two answers.
 6 Q. Well, were you answering a series of
 7 questions, or was he just simply asking you why are you
 8 here for treatment?
 9 A. I was answering these questions.
 10 Q. Those questions?
 11 A. Yes, sir. If you notice, I love my job, are
 12 you presently disabled, no, emotional abuse, physical
 13 abuse, no; sexual abuse.
 14 Q. What's the date on those questions?
 15 A. This, again, it's something 30/05.
 16 Q. It's not September 23rd, '05, though, is it?
 17 A. Not that I can tell. I wouldn't believe it to
 18 be, but again, this is not the original. I would need
 19 to see the original
 20 Q. What you're telling us is what you believe is
 21 found on Exhibit G is a series of answers you were
 22 making to questions in Exhibit F?
 23 A. F, yes, sir
 24 Q. Okay. I'm going to direct your attention to a
 25 record. It's probably 10 pages along, and it's dated

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1 February 8, 2006
 2 A. What's the page number at the top, sir?
 3 Q. It's 20 Good, that's good
 4 MR. CRAIG I'm sorry What did you say the
 5 date was, Jerry?
 6 MR. NOCE: I think it's February 8, 2006 Do
 7 you see that one?
 8 MR. CRAIG Oh, here
 9 Q. (By Mr. Noce) And it says under S, which I
 10 think are symptoms under the doctor's records, it says,
 11 38 year old white male notes significant improvement in
 12 his generalized anxiety On current Effexor therapy.
 13 And can you recall -- Effexor therapy, you were taking
 14 Effexor at his prescription?
 15 A. Yes, at his direction, yes
 16 Q. At his direction, okay And do you know how
 17 long that therapy lasted?
 18 A. It's ongoing
 19 Q. And this is in February of '06 Had you
 20 noticed an improvement, significant improvement?
 21 A. I noticed that -- well, yes, I did I noticed
 22 that I could get through the day without just being --
 23 becoming overcome by the emotion of what had happened,
 24 because at that particular time, I was thinking about
 25 it almost every day

1 Q. Was there ever an occasion where you left work
2 on account of anxiety from what happened?

3 A. No. If I got to the point where I felt that
4 that was happening, I would just close my door and let
5 it run its course for however long and then suck it up
6 and drive on.

7 Q. Why don't you look at Page 22, Mr. Visaw.
8 There's a reference in here that you were concerned --
9 there was a medical procedure you were contemplating,
10 and there's a reference under the HPI section of this
11 page of your records that you had been molested in high
12 school by a Catholic priest.

13 And I know this isn't your record, but I
14 assume if there's a reference here, it's a reference to
15 William Mueller?

16 A. Yes.

17 Q. There was no other incident involving any
18 other cleric?

19 A. That's correct.

20 Q. And the date of that reference I think is
21 January 10th, '06. Do you see that?

22 A. Yes, sir.

23 Q. Okay I think if you turn to Page 46 of
24 Exhibit -- as numbered in his notes of this man
25 Exhibit E, I think I made a note on something here

1 take it.

2 I believe also it had to do with the blood
3 pressure as well. I don't know. I don't know exactly
4 what it's used for, but I do know that he gave it to me
5 as an as needed, if you need --

6 Q. And your explanation about he, you, having a
7 strong family history of depression, you think that
8 relates to your wife's family?

9 A. I believe it relates to my immediate family
10 meaning my wife, because at that time we were
11 talking -- I was talking about moving to Vermont, and
12 she just was not happy about it at all.

13 You know, I don't -- I don't know. I'm trying
14 to think if my mom was ever being treated for
15 depression since my dad died. She may have. I don't
16 get into her medical history with her. I don't know.

17 Q. Okay As far as you know, your family -- your
18 family which is mom, dad, or sisters did not have a
19 history of depression?

20 A. Not to my knowledge They may have been -- if
21 you asked them, they'd probably say, yeah, I've been
22 being treated for so long, but is Bob aware of that,
23 probably not.

24 Q. And if you go down to -- I'm trying to see if
25 there's a way to describe This is pretty far down

1 A. Are we looking at the same page that he's
2 looking at?

3 Q. There's reference to a February 14th, '03
4 visit. Do you see is that down at the bottom?

5 A. Yes, sir.

6 Q. And there's a reference in here that you were
7 considering moving to Vermont for a job move. Do you
8 recall that?

9 A. Uh-huh, yep.

10 Q. Okay. It says, also he does have a strong
11 family history of depression That's -- I think it's
12 usually agreeable among counsel that HX stands for
13 history. Is that accurate?

14 A. I don't think so. It may -- may be in
15 reference to my wife who I know was being treated for
16 depression and anxiety at that time I don't recall
17 saying that I had a history of depression.

18 Q. Did you get a trial of Diovan? If you go to
19 the next page, it's a continuation of medicine.
20 Diovan, do you recall taking that medicine?

21 A. I never took it.

22 Q. Do you recall what that was prescribed for?

23 A. He gave that to me in response to -- I took
24 the anxiety and depression test, and there was no signs
25 of that He said if you -- you know, if you need to,

1 A. What's the date of the fax at the top?

2 Q. The date of the fax at the top is October 2,
3 2006, so I think that's not going to help us.

4 A. But what's the page number on that?

5 Q. Page No 1, actually It's way down here

6 A. That particular one?

7 Q. Yeah, that's it. That's it So it appears
8 that you were treating with Dr Bernard's office even
9 back in -- and I think you've told us this -- July
10 of -- July 3, 2000?

11 A. Uh-huh, yes, sir.

12 Q. Again, this is one of these questionnaires
13 that they ask you to fill out, and you tried to do it
14 as accurately as you could?

15 A. Yes, sir.

16 Q. Okay And you did not check anything other
17 than chickenpox history and migraine headaches on those
18 lists?

19 A. Yeah, that was all I could recall at that
20 time.

21 Q. Okay And if you turn to the second page of
22 that document, the same questionnaire, there's a place
23 under head and neck with regard that if you felt this
24 way you could indicate you'd had problems with
25 depression and anxiety, and that was left blank, wasn't

1 it?
 2 A. Yes, sir.
 3 Q. You had mentioned earlier that there was a
 4 mini patient health survey that you'd filled out. I
 5 think if you go to Page 6 -- I wanted to ask you if
 6 this -- Pages 6 and 7, was that what you were talking
 7 about?
 8 A. Yes.
 9 Q. Okay. And the date of that document, was that
 10 February 14th, '03 if you look at Page 27
 11 A. Yeah, yes, sir, but that's not my handwriting.
 12 Q. Okay. And it's three sections --
 13 four sections A, B, C, and D?
 14 A. Yes, sir
 15 Q. Okay. And under Section A, it says -- do you
 16 recall why you were filling this out?
 17 A. This is -- was at the request of my wife to go
 18 in. If I remember correctly, it will correlate with
 19 the previous notes that you had brought up on that
 20 particular day about the history of family depression,
 21 and that was when we were talking about going to
 22 Vermont and --
 23 Q. Okay. Let me see if I can get back to that
 24 Let me see.
 25 A. It's Page 46, I believe it is

1 depression. I mean, I was depressed or down. I was
 2 down. I was just not happy because my wife and I were
 3 arguing.
 4 Q. And also down in Section B, it says, have you
 5 worried excessively or been anxious about several
 6 things over the past six months, and you answered yes
 7 there?
 8 A. Yes, sir, I sure did.
 9 Q. What was that all about?
 10 A. Again, I think it goes to, you know, answering
 11 the question, yes, I've been worrying obsessively about
 12 how my wife and I are getting along because of the job,
 13 the job issue, me wanting to go to Vermont and her not
 14 wanting to go to Vermont.
 15 Q. And was that a two week problem or six month
 16 problem?
 17 A. I mean, over the time, a lot of work stresses,
 18 a lot of that, but I have to answer the questions
 19 accordingly. So over the last two weeks, yes, over the
 20 last six months, yes
 21 Q. And these are the same problems that were
 22 making you restless, tense, tired, concentration
 23 problems, irritable?
 24 A. At that time, yes.
 25 Q. And is this why you were prescribed some

1 Q. There it is, okay So Page 46 is referencing
 2 the visit on February 14th, '03 And as we get down
 3 here on these pages -- this mini patient health survey,
 4 it says -- there's a question that asks you have you
 5 been consciously depressed or down most of the day
 6 nearly every day for the past two weeks, and you filled
 7 in what?
 8 A. You're going to have to point that one out to
 9 me
 10 Q. Okay That's back here
 11 A. On B? A and B or what?
 12 Q. Section A.
 13 A. Section A?
 14 Q. Yes, sir
 15 A. May I ask what question?
 16 Q. Question 1
 17 A. Question 1? I put yes, because that was at
 18 the time that my wife and I were arguing about possibly
 19 moving to Vermont for the job.
 20 She didn't want to leave I looked at it as a
 21 promotion, so yeah, at that time the family issues were
 22 getting to me
 23 Q. And what you considered to be arguments, you
 24 considered that to be a depression?
 25 A. Well, I was down I'm not going to say it was

1 medication do you think back then?
 2 A. I would believe so But, again, if I may
 3 clarify, I don't know what Diovan is for. I don't know
 4 if it's an anti-depressant or a high blood pressure
 5 medicine.
 6 Reading his notes, it almost looks like it's
 7 a -- possibly a combination of both Because he's
 8 prescribing issues -- avoid salt, caffeine, and
 9 decongestants I mean, that would all affect my blood
 10 pressure
 11 Q. I think I'm done with that one I think I've
 12 asked this. I don't think I did ask it, actually. Did
 13 you receive a letter from the Society of Mary back in
 14 September, October, November last year regarding
 15 William Mueller as it related to Vianney -- or strike
 16 that
 17 Did you receive a letter from Vianney
 18 regarding William Mueller?
 19 A. I -- I personally did not If it was sent, it
 20 probably would have been sent to my mother's old
 21 address, and I don't know -- I don't remember getting
 22 it
 23 I think, actually, what ended up happening is
 24 there was a copy of the letter Bryan Bacon had
 25 scanned it and sent it to me, because I told him I

1 hadn't received a letter yet and he said that he had
 2 his, so --
 3 Q. And did you ever attempt to contact the order
 4 at all?
 5 A. Negative. No, sir
 6 Q. And you have not been on any kind of a mailing
 7 list for like reunions or anything like that with the
 8 school?
 9 A. They sent me something for my
 10 20th anniversary. Again, I think it went through to my
 11 mom, but if I remember correctly, I actually found out
 12 about the information from the website, because I go
 13 there periodically to see how the swim team is doing
 14 and whatnot, and I had saw the 20 year anniversary
 15 And I had responded to the individual doing
 16 the website that, you know, please pass on my
 17 condolences. I'm not going to be able to make it for
 18 that.
 19 Q. When you were 17, you mentioned the fact that
 20 these experiments occurred, he made you unconscious,
 21 and you passed out. And you thought under the
 22 circumstances then, you didn't think it was necessarily
 23 wrong?
 24 A. Yes, sir
 25 Q. That's true?

1 platoon, how many guns are in a platoon, where are
 2 these anti-aircraft sites versus these particular
 3 anti-aircraft sites. It was all strategic and tactical
 4 intelligence requirements driven by a commander's need
 5 for intelligence.
 6 Q. As a part of that training, did you receive
 7 any criminal training at all?
 8 A. No, sir, that was a whole different specialty.
 9 Q. And when you were in college, did you take any
 10 constitutional law classes?
 11 A. No, sir.
 12 Q. Or business law?
 13 A. No, sir.
 14 Q. Did you take any criminal justice courses?
 15 A. No, sir
 16 Q. When did you become interested in getting
 17 involved in law enforcement? You're in law enforcement
 18 now?
 19 A. Yes, sir
 20 Q. On a federal basis?
 21 A. Yes.
 22 Q. All right. When did you get involved in doing
 23 that, or when did you get interested in doing that?
 24 A. After coming back from the Army in '96, it was
 25 presented to me. I was in the Reserves here in

1 A. Yes, sir
 2 Q. And when you went into the service, were you a
 3 criminal investigator in the service also?
 4 A. In the military?
 5 Q. Yes, sir.
 6 A. No, I was an interrogator
 7 Q. And what did that involve?
 8 A. I was in the human intelligence branch in the
 9 United States Army, and that was -- you know, you
 10 received training in how to interrogate, debrief
 11 intelligence sources, and what to do, how to get
 12 information out of an individual either through, you
 13 know, befriending them or various other techniques
 14 And that training there, I graduated that and went on
 15 to Korea.
 16 Q. Okay. And did any of that give you a criminal
 17 investigative background at all --
 18 A. No, sir
 19 Q. -- in order to be able to interrogate people?
 20 A. No, sir
 21 Q. When you would interrogate people in the
 22 military, were you questioning them as it related to
 23 military matters as opposed to investigating crimes?
 24 A. It was strictly military related, what we
 25 called order of battle, how many people are in a

1 St. Louis.
 2 My platoon leader or one of the lieutenants in
 3 the service in the Reserves wanted to know if I'd be
 4 interested, and I said I'm not sure. I mean, it's got
 5 to be -- it's got to be a good job. I mean, it's
 6 federal law enforcement.
 7 But my career orientation, and I'm going to go
 8 back to Vianney, was when I graduated from Vianney, I
 9 wanted to be a school teacher who taught Spanish.
 10 Instead, I ended up going into the military
 11 and then coming out and going back to Citicorp
 12 Mortgage, as I said, and then finding the position with
 13 the then Immigration & Naturalization Service.
 14 Q. And your work at Citicorp was collections?
 15 A. Initially it was customer service, and then I
 16 transitioned into collections, yes
 17 Q. And did you work with lawyers helping you in
 18 that regard?
 19 A. No, sir.
 20 Q. Or criminal investigations in that regard at
 21 all?
 22 A. No, sir.
 23 Q. So your first training -- criminal work
 24 training would have been in 1996?
 25 A. Actually, I would have been exposed to it at

1 that point, but my official -- the first class I would
2 have attended would have been when I went through the
3 Federal Law Enforcement Training Center the following
4 year.

5 Q. '97. Right?

6 A. Yes, sir.

7 Q. At that time, you were 31 or what?

8 A. In '97?

9 Q. Yeah

10 A. 30.

11 Q. 30, okay. And when you started taking that
12 training, did you know then that these things had
13 occurred to you? Did you still remember that they had
14 occurred to you, what you've talked about today?

15 A. I remember being part of the master's program,
16 the tests, so to speak, but even at that time, there
17 was -- I didn't remember the abuses that had happened.

18 Q. All right. Well, you remembered the knife to
19 your throat always?

20 A. Yes, sir.

21 Q. Did you think that that -- after you received
22 your criminal training at the federal level, did you
23 believe that that was still okay, the knife to your
24 throat?

25 A. The training that I received dealt primarily

1 Q. And you didn't have any thoughts in your mind
2 that someone holding a knife to your throat when you
3 were 17 was wrong?

4 A. At that time, no, because I was still looking
5 at it from I was a part of the experiments. And I
6 really didn't discuss it with anybody.

7 Q. No, and I'm not asking you that, but what I'm
8 asking you is did you think that that was something
9 that was wrong that was done to you?

10 A. Under -- as I've explained to you before,
11 under the belief that it was done in furtherance of
12 somebody's education and not recalling the sexual abuse
13 that was done, I thought it was still okay.

14 Q. You knew it happened, you knew that somebody
15 had put a knife to your throat, but you thought it was
16 okay still, even after going through a federal criminal
17 training program?

18 A. Yes.

19 Q. At age 30?

20 A. Yes.

21 Q. And you still thought it was still okay that
22 an adult would tell you not to tell anybody about what
23 you were doing? Did you still think that was okay,
24 too, at age 30 after going through this federal
25 criminal program?

1 with constitutional law, search and seizure, those
2 types of issues. And then we went in to the criminal
3 violations and the administrative violations of
4 immigration law

5 So being able to say that what happened to me
6 at 17 years old, was that wrong after going through the
7 Federal Law Enforcement Training Center, I can't say
8 yes or no because I was not exposed to those -- that
9 type of criminal law at that point

10 There was nothing for me to bounce anything
11 against. We dealt exclusively with illegal immigrants.

12 Q. How long was the training program that you
13 went through, that federal criminal law program?

14 A. It was all put together. We did criminal law,
15 constitutional law, and what we call immigration and
16 naturalization law or NATS law. NAT I want to say it
17 was 16 weeks.

18 Q. And by the time you completed it, you were
19 30 or 31 years old?

20 A. I was 30.

21 Q. And you were going -- 30 years old and you
22 were going to become a criminal -- a federal criminal
23 investigator?

24 A. For the Immigration & Naturalization Service,
25 yes.

1 A. That really didn't hit home with me until
2 after the merger between immigration and customs which,
3 you know, predated -- it was in 2003, I believe it was

4 But it wasn't until truly at the time of
5 September 2005 that all the pieces fell together, that
6 it was -- that I realized that it was wrong what had
7 happened to me because of everything that had come out.

8 Q. And let me just ask it this way: At age
9 30 after completing the federal criminal program, you
10 knew then, as you always knew, that William Mueller
11 told you do not tell anybody about these experiments?

12 A. Yes.

13 Q. And you knew then, as you always knew, that he
14 stuck a knife to your throat?

15 A. Yes.

16 Q. You always knew that?

17 A. Yes.

18 Q. Okay. And you also knew that he made you
19 hyperventilate until you passed out?

20 A. Yes.

21 Q. And you -- that was something that's never
22 been repressed. You always knew that, too?

23 A. Yes.

24 Q. And you never thought that even after you
25 completed your federal criminal program in education,

1 you never thought that was wrong?
 2 A. No, because what we were taught through the
 3 Federal Law Enforcement Training program is that in
 4 order to have a crime occur, there typically is mens
 5 rea and actus rea. You have to have a criminal mind in
 6 conjunction with a criminal act.
 7 And my belief at that time was even though he
 8 held a knife to my throat, was I in danger? And I
 9 thought no. So, therefore, in my opinion at 30 having
 10 just completed the Federal Law Enforcement Training
 11 Center that the mens rea was not there
 12 Q. You knew all about mens rea?
 13 A. That was part of the -- part of the
 14 criminal --
 15 Q. What was the other Latin term you used?
 16 A. Actus rea.
 17 Q. Actus rea. So you knew all about that from
 18 your training with the federal government?
 19 A. It's part of the instruction, yes, sir.
 20 Q. Okay. Did you have any training on
 21 pornography?
 22 A. Not then, no.
 23 Q. Have you had any since?
 24 A. I have not had any official training on child
 25 pornography.

1 Q. Okay. And when that was done in 1997, did you
 2 think anything that William Mueller did to you was
 3 wrong?
 4 A. As I've already stated, you know, it wasn't
 5 something that was on my mind every day, so it wasn't
 6 even given a second thought for the most part.
 7 You know, if I thought about it at the time,
 8 yes. But, I mean, you're asking me to speculate about
 9 it if it was on my mind every day. No, it wasn't on my
 10 mind, so therefore, I couldn't have made a judgment
 11 call on that.
 12 Knowing what I know today, yes, it was wrong.
 13 I'm not going to say that at the age of 30 after
 14 completing the federal training center that it was
 15 wrong, no, because I did not have the full information
 16 with which to make a judgment.
 17 Q. Did you ever participate in any pornography
 18 prosecutions or investigations?
 19 A. I have conducted one and only one computer
 20 forensics examination on a child pornographer.
 21 Q. When was that?
 22 A. About two years ago. I don't know the
 23 exact -- the exact time frame.
 24 Q. Was there a prosecution?
 25 A. I was -- I was the forensics examiner. There

1 Q. How about unofficial training?
 2 A. When you go through a computer forensics
 3 course, you're taught the methods and techniques to
 4 identify files of interest.
 5 And there is no one course out there, official
 6 or unofficial, that can say this is child pornography,
 7 this isn't.
 8 Q. When was the first time you had any training
 9 in that area?
 10 A. In computer forensics?
 11 Q. No, in child pornography.
 12 A. I've not had any official training in child
 13 pornography.
 14 Q. And the training then you're talking about,
 15 that covered and included pornography?
 16 A. The first time that I had that was -- I'm
 17 thinking how it was -- I want to say May of 2000 or May
 18 of 2001. I'm not -- it's been a long time
 19 Q. After you finished and completed all this
 20 federal criminal background training that you took --
 21 and I think you said you took it in Georgia?
 22 A. Yes, sir.
 23 Q. In '97. And you completed it successfully,
 24 and you were tested on it?
 25 A. Yes

1 was another agent that was actually the prosecuting
 2 agent.
 3 Q. And was there a prosecution?
 4 A. Yes, sir.
 5 Q. Were you involved in the prosecution?
 6 A. The only thing I was involved in was examining
 7 the computer and getting that information to the case
 8 agent.
 9 Q. And did you end up testifying?
 10 A. No, sir.
 11 Q. Have you ever testified in court?
 12 A. Yes, sir.
 13 Q. On -- is that part of your job?
 14 A. Yes, sir.
 15 Q. Have you been trained to testify?
 16 A. We have not been -- as far as formal training
 17 on how to testify?
 18 Q. Yes, sir.
 19 A. At the Federal Law Enforcement Training
 20 Center, you are given a simulated case. And at the
 21 culmination of that case, there is a mock trial, and
 22 that's really your only exposure at the Federal Law
 23 Enforcement Training Center for trial. Everything else
 24 is, you know, dealing with the prosecutor's office
 25 Q. Do they videotape that mock trial?

1 A. I don't know if they do or don't.
 2 Q. Well, did they in your case?
 3 A. I don't remember
 4 Q. Okay. Do you recall anybody going over how
 5 you testified to tell you that was good, that was bad?
 6 A. Afterwards?
 7 Q. Yes, sir.
 8 A. Yes, there was a critique.
 9 Q. Was it by an attorney?
 10 A. It was by the instructors, and if I remember,
 11 most of the instructors there did have a legal degree.
 12 Q. How many times have you testified in court?
 13 A. Are you including grand jury on that as well?
 14 Q. Sure, sure.
 15 A. More than 10
 16 Q. And do you generally work with the
 17 U.S. Attorney in doing that?
 18 A. Yes, sir.
 19 Q. Do they help you in preparing?
 20 A. No, sir. They -- what they give us is the
 21 information that we provide them. They may give it to
 22 us in the form of the indictment, but it's all based
 23 off the information that's provided to them through the
 24 prosecution reports that we provide
 25 Q. Aside from the forensic computer work you've

1 new. I went to him and said I need to let you know
 2 about this litigation that's going on in case someone
 3 does contact you.
 4 And we discussed my forensics status, and it
 5 would be best for not only me but for any prosecution
 6 that I would subsequently be involved in.
 7 Q. Did you ever discuss William Mueller with your
 8 current wife at any time before September of 2005?
 9 A. I don't think so, no.
 10 Q. How about your first wife?
 11 A. No.
 12 Q. And we've already talked about what you talked
 13 about with your dad. How about your mom at all other
 14 than when she contacted you?
 15 A. I don't recall, but I don't think so.
 16 Q. Would you have ever discussed it with your
 17 sisters at all?
 18 A. Not until after September of 2005.
 19 Q. Have you talked to Eddy at all -- Matt Eddy at
 20 all about this?
 21 A. In relation to this, no, not at all.
 22 Q. Have you ever talked to Matt Eddy about
 23 William Mueller?
 24 A. I may have when we were still in school
 25 together. Again, I -- like I said, I may have. I

1 talked about as it relates to pornography, have you had
 2 any other specific training regarding pornography?
 3 A. No, sir
 4 Q. In the work that you -- in your training as it
 5 relates to forensic pornography, did you see anything
 6 in that work that you relate to what happened to you in
 7 1984 and 5?
 8 A. No, sir. In fact, when this was brought to
 9 my -- what we call the assistant special agent in
 10 charge, Patrick Baird, he and I both agreed that I'm
 11 not to do any more child pornography investigations.
 12 Q. Why is that?
 13 A. It just -- as he stated --
 14 Q. I'm sorry. Who said that?
 15 A. My assistant special agent in charge, Patrick
 16 Baird.
 17 Q. And he said that because of this?
 18 A. Because of this. He just said, you know,
 19 there's no reason to create a headache with that.
 20 We'll just -- when you do computer forensics, you'll do
 21 it for financial records and fraudulent documents. If
 22 there's child pornography on there, that's -- we'll
 23 deal with that if it shows up.
 24 Q. When did he tell you that? Last year?
 25 A. Yes, it was when I went to him. He was fairly

1 can't say yes or no
 2 Q. Did you discuss with him the experiments?
 3 A. I can't -- I don't recall.
 4 Q. And would there have been anybody else that
 5 you would have talked to while at Vianney while a
 6 student in the school about these experiments?
 7 A. No.
 8 Q. Is there anybody up to September 5 -- or
 9 September of 2005 that you discussed these experiments
 10 with other than your father?
 11 A. Not to my knowledge.
 12 MR. NOCE. Why don't we take about a 10 minute
 13 break. I'll look through my notes, because I think
 14 we're about done.
 15 VIDEOGRAPHER: We're going off the record at
 16 4:33 p m
 17 (A break was taken)
 18 VIDEOGRAPHER: We're back on the record at
 19 4:39 p m
 20 Q. (By Mr. Noce) If you look at Exhibit B,
 21 Mr. Visnaw, I'm going to direct your attention to your
 22 Answer No. 6
 23 A. Okay. I'll have to find Exhibit B. I've got
 24 A and C. Did I attach it back here? It's attached
 25 back here.

1 Q. Got it?
 2 A. I believe so.
 3 Q. Okay. There you go.
 4 A. Yes, sir.
 5 Q. All right. Look at Answer No. 6. And I know
 6 who Brandi, Julee -- Ann Marie is your mom?
 7 A. Yes, sir.
 8 Q. And then there's a Katie Odenwald who is a
 9 cousin?
 10 A. Yes, sir.
 11 Q. What would be -- now what would be the
 12 occasion that you would talk to your cousin about this?
 13 A. Just to let her know.
 14 Q. Let her know what?
 15 A. That it had happened and that there would be
 16 some bad times and some good times, and you know, just
 17 family, letting her know.
 18 She's the closest -- outside of my wife and my
 19 kids, she's the only family I have in Kansas City.
 20 Q. Okay. And is she your cousin on your mom's
 21 side?
 22 A. Yes.
 23 Q. Or dad's side? Okay And is she close to you
 24 in age?
 25 A. No, no She's I think 11 years younger, maybe

1 12 years younger than me.
 2 Q. And then there's Barbara Odenwald, lives in I
 3 guess south St. Louis?
 4 A. Uh-huh, yes, sir.
 5 Q. That's your aunt?
 6 A. Yes.
 7 Q. What would be the occasion for discussing this
 8 with her?
 9 A. I let her know, because after my sister died
 10 in May of 2005, my mom was -- you know, just thinking
 11 that everything was -- the whole world was coming down
 12 on her
 13 And I didn't know how to bring it up to my mom
 14 not to totally crush her, so what I had done is I
 15 consulted my aunt and talked to her about it and sought
 16 her advice on how to go about, you know, breaking this
 17 to my mom
 18 Q. Were there any other -- does Katie have any
 19 other siblings?
 20 A. Yes. She's got three brothers and another
 21 sister
 22 Q. Okay. What the brothers' names?
 23 A. Karl, Jr., Daniel, and John, and the sister's
 24 name is Krista.
 25 Q. Kurt Odenwald, is that a relative of yours

1 that you know?
 2 A. Kurt Odenwald is not a relative of mine. He
 3 is my aunt's brother-in-law
 4 Q. You know him to be a lawyer?
 5 A. Yes
 6 Q. And county councilman in St. Louis County?
 7 A. Yes.
 8 Q. Have you ever discussed this with him at all?
 9 A. No, sir
 10 Q. So what you were doing was you were going to
 11 talk to your Aunt Barbara and discuss with her how to
 12 discuss this with mom?
 13 A. Yes, and also to let her know what was
 14 happening so that when I did eventually break it to my
 15 mother, if my mother came to her and said this is
 16 crazy, give me a shoulder to cry on, she knew what was
 17 going on.
 18 Q. And this would have been -- like you say, in
 19 the fall It would have been sometime after your mom
 20 called you to talk about Mueller?
 21 A. Yes
 22 Q. All right. And you talked about Mueller in
 23 general terms with your mom, but you certainly didn't
 24 tell her anything beyond that, did you?
 25 A. Correct What I spoke with my mom about was,

1 you know, I believe that the reason he's in the news,
 2 excuse me, is that, you know, having seen everything,
 3 probably for child molestation.
 4 And she had asked again -- I'm reiterating
 5 again. Well, he didn't do any of that to you? No, he
 6 didn't So just trying to keep her from freaking out.
 7 Q. In short -- within a week do you think of that
 8 conversation, is that when you called your aunt?
 9 A. I can't give you a specific time frame I
 10 know it was after that conversation. It could have
 11 been in October I don't -- I can't even tell you when
 12 I told Kate
 13 Q. Did you tell Kate before you told your aunt?
 14 A. Yes
 15 Q. Okay. And then was it a phone call with your
 16 aunt that you had before discussing it with your mom,
 17 or did you come back to St. Louis and talk to her, or
 18 how did that happen?
 19 A. I think it was originally a phone call. And
 20 then on one of the visits back, I believe it was after
 21 my son was born on January 31st, sometime in there, I
 22 had come back and we had talked about it again.
 23 I don't remember if I had told my mom in
 24 between that or not, so my aunt wanted to know how
 25 things were going, how I was doing

1 Q. Had your name been in the papers here in
2 St. Louis?
3 A. I -- I think my name has only shown up in
4 one -- one instance, but I don't know if it was even
5 published in the newspaper. I think it was something
6 that maybe SNAP had put out.
7 Q. Do you -- I think you told me you're not a
8 member of SNAP?
9 A. Correct.
10 Q. All right. Do you frequent or review their
11 website from time to time?
12 A. No, sir.
13 Q. And what -- you talked -- and I'm just trying
14 to get this straight, Mr. Visnaw, so I understand. So
15 in order to tell your mother what happened, you first
16 talked to your cousin and then you confided in your
17 aunt and then you eventually talked to your mom about
18 it?
19 A. All the individuals listed here besides my
20 mother were actually notified or told about the
21 incident prior to me telling my mom.
22 Q. Okay. And you asked their advice on how to --
23 A. Well, my sister Juliee who -- our relationship
24 got much better after my sister's death. You know, I
25 confided in her as the immediate family member, because

1 And he happened to walk in and saw me close
2 the door and said, okay, what's going on? You're never
3 like this. You're always either upbeat or working on
4 something. You just don't close your door and have,
5 you know, this kind of reaction to something. What's
6 going on?
7 Q. And what I'm gathering here is what we have
8 for an address here is all the work addresses?
9 A. Yes.
10 Q. And the work phone numbers?
11 A. Correct.
12 Q. All right. So on one occasion, and it would
13 have been September of '05 after you sort of heard
14 about all this, you went out and Googled or whatever
15 and gathered information about Mueller and what was
16 happening?
17 A. I had gone and -- because my mother said he
18 was in the news, I thought immediately *St. Louis*
19 *Post-Dispatch*, so I went right to the *St. Louis*
20 *Post-Dispatch* website, and there was a picture of him
21 with the article.
22 And I didn't -- I didn't -- I don't think I
23 finished the entire article. I think that I started
24 reading and I got down to the point where they said,
25 you know, he was blind-folded, asked to undress down to

1 it's just, hey, this is what happened
2 And then Kate was told because she is my
3 family in Kansas City. And then my Aunt Barb was told
4 not only to let her know but to also, you know, seek
5 her counsel on what -- what do I do when I tell my mom
6 I mean, how do I keep her from --
7 Q. Is she your mom's older sister?
8 A. Younger
9 Q. Younger sister, okay. And then the next page
10 has some people that you talked about regarding William
11 Mueller, again, approximately in the fall of 2005.
12 Ricky Volkmann from Kansas City, who is that?
13 A. All of these individuals -- the first
14 three are co-workers, and then the last individual is
15 my assistant special agent in charge.
16 Ricky Volkmann is -- Ricky and Vicky have both
17 been there the whole time that I've been there.
18 They're actually getting close to retirement right now.
19 Of all the people at work, Ricky's probably the closest
20 person I'm to
21 And the manner in which I told him was the day
22 that I went on the internet to pull the information up
23 while I was at work, I went to close my door because I
24 had literally started to shake at my desk and felt like
25 my whole world was just caving in on me

1 his underwear, and a knife was held to his throat, and
2 that's where like a lightning bolt just struck me.
3 And I wanted -- I just wanted to be alone. I
4 went to close my door. He came in right after, I mean,
5 the door was closed.
6 I got back to my desk, and he was walking in.
7 He was actually coming in on something totally
8 unrelated, obviously, and sat down and said let's talk.
9 Q. Okay. When you downloaded all that
10 information, did you like set up a file of your own and
11 keep it?
12 A. I know that I've kept some of the e-mails or
13 some of the files that I had originally, but I deleted
14 those because at that point it was like why do I even
15 want to keep this around, why do you want to have this
16 information for me to go back and reread.
17 I mean, it bugs me now just to think about. I
18 don't want to have it. I don't want to have any access
19 to it.
20 So I've stopped going on the internet to try
21 to find stuff, and I haven't done that many months.
22 And any kind of electronic stuff that I have, I've
23 purged, because I just don't want it on my computer. I
24 don't want to have any access to it.
25 Q. At the time when you did that, did you simply

1 put it on your screen, read it, or did you print it?
 2 A. No, I just read it right off the screen.
 3 Q. So then all you had to do was knock it off?
 4 A. Close it out.
 5 Q. Okay. All right. And so you didn't actually
 6 put together a paper file about these materials?
 7 A. No, sir, no, sir. But I think my mom has. I
 8 think my mom has cut out the articles from the paper
 9 There's an envelope from my mom at my house in
 10 St. Louis. It's just a 4x8, 4x6 envelope that's got
 11 some articles in it. I just leave it on the shelf. I
 12 don't even touch it.
 13 Q. And as I understand it, the reason you never
 14 discussed this with anybody for the longest period of
 15 time, what happened, was because you were directed not
 16 to talk to anybody about it?
 17 A. No, no. I was directed not to talk to anybody
 18 at the school. I was directed not to tell anybody what
 19 was going on while I was at Vianney, because I was led
 20 to believe that if word got out and other individuals,
 21 say brothers at the residence or at the school found
 22 out, then it would undermine why he was put there at
 23 Vianney.
 24 And I was told that he was put there to try to
 25 find out why brothers were leaving the order. And so

1 shame for what happened?
 2 A. Based upon what I knew to be at that time, no.
 3 Q. All the way up until September of 2005. And
 4 even when your mom called you, you did not relate to
 5 her the fact that you'd been involved in these
 6 experiments?
 7 A. No, because at that point I had seen -- I had
 8 gone on very quickly and saw the allegations. And at
 9 that point, that's when -- I at least at that point in
 10 the very brief reading that I had knew that there was a
 11 problem and knew that I potentially could be a victim
 12 in this overall event.
 13 Q. And that's why you didn't talk to your mom
 14 about it?
 15 A. Yes, exactly.
 16 Q. Because you thought there may have been
 17 something wrong that occurred?
 18 A. Yes.
 19 Q. But up to that point, you never did?
 20 A. I never spoke with her about it. I never
 21 thought that there was something that was wrong with
 22 it.
 23 Q. You never thought anything wrong had occurred
 24 to you up until September 2005?
 25 A. That's correct.

1 that is why I never told anybody while I was at
 2 Vianney.
 3 The reason I never told anybody since
 4 graduating from Vianney is I had no reason to. I
 5 didn't believe there was anything that was done that
 6 was wrong.
 7 Q. Okay. Why did you discuss it with your dad
 8 then?
 9 A. Because there was the letter from
 10 Brother Mueller. And what I discussed with him was
 11 that, hey, here's a letter from Brother Mueller. What
 12 do you want me to do with it? Go ahead and throw it
 13 away. I don't write him back.
 14 Why is he still writing you? Because we
 15 assisted in his master's degree. There was a group of
 16 us from what we were told, and he liked to keep in
 17 touch.
 18 I mean, it didn't seem odd to me that he would
 19 want to keep in touch with former students. You know,
 20 I know a lot of people that either college instructors
 21 or high school people, hey, I know him. He's my -- he
 22 was my coach in swimming or diving or football or
 23 whatever, so it didn't strike me as odd that he would
 24 want to keep in contact with me.
 25 Q. All right. So you were -- you didn't have any

1 MR. CRAIG. And obviously we've been over
 2 this.
 3 Q. (By Mr. Noce) By William Mueller at Vianney?
 4 MR. CRAIG. I mean, are we having issues with
 5 closure on this deposition, Jerry?
 6 MR. NOCE: No, no, no. I'm getting there.
 7 MR. CRAIG. It's repetitive here.
 8 MR. NOCE. That's true.
 9 Q. (By Mr. Noce) Up to September 2005, to the
 10 extent that you remember what occurred, and you've
 11 already talked about that, you never thought any of
 12 that was wrong?
 13 A. That's correct.
 14 Q. You didn't give any statement to Ken Chackes
 15 about this at all?
 16 A. We talked about it briefly. I don't -- I
 17 never gave him a formal statement. We just talked on
 18 the telephone.
 19 Q. Who are Mark and Cindy Sanderson?
 20 A. Friends of the family.
 21 Q. Friends of your family in Kansas City?
 22 A. Yes.
 23 Q. You and your wife?
 24 A. Yes.
 25 Q. And what would be the occasion that you would

1 discuss this with them?
 2 A. It actually came out accidentally. We were --
 3 my distrust of clergy and priests. We were having
 4 lunch. They had gone to church, and it was a weekly
 5 thing where we'd go to their house after church, after
 6 they had come back, and we'd have lunch at their house.
 7 And we were talking about -- my wife was
 8 bringing up the fact, well, you were pretty rude to,
 9 you know, Pastor Tim or whatever his name is.
 10 Q. You were?
 11 A. I was
 12 Q. Okay.
 13 A. And Brandi had already known. This is
 14 after -- this is after September of 2005, so Brandi
 15 knew the circumstances.
 16 And it just came out. I said, well, if you
 17 had been molested by a clergy, and I stopped. And both
 18 Mark and Cindy were like, excuse me, so I related some
 19 generalities to them as a husband and wife.
 20 And then Mark who is probably, you know, the
 21 most religious person that I even talk to, as I
 22 categorize that, pulled me aside and said, hey, you
 23 know, we need to talk, because I want you to know that
 24 I'm here to support you and I'm here if you need
 25 someone to talk to. I'm here

1 Q. We have mentioned the fact that you have
 2 incurred expenses, some expenses for medication as a
 3 result of the treatment you're undergoing for the
 4 damages you're claiming in this lawsuit. That's
 5 one thing?
 6 A. Yes, sir
 7 Q. And can you give me a ballpark figure on that?
 8 A. Well, because Dr. Bernard has been giving me
 9 samples as far as that medication is concerned, it was
 10 initially -- I mean, there has been no charge
 11 Q. Is that the --
 12 A. He's given me samples of the Effexor. I think
 13 there was maybe \$30 or \$40 for the Paxil back then.
 14 Q. And as it relates to the other medical
 15 expenses, that would be limited to the treatment from
 16 Dr. Harris, the psychologist, and some of the treatment
 17 from Dr. Bernard?
 18 A. Yes, sir.
 19 Q. Because some of the treatment is for other
 20 things?
 21 A. Exactly, sir.
 22 Q. Are there any other physicians or health care
 23 providers of any kind who have treated you on account
 24 of the basis of the matters that are brought up in your
 25 lawsuit?

1 Q. Would that have been last fall, 2005?
 2 A. Around that time. It may have even been early
 3 January, but it was before the interrogatories were
 4 written.
 5 Q. You also mention in here you were involved in
 6 some sort of a civil action involving Provident
 7 BancCorp? What was that about? Were you plaintiff or
 8 defendant?
 9 A. I was the defendant, but what happened was
 10 because I was moving from Korea to Fort Lewis to -- and
 11 getting out of the Army, their paper trail didn't catch
 12 up to show that the debt with them had been paid off.
 13 So they sent me to collections, collections to
 14 litigation, and once everything caught back up, it was
 15 dismissed.
 16 Q. Who is Jim Stuka?
 17 A. That is another client with my attorney
 18 Q. Okay. Is that somebody you know?
 19 A. No. I know of him through my attorney
 20 Q. How about Ed Naeger?
 21 A. Again, somebody I know of through my attorney
 22 Q. Do you know, is he a cop, Naeger?
 23 MR. CRAIG (Nods head)
 24 Q. (By Mr. Noce) And Timothy Turner?
 25 A. Somebody I know through my attorney

1 A. I believe the only two are Dr. Harris and
 2 Dr. Bernard.
 3 Q. And do you believe that the expenses incurred,
 4 whether it's covered by your health insurance through
 5 work or copay, do you think any of that would exceed
 6 \$2,000?
 7 A. Eventually it would over the period of time.
 8 Q. Has it today?
 9 A. As of today, I don't know exactly. I know
 10 that I've paid out at least \$90 so far. I don't know.
 11 I haven't received a bill from Dr. Harris for the
 12 subsequent sessions I've had with him, but I know that
 13 it's \$30 per session for me for my copay portion.
 14 Q. And is it -- the person who's treating you for
 15 this -- the damages you're claiming here is really
 16 Dr. Harris, and then Dr. Bernard's filling your
 17 prescriptions?
 18 A. Correct.
 19 Q. And do you see Harris on a regular basis?
 20 A. I saw him last week. What we do is we have a
 21 session, and if I feel, you know, something that may
 22 need to be discussed or I have what I call an episode
 23 where I just -- all of a sudden just feel like burning
 24 down, downtrodden, I'll call him and make one
 25 So it's not every week. It's more or less

1 when I feel that there's a need to actually go in and
 2 talk to him at the beginning, yes, it was as often as
 3 I could, as possible as I could.
 4 And it has tailed off. And he's even stated
 5 that, that you don't need to come see me weekly.
 6 Q. And so has he left it as an as needed, contact
 7 the office if you need to see me?
 8 A. Contact the office if I need to see him or if
 9 through that day's session he feels that I should
 10 follow up in another week, he'll make that known
 11 Q. Do you have an appointment as you sit here
 12 today to see him?
 13 A. Tomorrow.
 14 Q. Tomorrow. Back in Kansas City, I assume?
 15 A. Yes, sir.
 16 Q. All right. And has he had you get involved in
 17 any other type of treatment other than counseling with
 18 him?
 19 A. No, sir
 20 Q. You're not in any group therapy or anything
 21 like that?
 22 A. No, sir.
 23 Q. Has any physician indicated to you that you're
 24 going to be hospitalized?
 25 A. No, sir.

1 Q. Has any physician, Harris or Bernard, placed
 2 any restrictions on your activities such as -- I don't
 3 know. What hobbies do you have other than taking care
 4 of your kids?
 5 A. Softball. That's it. I work too much to have
 6 any other hobbies.
 7 Q. Okay. Have any of these health care providers
 8 placed any restrictions on your hobbies at all?
 9 A. No.
 10 Q. Okay. Are any of the activities of daily
 11 life, have they been -- have you had any restrictions
 12 placed on you by any health care provider as a result
 13 of what you're claiming in this lawsuit?
 14 A. In my daily life, I think -- and I don't know
 15 if I would call this a restriction or not, but to me it
 16 was guidance from Dr. Harris.
 17 Because, as I stated earlier, with my children
 18 when they were smaller and even to some degree now as
 19 they're getting older, I become very anxious or very
 20 edgy if they're running around the house naked, if they
 21 want to get in the shower with either myself or my
 22 wife. My son will just come in and take his diaper off
 23 and clumb into the shower.
 24 You know, what Dr. Harris has said, you know
 25 what, that's a kid. The only thing I want you to do is

1 enjoy your child. Enjoy their youth now, because
 2 later, you know, those are going to be the things that
 3 you remember. I don't know if that's a restriction or
 4 not, but that was --
 5 Q. Well, I think my question was unclear. What
 6 I'm asking is have you gotten directions from any
 7 physician who's treating you for what's claimed in this
 8 lawsuit of things that you are not to do?
 9 A. No.
 10 Q. Or restricted your activities in any regard?
 11 A. No.
 12 Q. Has any physician kept -- or any health care
 13 provider to make sure I use it in the broadest sense --
 14 directed you to stay off work as a result of anything?
 15 A. No.
 16 Q. Or restricted your activities at work as a
 17 result of anything claimed here?
 18 A. The only thing I would say in that regard
 19 would be to -- as it relates to the forensics side, the
 20 computer forensics side when it was discussed with
 21 Dr. Harris that I do do that.
 22 He agreed that it would be best to try to stay
 23 away from my type of child pornography investigation,
 24 one, because we just don't want to -- we don't want to
 25 feed my anxiety of having to see these people viewing

1 child pornography all the time, and two, it's just not
 2 a need because there's somebody else there that can do
 3 it.
 4 Q. And I think that was something that the
 5 special agent recommended anyway?
 6 A. Correct, Patrick Baird, right.
 7 Q. Aside from that, any other restrictions placed
 8 on any activities for you by any of these health care
 9 providers?
 10 A. No, sir.
 11 Q. Is there any -- has this, what you're claiming
 12 in this lawsuit -- well, strike that. Let me start
 13 over.
 14 Do you think that the care provided to you by
 15 Dr. Bernard has helped you?
 16 A. I believe with the medicines provided, it's
 17 helped me get through the days when I have my down
 18 moments, and it's also kept me a little bit more upbeat
 19 knowing that I can think through it.
 20 I don't get the fog of the doldrums, so to
 21 speak, because I'm going back. And it really helps me
 22 because I don't concentrate on the events from 1984 and
 23 '85 like I did shortly after September 2005.
 24 Q. And so that's accurate, his treatment's
 25 helping you?

1 A. Yes.
 2 Q. And you're doing better now than you were a
 3 year earlier?
 4 A. Yes, sir.
 5 Q. And would the same be true of Dr. Harris? Do
 6 you believe his treatment is helping you?
 7 A. Yes.
 8 Q. And you're doing better now as a result of his
 9 treatment and care than you were a year ago?
 10 A. Yes, sir.
 11 Q. Has your wife noted an improvement?
 12 A. I would hope so I -- you'd have to talk to
 13 her. I mean, she --
 14 Q. Well, most wives I know -- present company
 15 excluded, of course -- are more than happy to discuss
 16 how we're doing on a regular basis, but has your wife
 17 noted to you that she thinks you're doing better?
 18 A. What she has said to me is she can tell if I
 19 miss a couple days of my medicine -- because I get up
 20 early and I just forget to take it -- I become more
 21 aggressive, I become -- I'm easier to anger. And
 22 usually it's because I have -- I've been thinking about
 23 the events.
 24 When I'm on my medication, she notices a stark
 25 improvement. I don't get as angry with my children

1 until I talked to Dr. Harris.
 2 Q. But you've had that feeling since '86?
 3 A. I've had the feeling, but I don't know why. I
 4 look at every -- every adult male as someone who either
 5 wants to hurt me or my children, so I become
 6 overprotective. I'm afraid to let my kids have fun as
 7 children. To me, that's an important thing.
 8 But I'm always watching out. If they get too
 9 far out of my sight, I'm always grabbing them. If
 10 they're at the playland in the local mall, I'm never
 11 more than five feet away from them or they're never out
 12 of eyeshot.
 13 If they run up to somebody, it's immediately
 14 what's he going to do, why are you talking to my kid.
 15 It's become restrictive for them. So in that regard,
 16 thus, according to Dr. Harris, has been a direct result
 17 of that.
 18 I view pretty much a lot of older males -- I
 19 don't get along with them. If you're older than me and
 20 you're just -- I don't -- for some reason, I don't deal
 21 with you very well
 22 Q. Even your own lawyer?
 23 A. Well, he's not older than me
 24 MR. CRAIG We're the exact same age.
 25 MR. NOCE Oh, okay

1 In fact, I very seldom get angry with my children when
 2 I'm on my medication because I look at things
 3 differently, you know, at that point. So I would say
 4 yes I think she has noticed an improvement.
 5 Q. Do you think your marriage is better now than
 6 it was a year ago?
 7 A. Yes
 8 Q. And in what way as we sit here today is your
 9 life affected, and tell me now so I can evaluate your
 10 case, if you would, by what you're claiming in the
 11 lawsuit?
 12 A. How is it affected now?
 13 Q. Yes, sir.
 14 A. Again, I -- the church was a big part of my
 15 life before, and it went away And it went away in a
 16 way of distrusting people, distrusting every clergyman
 17 that I had ever come across, anybody who I viewed to be
 18 hyper-religious. You know, there's several in my
 19 wife's church that I just feel very uncomfortable
 20 around
 21 So I miss out on the relationship that the
 22 church brings, any church brings to someone of faith,
 23 that interaction there, because I just don't trust
 24 anybody that is affiliated with what I see or what I
 25 perceive now as an adult. And that I wasn't aware of

1 THE WITNESS: April 1st. Right?
 2 MR. CRAIG 9th
 3 THE WITNESS: April 9th, so he's the exact
 4 same age
 5 MR. NOCE He's older than you the record will
 6 reflect.
 7 THE WITNESS Few days isn't that big of a
 8 deal
 9 MR. NOCE. Okay
 10 THE WITNESS: So it's something that has even
 11 affected my job, because I get along much better with
 12 females I relate to them much more.
 13 And one of the reasons Dr. Harris said is that
 14 after this happened, you went to the only other group
 15 that you could have at that time, and you began to
 16 associate -- you became comfortable with women saying,
 17 you know, I confide in you, I feel more comfortable
 18 around them because there was no injury that was
 19 sustained by them
 20 So, you know, my dad -- I lost five years with
 21 my dad I think my -- at the time my grades suffered a
 22 little bit because of it. I dropped to the other honor
 23 roll, to the silver honor roll But losing the five
 24 years with my father, not re-establishing that until
 25 1991 right before he died.

1 Spiritually, I've lost out on 20 years' worth
2 of faith. I believe that my child does need to be
3 baptized, but I don't trust anybody to baptize my
4 children because I believe that once -- I see it as,
5 okay, you're going to baptize them, and now what you're
6 going to do is say, hey, can you be an alter boy or how
7 about an alter girl. Or can you help me? Can you stay
8 late and help me clean up?

9 I don't look at religious people in that
10 light. I've lost out on a lot of spiritual things in
11 my life, which I still hold dear my faith.

12 My time with my father during the time that he
13 was in the hospital awaiting a heart transplant where I
14 should have been with him as often as possible, I chose
15 not to be around him.

16 Q. (By Mr. Noce) Where were you living then?

17 A. Here in St. Louis.

18 Q. Had you ever heard of any other instances
19 unrelated to William Mueller of clergy sexual abuse
20 prior to September 2005?

21 A. It was in the news everywhere in Boston and --
22 was it Cardinal Law? I don't think there was a day
23 that you couldn't pick up a newspaper from somewhere
24 and find that there was an allegation or an accusation.

25 Q. Any other way in which this has affected you

1 direction of Dr. Harris Get used to your children,
2 work with them first, and now I have a blast with my
3 children.

4 Q. Anything else?

5 A. And I was getting ready to say something
6 before you asked where was I living. I lost my train
7 of thought when I was -- right then.

8 Q. I think Archbishop Law or Cardinal Law was
9 probably 10 or 12 years ago, so this is not news to
10 you?

11 A. No, no

12 Q. I mean, it's been something that's been going
13 on for quite awhile.

14 A. No

15 Q. I know in the lawsuit, there's money damages
16 sought. Okay? Is there anything that you want aside
17 from money damages from either Vianney or the Society
18 of Mary in this case?

19 A. I would like an acknowledgment that it
20 happened You know, reading the -- reading the initial
21 release that came out and having seen some of the
22 statements by Brother Glodich or another --

23 Q. Do you know him?

24 A. No, I've never met the man You know, there
25 were statements in one of the periodicals. I don't

1 other than what you've already told me?

2 A. You know, with my own family, there was -- as
3 far as my married family with Brandt, you know, not
4 feeling comfortable around my own kids, not feeling
5 comfortable around the kids of my friends

6 You know, I think there was -- was that, and
7 you know, I just feel extremely -- I get very anxious
8 or -- I don't know. I can't think of the word to
9 describe it, but my anxiety level goes up a lot if I'm
10 like left alone with a child

11 I always try to -- instead of, hey, do you
12 want to come outside and throw a ball with me, it's
13 like, no, not right now. I'm always afraid to put
14 myself in the position where there could be the
15 allegation made of impropriety

16 I'm afraid to interact with children without
17 their parents there I feel that I'm going to be
18 labeled a pedophile

19 Q. How long have you felt that way?

20 A. That has been something that has been going on
21 for a while, and it wasn't made known to me that this
22 all has stemmed from what happened to me back in high
23 school

24 And I love children I mean, I play with my
25 children every day, and that's literally at the

1 know if it was the *Pueblo Chiefton* or which one it was
2 where he stated, hey, in 1986 we had a father come
3 forward and say that there was some kinky behavior

4 Well, to me, you should have made it known to
5 everybody from that point forward, or that point from
6 1986 backwards who had contact with Brother Mueller so
7 it could have been resolved then.

8 And, to me, the school and the order covered
9 it up by sending him to counseling not only once but a
10 second time instead of making it known then.

11 And an apology and a public acknowledgment
12 that, hey, we screwed up is one thing that I do ask
13 from the order.

14 Even though the people aren't there when I was
15 there, they still represent to me the evilness and the
16 demonic nature of what Brother Mueller represents to me
17 today.

18 Q. Anything else?

19 A. No, sir

20 MR. NOCE. Okay Let me check. I think I'm
21 done That's it

22 VIDEOGRAPHER. Signature?

23 MR. NOCE. I don't know It's up to you

24 MR. CRAIG. She's going to forward the depo,
25 and I'll forward it to him to read

November 6, 2006

1 MR. NOCE: Okay.
 2 VIDEOGRAPHER: This is the end of the
 3 deposition. The time the 5:13 p.m. We're going off
 4 the record.
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Sanders, Simpson & Fletcher
 Attn: Daniel Craig
 1129 Grand Boulevard, Suite 1400
 Kansas City, Missouri 64106

IN RE: ROBERT WILLIAM VISNAW
 vs
 MARIANIST PROVINCE OF THE UNITED STATES, ST. JOHN
 VIANNEY HIGH SCHOOL, INC., and BROTHER WILLIAM MUELLER
 (Signature Page of ROBERT WILLIAM VISNAW)

Dear Mr. Craig

This letter is incorporated as Page 503 of ROBERT WILLIAM VISNAW's deposition that he gave in the above-styled cause of action. As per request, he is to read over the deposition. Please have him read over your copy of the transcript which is enclosed. If he has any corrections, please have him make them on the CORRECTION SHEET(S) that I have also enclosed. For each CORRECTION SHEET that he marks on, please have him sign his name down at the bottom where it says Deponent. If he has no corrections, then have him mark NO CORRECTIONS diagonally across one of the CORRECTION SHEETS and also sign down at the bottom of the CORRECTION SHEET where it says Deponent.

After he is through reading over the deposition, have him sign the ORIGINAL SIGNATURE PAGE, Page 502. His signature MUST BE NOTARIZED before the ORIGINAL SIGNATURE PAGE is returned.

I would appreciate it if you could send back the ORIGINAL SIGNATURE PAGE and CORRECTION SHEET(S) to me by no later than December 6, 2006, as per statute he has thirty days to review. My return address is on the front cover of the deposition. If you have any questions please feel free to call me at (314)621-4408 and I'll be glad to help in any way I can.

Sincerely,

Jennifer L. Broderick, CSR

cc: Gerard T. Noce

SIGNATURE PAGE

NOTARIAL CERTIFICATE

STATE OF ILLINOIS)
)
 COUNTY OF MACOUPIN)

I, JENNIFER L. BRODERICK, a Certified Shorthand Reporter and duly commissioned Notary Public within and for the State of Illinois do hereby certify that there came before me at the offices of Burroughs, Hepler, Broom, MacDonald, Hebrank & True, LLP, 800 Market Street Suite 2300, St. Louis, Missouri 63101,

ROBERT WILLIAM VISNAW,

who was by me first duly sworn to testify to the truth and nothing but the truth of all knowledge touching and concerning the matters in controversy in this cause, that the witness was thereupon carefully examined under oath and said examination was reduced to writing by me, and that this deposition is a true and correct record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for nor employed by any of the parties to the action in which this deposition is taken, further, that I am not a relative or employee of an attorney or counsel employed by the parties hereto or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of November 2006

My commission expires December 9, 2009

Notary Public

ROBERT WILLIAM VISNAW

Subscribed and sworn before me on this _____ day
 of _____, 2006

My commission expires _____

Notary Public

B

IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS
STATE OF MISSOURI

ROBERT WILLIAM VISNAW,)
)
 Plaintiff,)
) Cause No 06CC-000008
 v)
) Div No 15
)
 MARIANIST PROVINCE OF THE)
 UNITED STATES, ST JOHN VIANNEY)
 HIGH SCHOOL, INC and BROTHER)
 WILLIAM MUELLER,)
)
 Defendants)

**DEFENDANTS ST. JOHN VIANNEY HIGH SCHOOL, INC. AND MARIANIST
PROVINCE OF THE UNITED STATES' JOINT
MOTION FOR SUMMARY JUDGMENT**

COME NOW Defendants, St John Vianney High School, Inc (hereinafter referred to as "Vianney"), and Marianist Province of the United States, (hereinafter referred to as "Marianist Province") by and through their attorneys, and for their Joint Motion for Summary Judgment pursuant to Rule 74.04 of the Missouri Rules of Civil Procedure, state as follows:

1 On January 3rd, 2006, Plaintiff Robert Visnaw (hereinafter "Plaintiff") filed a Petition for damages in this Court against defendants William Mueller (hereinafter "Mueller"), Vianney, and the Marianist Province (See Exhibit A, attached, Plaintiff's Petition)

2 On December 18th, 2006, Plaintiff amended his Petition to add a claim for Negligence and Negligent Supervision, Retention, and Failure to Warn (See Exhibit B, attached, Plaintiff's Amended Petition)

3 In his Amended Petition, Plaintiff alleges that he was sexually assaulted by Mueller and that the Defendants failed to inform students at Vianney of Mueller's alleged propensity to sexually assault juveniles (See Exhibit B at ¶¶7-10, ¶36 and ¶40)

PERTINENT LAW

4 Summary judgment is proper when there is no genuine issue as to any material fact and “ the facts as admitted show a legal right judgment for the movant ” *ITT Commercial Finance Corp v Mid-America Marine Supply Corp* , 854 S W 2d 371, 380 (Mo banc 1993)

5 A defending party may establish a right to summary judgment by showing “ that there is no genuine dispute as to the existence of *each* of the facts necessary to support the movant’s properly-pleaded affirmative defense ” *Id* at 381 (emphasis in original)

6 Assertion of the statute of limitations is an affirmative defense *See* Rule 55 08 of the Missouri Rules of Civil Procedure

7 Because Plaintiff claims that the incidents alleged in this matter occurred in 1985, the general five year statute of limitations contained in R S Mo § 516 120 applies to his cause of action *See Powel v Chaminade College Preparatory, Inc* , 197 S W 3d 576, 580 (Mo banc 2006)

8 Statutes of limitation in Missouri begin to run when the damage resulting from a wrong is “ sustained and is capable of ascertainment ” R S Mo § 516 100

9 In order to determine when a wrong is capable of ascertainment, courts should apply an objective standard “ the statute of limitations begins to run when the evidence was such to place a reasonably prudent person on notice of a potentially actionable injury ” *Powel v Chaminade College Preparatory, Inc* , 197 S W 3d 576, 582 (Mo banc 2006) (internal citations omitted)

10 In the present case, therefore, under the general statute of limitations set forth in R S Mo § 516 120 Plaintiff should have filed his suit no later than 1993—which would be five (5) years after he turned twenty-one (21) ¹

11 Even under the lengthiest period of limitations that might potentially apply to his claim, Plaintiff's case is time-barred Under Missouri law in effect in 1985, an action for “childhood sexual abuse” was barred unless Plaintiff filed his case either within five (5) years of his eighteenth (18th) birthday or within three (3) years after he reasonably should have discovered that his alleged injury was caused by the alleged abuse, whichever occurred later R S Mo § 537 046(2) (1990)

12 Plaintiff did not file his original Petition in this matter, however, until January 3rd, 2006—over 21 years after he turned 18 years of age in 1985 ²

GROUND FOR SUMMARY JUDGMENT

13 The statute of limitations has barred any action Plaintiff might have had against Vianney and the Marianist Province

14 Plaintiff had notice of the potentially actionable injuries that he allegedly suffered over twenty years ago, at the time the alleged incidents occurred.

15 Since Plaintiff failed to bring this action until 2005, his action is barred, and Vianney and the Marianist Province should be granted summary judgment

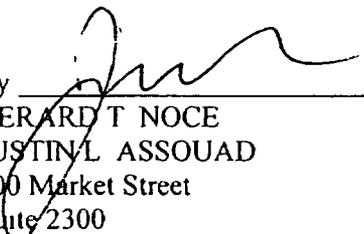
¹ Defendants recognize that Plaintiff claims the last alleged incident occurred prior to his turning 21, however, as is discussed in detail in this Memorandum, there is no allegation that he ever forgot or repressed his knowledge of the incidents prior to turning 21 in April of 1988, rather, Plaintiff admits that he has always remembered the bulk of what happened during the incidents As such, under the objective test set forth in *Powel*, Plaintiff had a “potentially actionable injury” for which the statute of limitations began to run for him immediately upon turning 21 in April 1988, thus making the statute of limitation have run on his claims in 1993 at the very latest under R S Mo § 516 120 (or in 1990 under R S Mo § 537 046, which is discussed in the next paragraph)

² Plaintiff admits that he has always remembered the bulk of what happened during the incidents As such, under the objective test set forth in *Powel*, Plaintiff had a “potentially actionable injury” for which the statute of limitations began to run for him immediately upon turning 18 in April 1988, thus making the statute of limitation have run on his claims in 1990 at the very latest under R S Mo § 537 046

16 In accordance with Rule 74.04(c)(1), Vianney and the Marianist Province have attached to this motion a statement of uncontroverted material facts and a memorandum in support of their motion. Vianney and the Marianist Province hereby incorporate herein all of the statements of fact, arguments, and positions stated in those documents as though fully set forth herein.

WHEREFORE, in light of the above, the defendant St. John Vianney High School, Inc. and the defendant Marianist Province of the United States respectfully request that this Court grant them summary judgment under Missouri Supreme Court Rule 74.04 and any other and further relief that this Court deems just and appropriate under the circumstances.

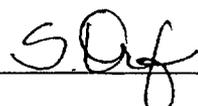
HEPLER, BROOM, MacDONALD,
HEBRANK, TRUE & NOCE, LLC

By 
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JUSTIN L. ASSOUD #48576
800 Market Street
Suite 2300
St. Louis, MO 63101
314/241-6160
314/241-6116 – Facsimile

Attorneys for Defendants
St. John Vianney High School and
Marianist Province of the United States

CERTIFICATE OF SERVICE

A copy of the foregoing has been sent this 25 day of May, 2007 via first class U.S. Mail, postage prepaid, to Mr. Daniel W. Craig, Attorneys for Plaintiffs, 1125 Grand Blvd., Suite 900, Kansas City, MO 64106 and Mr. J. Martin Hadican, Attorney at Law, 225 South Meramec, Suite 832, St. Louis, MO 63105 - Attorney for Defendant Mueller.



MISSOURI CIRCUIT COURT
TWENTY-FIRST JUDICIAL CIRCUIT
COUNTY OF ST. LOUIS

ROBERT WILLIAM VISNAW,)
)
 Plaintiff,)
)
 v)
)
 MARIANIST PROVINCE OF THE)
 UNITED STATES,)
)
 Serve CT Corporation System)
 Registered Agent)
 120 South Central Avenue)
 Clayton, Missouri 63105)
)
 ST. JOHN VIANNEY HIGH SCHOOL, INC.)
)
 Serve Wendell L DePhillips)
 Registered Agent)
 1311 S Kirkwood Road)
 St Louis, Missouri 63122)
)
 BROTHER WILLIAM MUELLER,)
)
 Serve Service by Special Process Server)

Case No.

Division

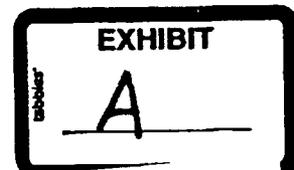
JURY TRIAL DEMANDED

15

PETITION FOR DAMAGES

COMES NOW plaintiff, by and through counsel, and for his cause of action states as follows

1 Plaintiff Robert Visnaw is a Kansas citizen residing in Johnson County, Kansas. At all times relevant to the allegations of this cause of action, plaintiff was a citizen of the state of Missouri, attended defendant St John Vianney High School, in St. Louis County, Missouri, and was a minor parishioner and student of defendants.



2. Defendant Marianist Province of the United States is a Missouri non-profit corporation in good standing, with its principal place of business in the city of St. Louis, Missouri. At all times relevant to the allegations of this cause of action, defendant was the supervisor of defendant Brother William Mueller, and was the owner and operator of defendant St. John Vianney High School.

3. Defendant St. John Vianney High School, Inc. is a Missouri non-profit corporation in good standing, with its principal place of business in St. Louis County, Missouri. At all times relevant to the allegations of this cause of action, defendant was wholly owned, operated and/or managed by defendant Marianist Province of the United States. At all times relevant to the allegations of this cause of action, defendant was the supervisor of defendant Brother William Mueller.

4. Defendant Brother William Mueller is believed to be a citizen of Texas residing in the city of San Antonio, Texas. At all times relevant to the allegations of this cause of action, defendant was a member, associate and/or employee, and was under the supervision of, defendants Marianist Province of the United States and/or St. John Vianney High School.

5. Jurisdiction and venue are proper in this Court because plaintiff asserts claims under Missouri common law only, because the acts, omissions, and/or occurrences giving rise to this cause of action arose in St. Louis County, Missouri, and because at least one defendant is a citizen of the state of Missouri, where this action is being brought.

6. Each of the acts or omissions of defendants as set forth below caused or contributed to cause the injuries and damages to plaintiff, and therefore each defendant is jointly and severally liable for said injuries and damages.

7 In approximately 1984, defendant Brother William Mueller repeatedly assaulted and/or battered plaintiff. Plaintiff believes such assaults and batteries included, but were not limited to, sexual misconduct. Said assaults and/or batteries occurred on property which defendants Maronist Province of the United States and/or St. John Vianney High School owned and/or controlled and/or had the right to control the activity thereon.

8 The aforementioned abuse of plaintiff, and the circumstances under which the abuse occurred, caused plaintiff to develop various psychological coping mechanisms which made him incapable of ascertaining the resulting damages from that conduct until approximately 2005, when specific details of defendant Mueller's abuse of minors emerged publicly.

9 Due to the way in which defendant Mueller abused plaintiff, in that he would initially render him unconscious prior to his assault and battery of plaintiff, prevented plaintiff from ascertaining the resulting damages from that conduct until 2005, when specific details of defendant Mueller's abuse of minors emerged publicly.

10 Prior to defendant Brother William Mueller's assault and battery of plaintiff, defendants Maronist Province of the United States and/or St. John Vianney High School had knowledge and were aware of several previous assaults and batteries, including sexual misconduct, by defendant Mueller on minors during the 1960's, 1970's and/or early 1980's.

Count I- Intentional Failure to Supervise Clergy
(Plaintiff v. Marianist Province of the United States and
St. John Vianney High School)

11 Plaintiff incorporates by reference the allegations made in paragraphs 1-10
above

12 At the time of the assaults and batteries described above, defendant Brother
William Mueller was under the supervision of defendants Marianist Province of the United
States and/or St. John Vianney High School

13 At the time of the assaults and batteries, defendant Brother William Mueller's
supervisors, defendants Marianist Province of the United States and/or St. John Vianney High
School knew that harm was certain or substantially certain to result

14 Defendant Brother William Mueller's supervisors, defendants Marianist Province
of the United States and/or St. John Vianney High School disregarded the known risks

15 As a result of defendant Brother William Mueller's supervisors' inaction, damage
was caused to plaintiff

16 The harm that occurred to plaintiff occurred on premises owned or controlled, or
with the right to control the activity thereon, by defendants Marianist Province of the United
States and/or St. John Vianney High School

17 Defendants' conduct as stated above was outrageous because of defendants' evil
motive or reckless indifference to the rights of others, thus justifying an award of punitive
damages

WHEREFORE, plaintiff prays for judgment against defendants Marianist Province of the
United States and St. John Vianney High School, jointly and severally, in an amount that will

fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper.

Count II- Intentional Infliction of Mental Distress

(Plaintiff v All Defendants)

18 Plaintiff incorporates by reference the allegations made in paragraphs 1-17, above

19. Defendant Brother William Mueller assaulted and battered plaintiff

20 Defendants Maronist Province of the United States and/or St. John Vianney High School intentionally failed to supervise defendant Mueller, which resulted in his assaulting and battering plaintiff

21 Defendants' actions, inactions and/or omissions were extreme, outrageous, and intolerable

22 Plaintiff sustained severe emotional distress which was medically diagnosable and medically significant

23 Defendants' conduct as stated above was outrageous because of defendants' evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages

WHEREFORE, plaintiff prays for judgment against all named defendants in this action, jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper

Count III- Assault

(Plaintiff v. Brother William Mueller)

24 Plaintiff incorporates by reference the allegations made in paragraphs 1-23,
above

25 Defendant Brother William Mueller physically grasped, held, touched, fondled,
choked and/or groped plaintiff in threatening and highly inappropriate ways during which he
brandished what plaintiff believed was a knife and placed it to his neck and face

26. Defendant's actions put plaintiff in fear of bodily harm

27 By reason of defendant's actions, plaintiff suffered damage

28 Defendant s conduct as stated above was outrageous because of defe ndant's evil
motive or reckless indifference to the rights of others, thus justifying an award of punitive
damages

WHEREFORE, plaintiff prays for judgment against defendant Brother William Mueller,
jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his
damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other
relief as may be just and proper

Count IV- Battery

(Plaintiff v. Brother William Mueller),

29 Plaintiff incorporates by reference the allegations made in paragraphs 1-28,
above

30 Defendant Brother William Mueller physically held, touched, and groped plaintiff
in threatening and highly inappropriate ways during which he brandished what plaintiff believed
was a knife and placed it to his neck and face

31 Defendant's actions constituted harmful and offensive touching upon plaintiff

32 By reason of defendant's actions, plaintiff suffered damage

33 Defendant's conduct as stated above was outrageous because of defendant's civil
 motive or reckless indifference to the rights of others, thus justifying an award of punitive
 damages

WHEREFORE, plaintiff prays for judgment against defendant Brother William Mueller,
 jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his
 damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other
 relief as may be just and proper

Respectfully Submitted

SANDERS, SIMPSON, & FLETCHER, L C

By 
 MICHAEL R FLETCHER, #47495
 DANIEL W CRAIG, #43883
 1125 Grand Blvd, Suite 1400
 Kansas City, MO 64106
 (816) 471-6444, FAX (816) 471-6664

ATTORNEYS FOR PLAINTIFFS

MISSOURI CIRCUIT COURT
TWENTY-FIRST JUDICIAL CIRCUIT
COUNTY OF ST. LOUIS

ROBERT WILLIAM VISNAW,)	
)	
Plaintiff,)	
	)	Case No.
v)	
	)	Division
MARIANIST PROVINCE OF THE)	
UNITED STATES,)	
ST. JOHN VIANNEY HIGH SCHOOL, INC.,)	
BROTHER WILLIAM MUELLER,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that the following pleadings and documents were served upon all named defendants concurrently with service of plaintiff's Petition for Damages

1 Notice of Deposition of Defendant Marianist Province of the United States pursuant to Rule 57.03 (b)(4)

2 Notice of Deposition of Defendant St. John Vianney High School pursuant to Rule 57.03 (b)(4)

3 Request for Admissions to Defendant Marianist Province of the United States

4 Request for Admissions to Defendant St. John Vianney High School

5 Plaintiffs' First Set of Interrogatories to Defendant Marianist Province of the United States

6 Plaintiffs' First Set of Interrogatories to Defendant St. John Vianney High School

Respectfully Submitted,

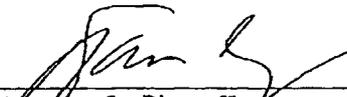
SANDERS, SIMPSON & FLETCHER, L L C

By 
 Michael R. Fletcher MO #47405
 Daniel W. Craig MO #43813
 1125 Grand Boulevard, Suite 1400
 Kansas City, Missouri 64106
 816-471-6444 Fax No 816-471-6664

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served upon defendants along with the original Summons and Pctition for Damages



 Attorney for Plaintiff

operated and/or managed by defendant Marianist Province of the United States. At all times relevant to the allegations of this cause of action, defendant was the supervisor of defendant Brother William Mueller.

4 Defendant Brother William Mueller is believed to be a citizen of Texas, residing in the city of San Antonio, Texas. At all times relevant to the allegations of this cause of action, defendant was a member, associate and/or employee, and was under the supervision of, defendants Marianist Province of the United States and/or St. John Vianney High School.

5 Jurisdiction and venue are proper in this Court because plaintiff asserts claims under Missouri common law only, because the acts, omissions, and/or occurrences giving rise to this cause of action arose in St. Louis County, Missouri, and because at least one defendant is a citizen of the state of Missouri, where this action is being brought.

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8 The aforementioned abuse of plaintiff, and the circumstances under which the abuse occurred, caused plaintiff to develop various psychological coping mechanisms which made him incapable of ascertaining the resulting damages from that conduct until approximately 2005, when specific details of defendant Mueller's abuse of minors emerged publicly.

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12 At the time of the assaults and batteries described above, defendant Brother William Mueller was under the supervision of defendants Marianist Province of the United States and/or St. John Vianney High School

13 At the time of the assaults and batteries, defendant Brother William Mueller's supervisors, defendants Marianist Province of the United States and/or St. John Vianney High School knew that harm was certain or substantially certain to result.

14 Defendant Brother William Mueller's supervisors, defendants Marianist Province of the United States and/or St. John Vianney High School disregarded the known risks

15 As a result of defendant Brother William Mueller's supervisors' inaction, damage was caused to plaintiff

16 The harm that occurred to plaintiff occurred on premises owned or controlled, or with the right to control the activity thereon, by defendants Marianist Province of the United States and/or St John Vianney High School

17 Defendants' conduct as stated above was outrageous because of defendants' evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages.

WHEREFORE, plaintiff prays for judgment against defendants Marianist Province of the United States and St. John Vianney High School, jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages and for such other relief as may be just and proper

Count II- Intentional Infliction of Mental Distress

(Plaintiff v. All Defendants)

18 Plaintiff incorporates by reference the allegations made in paragraphs 1-17, above

19 Defendant Brother William Mueller assaulted and battered plaintiff

20 Defendants Marianist Province of the United States and/or St John Vianney High School intentionally failed to supervise defendant Mueller, which resulted in his assaulting and battering plaintiff

21 Defendants' actions, inactions and/or omissions were extreme, outrageous, and intolerable

22 Plaintiff sustained severe emotional distress which was medically diagnosable and medically significant

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Count III- Assault

(Plaintiff v. Brother William Mueller)

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26 Defendant's actions put plaintiff in fear of bodily harm

27. By reason of defendant's actions, plaintiff suffered damage.

28 Defendant's conduct as stated above was outrageous because of defendant's evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages

WHEREFORE. plaintiff prays for judgment against defendant Brother William Mueller, jointly and severally in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages. and for such other relief as may be just and proper

Count IV- Battery

(Plaintiff v. Brother William Mueller),

29 Plaintiff incorporates by reference the allegations made in paragraphs 1-28,
above

30 Defendant Brother William Mueller physically held, touched, and groped plaintiff
in threatening and highly inappropriate ways during which he brandished what plaintiff believed
was a knife and placed it to his neck and face

31. Defendant's actions constituted harmful and offensive touching upon plaintiff

32 By reason of defendant's actions, plaintiff suffered damage

33 Defendant's conduct as stated above was outrageous because of defendant's evil
motive or reckless indifference to the rights of others, thus justifying an award of punitive
damages.

WHEREFORE, plaintiff prays for judgment against defendant Brother William Mueller,
jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his
damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other
relief as may be just and proper

Count V- Negligence

(Plaintiff v. All Defendants)

34 Plaintiff incorporates by reference the allegations made in paragraphs 1-33,
above

35 Defendants had a duty to protect children served by their schools

36 Upon information and belief, defendants, by and through their agents, servants
and employees, knew or reasonably should have known of defendant Mueller's dangerous and
exploitive propensities and/or that he was an unfit agent, and despite such knowledge, defendants
breached their duty to protect plaintiff when they failed to protect plaintiff from the sexual and
other abuse described herein

37. Defendants' actions and/or inactions were willful, wanton and reckless for which
punitive damages and/or damages for aggravating circumstances are appropriate

38. As a direct result of the acts or omissions described herein, plaintiff has suffered,
and continues to suffer great pain of mind and body, shock, emotional distress, physical
manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation,
and loss of enjoyment of life, was prevented and will continue to be prevented from performing
daily activities and obtaining the full enjoyment of life, and/or has incurred and will continue to
incur expenses for medical and psychological treatment, therapy, and counseling

WHEREFORE, plaintiff prays for judgment against defendants jointly and severally, in
an amount that will fairly and reasonably compensate plaintiff for his damages, for costs
incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just
and proper

Count VI- Negligent Supervision, Retention and Failure to Warn

(Plaintiff v. Marianist Province and St. John Vianney)

39 Plaintiffs incorporate by reference the allegations made in paragraphs 1-38,
above

40. Upon information and belief, defendants, by and through their agents, servants and employees, knew or reasonably should have known of defendant Mueller's dangerous and exploitive propensities and/or that he was an unfit agent, and despite such knowledge, defendants negligently retained and/or failed to supervise defendant Mueller, who was in a position of trust and authority as a Brother, teacher, and Assistant Principal, where he was able to commit the wrongful acts against the plaintiff Defendants failed to provide reasonable supervision of defendant Mueller, failed to use reasonable care in investigating defendant Mueller and failed to provide adequate warning to plaintiff and his family of defendant Mueller's dangerous propensities

41. Defendants' actions and/or inactions were willful, wanton and reckless for which punitive damages and/or damages for aggravating circumstances are appropriate

42 As a direct result of the acts or omissions described herein, plaintiff has suffered, and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life, was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling

Respectfully Submitted,

SANDERS & SIMPSON, L C.

By. 
DANIEL W CRAIG, #43883
1125 Grand Blvd , Suite 1400
Kansas City, MO 64106
(816) 471-6444, FAX (816) 471-6664

ATTORNEYS FOR PLAINTIFF

C

IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS
STATE OF MISSOURI

ROBERT WILLIAM VISNAW,)
)
 Plaintiff,)
) Cause No 06CC-000008
 v)
) Div. No 15
 MARIANIST PROVINCE OF THE)
 UNITED STATES, ST JOHN VIANNEY)
 HIGH SCHOOL, INC and BROTHER)
 WILLIAM MUELLER,)
)
 Defendants)

**DEFENDANTS ST. JOHN VIANNEY HIGH SCHOOL, INC. AND MARIANIST
PROVINCE OF THE UNITED STATES' STATEMENT OF UNCONTROVERTED
MATERIAL FACTS IN SUPPORT OF THEIR JOINT MOTION FOR SUMMARY
JUDGMENT**

COME NOW Defendants, St John Vianney High School, Inc (hereinafter referred to as "Vianney") and Marianist Province of the United States (hereinafter referred to as "Marianist Province"), and for their Statement of Uncontroverted Material Facts pursuant to Rule 74.04 of the Missouri Rules of Civil Procedure, state as follows

1 On January 3rd, 2006, Plaintiff Robert Visnaw (hereinafter "Plaintiff") filed a Petition for damages in this Court against defendants William Mueller (hereinafter "Mueller"), Vianney, and the Marianist Province (See Exhibit A, *attached*, Plaintiff's Petition)

2 On December 18th, 2006, plaintiff Robert Visnaw amended his Petition to add a claim for Negligence and Negligent Supervision, Retention, and Failure to Warn (See Exhibit B, *attached*, Plaintiff's Amended Petition)

3 In his Amended Petition, Mr Visnaw alleges that he was sexually assaulted by Mueller and that the Defendants failed to inform students at Vianney of Mueller's alleged propensity to sexually assault juveniles (See Exhibit B at ¶¶7-10, ¶36 and ¶40)

4 Plaintiff was born on April 9, 1967 (See Exhibit C, attached, Plaintiff's Responses to Separate Interrogatories of St. John Vianney High School Directed to Pl, at No 1(b)

5 Plaintiff started attending high school as a freshman at Vianney in the fall of 1981 and graduated in May of 1985 (See Exhibit D, attached, Deposition of Robert Visnaw at p 8)

6 Plaintiff alleges that his damages are the result of four separate incidents that transpired between him and Mueller during his senior year at Vianney (See Ex D at p 96)

7 At the time of the alleged incidents, Mueller was employed at Vianney as an "assistant vice-principal" (See Ex D at p 20)

8 Plaintiff first met Mueller during his senior year at Vianney, when he would have been 17 years old (See Ex D at p 20)

I. First Alleged Incident

9 Plaintiff claims that in the first alleged incident with Mueller, Mueller instructed him to come to his office in the evening after school, and while he was in Mueller's office, Mueller allegedly had him hyperventilate to the point of unconsciousness four or five times, each time upon awakening, Mueller would question him about what he had experienced (See Ex D at pp. 109-113)

10 Mueller allegedly told Plaintiff that he was conducting an experiment on fear for his masters' thesis (See Ex D at p 109)

11 Plaintiff admits that he does not recall having been physically injured during the first alleged incident with Mueller and admits that he has no evidence of having been sexually abused during the incident (See Ex D at pp. 114-115)

12 Plaintiff admits that he has “always recalled the passing out and waking up with the questions” and the alleged incident itself (See Ex D at p 115)

13 Plaintiff admits that he did not find anything that occurred in the first alleged incident to have been physically offensive, harmful, or injurious (See Ex D at p 117)

II. Second Alleged Incident

14 Plaintiff claims that the second alleged incident with Mueller occurred about three weeks to a month after the first incident, he met Mueller at the school gymnasium entrance in the evening after swim practice. (See Ex D at pp 125 and 137)

15 Plaintiff and Mueller went to the varsity locker room (See Ex. D at p 139)

16 Plaintiff alleges that Mueller again instructed Plaintiff to hyperventilate and make himself pass out, Plaintiff did so (See Ex D at p 142)

17 Plaintiff allegedly recalls waking up “laying down on something” and realizing that Mueller was massaging Plaintiff’s genitals (See Ex D at p 142-143).

18 Plaintiff allegedly recalls hearing moaning or sounds associated with sexual activity as he woke up (See Ex D at p 143)

19 Plaintiff allegedly saw Mueller holding his own penis with his other hand and then Mueller stopped immediately. (See Ex D at pp. 143 and 153)

20. Plaintiff admits to having been “freaked out” by the alleged incident although he claims not to have recalled what happened in the incident until 2005 (See Ex D at pp 144-145)

III. Third Alleged Incident

21 Plaintiff claims that the third alleged incident with Mueller happened around Christmas break of his senior year (See Ex D at p. 157)

22 Plaintiff claims that he met Mueller at Vianney's main entrance after diving practice and the two of them went to the varsity locker room; they walked all the way to the back of the locker room (See Ex D at p 157-158)

23 Plaintiff claims that Mueller again instructed him to hyperventilate to unconsciousness while Mueller grabbed Plaintiff's head and moved it side to side in circles while Plaintiff bent over and hyperventilated (See Ex D at p 158)

24 Plaintiff claims that when he woke up, he was in the front of the locker room or gym sitting on the floor with his knees up at his chest (See Ex D at pp 158-159)

25 Plaintiff recalls that after he regained consciousness, Mueller helped him stand up and asked him to put VO5 hair gel in his hair, Plaintiff did so without objection and he does not recall Mueller touching him while he did so (See Ex D at pp 141-142)

26 Plaintiff admits that he is unaware of or cannot recall any sexual misconduct having occurred during the third alleged incident (See Ex D at pp 160-161)

IV. Fourth Alleged Incident

27 Plaintiff claims that the fourth and final alleged incident with Mueller happened in March the night of the Spring Dance of his senior year (See Ex. D at p 164)

28 Plaintiff arrived at the dance after dark and met Mueller outside the main entrance to Vianney near the administration center (See Ex D at p 166).

29 Plaintiff and Mueller walked to a small teachers' office near where the bookstore used to be (See Ex D at p 167)

30 Plaintiff claims that Mueller told him that as part of the experiment, he needed Plaintiff to take off his clothing down to his underwear, Plaintiff agreed and said he thought that doing so was "no big deal" (See Ex D at p. 168)

31 Plaintiff claims that Mueller stepped out of the office while he took his clothes off, when he re-entered the office, he instructed Plaintiff to face away from him (See Ex D at p 168)

32 Plaintiff claims that Mueller blindfolded him, repeatedly touched his shoulder and asked Plaintiff if he was afraid, Plaintiff repeatedly responded that he was not (See Ex D at p 168)

33 Plaintiff claims that Mueller then placed a knife to his throat and closed the gap of space between them, Plaintiff claims he put his hands on a table in front of him (See Ex D at pp 169-172)

34 Plaintiff admits that he has always remembered Mueller allegedly having held a knife to his throat and admits that he never repressed that recollection (See Ex D at pp 169 and 264)

35 Plaintiff claims that Mueller would ask him while he held the knife to his throat if he was afraid, Plaintiff would respond that he was not and then Mueller would press the knife against his throat harder. (See Ex D at p 170)

36 Plaintiff claims that eventually he felt skin-to-skin contact between his back and what he assumes was Mueller's stomach and that he became "very afraid" (See Ex D at p 171)

37 Plaintiff admits that he eventually told Mueller during the alleged incident that he was afraid (See Ex D at p 172)

38 Plaintiff claims that Mueller then reached his hand down into Plaintiff's pants and started massaging his genitals (See Ex. D at p 173).

39 Plaintiff admits that “ from the tips of [his] fingers to the tips of [his] toes,” he was “ totally, totally, totally scared to death about what was happening ” (See Ex D at p 173).

40 Plaintiff claims that suddenly, everything stopped, and he woke up in the hallway fully clothed followed by Mueller taking him out to the school track to walk around (See Ex D at p 173)

41 Plaintiff does not recall having had a discharge but does remember having had an erection during the alleged incident (See Ex D at p 174)

42. Plaintiff admits that he always remembered taking off his clothes down to his underwear and does not claim that he ever repressed that part of his memories about the alleged incidents (See Ex D at p 189)

43. Plaintiff admits that he was fully conscious during the fourth alleged incident (See Ex D at p 203).

44 Plaintiff admits that he always remembered Mueller asking him to hyperventilate and pass out and does not claim that he ever repressed that part of his memories about the alleged incidents (See Ex D at p 264)

45 Plaintiff voluntarily maintained contact with Mueller after graduation from Vianney through phone calls and three, four, or five letters (See Ex D at pp 119-121)

46. Plaintiff performed very well academically at Vianney, graduating in the top quarter of his class; he was also on the silver honor roll (See Ex D at pp 32 and 219)

47 Plaintiff graduated from the University of Missouri-St Louis with a bachelor’s degree in Spanish and is currently employed as a criminal investigator/special agent with the Department of Homeland Security/Immigration & Naturalization Service (See Ex D at pp 49-50 and 262 , respectively, *see also* Ex C at No 2)

48 Plaintiff claims that he “quit” the Catholic Church around 1986-1987, while he was in college at the University of Missouri-St Louis (See Ex D at pp 66-67)

49 Plaintiff served in the human intelligence branch of the U.S Army (See Ex D at p 258, see also Ex C at No 3)

50 Mr Visnaw speaks five languages English, Spanish, Portuguese, Italian and some Korean (See Ex D at p 60)

51 Prior to his employment with the Department of Homeland Security, Plaintiff attended Federal Law Enforcement Training in Glencoe, Georgia, that training involved criminal investigations and criminal law (See Ex D at pp 50-51 and 82)

52 Plaintiff claims that in September of 2005, he reviewed some St Louis Post-Dispatch newspaper articles relating to a claim brought by Bryan Bacon against Mr Mueller (See Ex. D at pp 42-43)

53 Plaintiff admits that he contacted Bryan Bacon to tell Bacon about his alleged incidents with Mueller (See Ex D at p 43)

54 Plaintiff admits that he recalled having participated in Mueller’s “experiments” in July of 1991, when he received correspondence from Mueller at his parents’ home and he told his father that he had assisted Mueller in the experiments when he attended Vianney (See Ex D at pp 117-118)

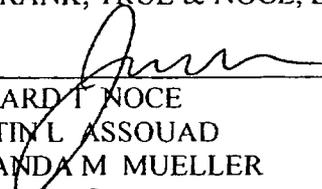
55 Plaintiff admits that he has always remembered that Mueller told him not to tell anyone about the “experiments ” (See Ex D at p 187)

56 Plaintiff admits that he “made excuses to not help Brother Mueller any longer” after the last alleged incident (See Ex C at No 10)

57 Mr Visnaw has always known of his participation in the alleged experiments

(See Ex D at 220)

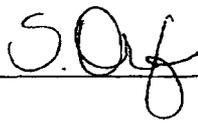
HEPLER, BROOM, MacDONALD,
HEBRANK, TRUE & NOCE, LLC

By 
GERARD T NOCE #27636
JUSTIN L ASSOUAD #48576
AMANDA M MUELLER #50385
800 Market Street
Suite 2300
St Louis, MO 63101
314/241-6160
314/241-6116 – Facsimile

Attorneys for Defendants Marianist Province of the
United States and Chaminade College Preparatory,
Inc

CERTIFICATE OF SERVICE

A copy of the foregoing has been sent this 25 day of May, 2007 via first class U S
Mail, postage prepaid, to Mr Daniel W Craig, Attorneys for Plaintiff, 1125 Grand Blvd., Suite
1400, Kansas City, MO 64106 and to Mr J Martin Hadican, Attorney for Defendant Mueller,
225 South Meramec, Suite 832, St Louis, MO 63105



MISSOURI CIRCUIT COURT
TWENTY-FIRST JUDICIAL CIRCUIT
COUNTY OF ST. LOUIS

ROBERT WILLIAM VISNAW,)
)
 Plaintiff,)
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 v.)
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 MARIANIST PROVINCE OF THE)
 UNITED STATES,)
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 Serve CT Corporation System)
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 120 South Central Avenue)
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 ST. JOHN VIANNEY HIGH SCHOOL, INC.)
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 BROTHER WILLIAM MUELLER,)
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 Serve Service by Special Process Server)

Case No.

Division

15

JURY TRIAL DEMANDED

PETITION FOR DAMAGES

COMES NOW plaintiff, by and through counsel, and for his cause of action states as follows:

1 Plaintiff Robert Visnaw is a Kansas citizen residing in Johnson County, Kansas. At all times relevant to the allegations of this cause of action, plaintiff was a citizen of the state of Missouri. attended defendant St John Vianney High School, in St. Louis County, Missouri, and was a minor parishoner and student of defendants



2. Defendant Marianist Province of the United States is a Missouri non-profit corporation in good standing, with its principal place of business in the city of St. Louis, Missouri. At all times relevant to the allegations of this cause of action, defendant was the supervisor of defendant Brother William Mueller, and was the owner and operator of defendant St. John Vianney High School.

3. Defendant St. John Vianney High School, Inc. is a Missouri non-profit corporation in good standing, with its principal place of business in St. Louis County, Missouri. At all times relevant to the allegations of this cause of action, defendant was wholly owned, operated and/or managed by defendant Marianist Province of the United States. At all times relevant to the allegations of this cause of action, defendant was the supervisor of defendant Brother William Mueller.

4. Defendant Brother William Mueller is believed to be a citizen of Texas, residing in the city of San Antonio, Texas. At all times relevant to the allegations of this cause of action, defendant was a member, associate and/or employee, and was under the supervision of, defendants Marianist Province of the United States and/or St. John Vianney High School.

5. Jurisdiction and venue are proper in this Court because plaintiff asserts claims under Missouri common law only, because the acts, omissions, and/or occurrences giving rise to this cause of action arose in St. Louis County, Missouri, and because at least one defendant is a citizen of the state of Missouri, where this action is being brought.

6. Each of the acts or omissions of defendants as set forth below caused or contributed to cause the injuries and damages to plaintiff, and therefore each defendant is jointly and severally liable for said injuries and damages.

7 In approximately 1984, defendant Brother William Mueller repeatedly assaulted and/or battered plaintiff. Plaintiff believes such assaults and batteries included but were not limited to, sexual misconduct. Said assaults and/or batteries occurred on property which defendants Maronist Province of the United States and/or St. John Vianney High School owned and/or controlled, and/or had the right to control the activity thereon.

8 The aforementioned abuse of plaintiff, and the circumstances under which the abuse occurred, caused plaintiff to develop various psychological coping mechanisms which made him incapable of ascertaining the resulting damages from that conduct until approximately 2005 when specific details of defendant Mueller's abuse of minors emerged publicly.

9 Due to the way in which defendant Mueller abused plaintiff, in that he would initially render him unconscious prior to his assault and battery of plaintiff prevented plaintiff from ascertaining the resulting damages from that conduct until 2005, when specific details of defendant Mueller's abuse of minors emerged publicly.

10 Prior to defendant Brother William Mueller's assault and battery of plaintiff, defendants Maronist Province of the United States and/or St. John Vianney High School had knowledge and were aware of several previous assaults and batteries, including sexual misconduct, by defendant Mueller on minors during the 1960's, 1970's and/or early 1980's.

Count I- Intentional Failure to Supervise Clergy
(Plaintiff v. Marianist Province of the United States and
St. John Vianney High School)

11 Plaintiff incorporates by reference the allegations made in paragraphs 1-10,
above

12 At the time of the assaults and batteries described above, defendant Brother
William Mueller was under the supervision of defendants Marianist Province of the United
States and/or St. John Vianney High School

13 At the time of the assaults and batteries, defendant Brother William Mueller's
supervisors, defendants Marianist Province of the United States and/or St. John Vianney High
School knew that harm was certain or substantially certain to result

14 Defendant Brother William Mueller's supervisors, defendants Marianist Province
of the United States and/or St. John Vianney High School disregarded the known risks

15 As a result of defendant Brother William Mueller's supervisors' inaction, damage
was caused to plaintiff

16 The harm that occurred to plaintiff occurred on premises owned or controlled, or
with the right to control the activity thereon, by defendants Marianist Province of the United
States and/or St. John Vianney High School

17 Defendants' conduct as stated above was outrageous because of defendants' evil
motive or reckless indifference to the rights of others, thus justifying an award of punitive
damages

WHEREFORE, plaintiff prays for judgment against defendants Marianist Province of the
United States and St. John Vianney High School, jointly and severally, in an amount that will

fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper

Count II- Intentional Infliction of Mental Distress

(Plaintiff v. All Defendants)

18 Plaintiff incorporates by reference the allegations made in paragraphs 1-17
above

19 Defendant Brother William Mueller assaulted and battered plaintiff

20 Defendants Marianist Province of the United States and/or St. John Vianney High
School intentionally failed to supervise defendant Mueller, which resulted in his assaulting and
battering plaintiff

21 Defendants' actions, inactions and/or omissions were extreme, outrageous, and
intolerable

22 Plaintiff sustained severe emotional distress which was medically diagnosable and
medically significant

23 Defendants' conduct as stated above was outrageous because of defendants' evil
motive or reckless indifference to the rights of others, thus justifying an award of punitive
damages

WHEREFORE, plaintiff prays for judgment against all named defendants in this action,
jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his
damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other
relief as may be just and proper

Count III- Assault

(Plaintiff v Brother William Mueller)

24 Plaintiff incorporates by reference the allegations made in paragraphs 1-23,
above

25 Defendant Brother William Mueller physically grasped, held, touched, fondled,
choked and/or groped plaintiff in threatening and highly inappropriate ways during which he
brandished what plaintiff believed was a knife and placed it to his neck and face

26 Defendant's actions put plaintiff in fear of bodily harm

27 By reason of defendant's actions, plaintiff suffered damage

28 Defendant's conduct as stated above was outrageous because of defendant's evil
motive or reckless indifference to the rights of others, thus justifying an award of punitive
damages

WHEREFORE, plaintiff prays for judgment against defendant Brother William Mueller,
jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his
damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other
relief as may be just and proper

Count IV- Battery

(Plaintiff v. Brother William Mueller),

29 Plaintiff incorporates by reference the allegations made in paragraphs 1-28,
above

30 Defendant Brother William Mueller physically held, touched, and groped plaintiff
in threatening and highly inappropriate ways during which he brandished what plaintiff believed
was a knife and placed it to his neck and face

31 Defendant's actions constituted harmful and offensive touching upon plaintiff

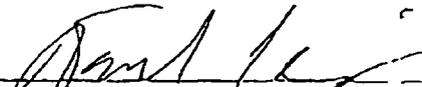
32 By reason of defendant's actions, plaintiff suffered damage

33 Defendant's conduct as stated above was outrageous because of defendant's civil
motive or reckless indifference to the rights of others, thus justifying an award of punitive
damages

WHEREFORE, plaintiff prays for judgment against defendant Brother William Mueller,
jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his
damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other
relief as may be just and proper

Respectfully Submitted.

SANDERS, SIMPSON, & FLETCHER, L C

By 
MICHAEL R. FLETCHER, #47495
DANIEL W. CRAIG, #43883
1125 Grand Blvd, Suite 1400
Kansas City, MO 64106
(816) 471-6444, FAX (816) 471-6664

ATTORNEYS FOR PLAINTIFFS

MISSOURI CIRCUIT COURT
TWENTY-FIRST JUDICIAL CIRCUIT
COUNTY OF ST. LOUIS

ROBERT WILLIAM VISNAW,)	
)	
Plaintiff,)	
	)	Case No.
v)	
	)	Division
MARIANIST PROVINCE OF THE)	
UNITED STATES,)	
ST. JOHN VIANNEY HIGH SCHOOL, INC ,)	
BROTHER WILLIAM MUELLER,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that the following pleadings and documents were served upon all named defendants concurrently with service of plaintiff's Petition for Damages

- 1 Notice of Deposition of Defendant Marianist Province of the United States pursuant to Rule 57.03 (b)(4).
- 2 Notice of Deposition of Defendant St. John Vianney High School pursuant to Rule 57.03 (b)(4)
- 3 Request for Admissions to Defendant Marianist Province of the United States
- 4 Request for Admissions to Defendant St. John Vianney High School
5. Plaintiffs' First Set of Interrogatories to Defendant Marianist Province of the United States
- 6 Plaintiffs' First Set of Interrogatories to Defendant St. John Vianney High School

Respectfully Submitted,

SANDERS, SIMPSON & FLETCHER, L L C

By 
 Michael R. Fletcher MO #474115
 Daniel W. Craig MO #43883
 1125 Grand Boulevard, Suite 1400
 Kansas City, Missouri 64106
 816-471-6444 Fax No 816-471-6664

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served upon defendants along with the original Summons and Pctition for Damages


 Attorney for Plaintiff

**MISSOURI CIRCUIT COURT
TWENTY-FIRST JUDICIAL CIRCUIT
COUNTY OF ST. LOUIS**

ROBERT WILLIAM VISNAW,)	
)	
Plaintiff,)	
	)	Case No.
v.)	
	)	Division
MARIANIST PROVINCE OF THE)	
UNITED STATES,)	
ST. JOHN VIANNEY HIGH SCHOOL, INC.)	
and,)	
BROTHER WILLIAM MUELLER,)	

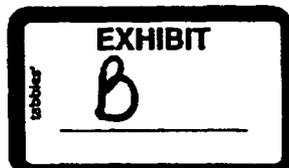
FIRST AMENDED PETITION FOR DAMAGES

COMES NOW plaintiff, by and through counsel, and for his cause of action states as follows

1 Plaintiff Robert Visnaw is a Kansas citizen residing in Johnson County, Kansas. At all times relevant to the allegations of this cause of action, plaintiff was a citizen of the state of Missouri, attended defendant St John Vianney High School, in St Louis County, Missouri, and was a minor parishioner and student of defendants

2 Defendant Marianist Province of the United States is a Missouri non-profit corporation in good standing, with its principal place of business in the city of St Louis, Missouri. At all times relevant to the allegations of this cause of action, defendant was the supervisor of defendant Brother William Mueller, and was the owner and operator of defendant St. John Vianney High School

3 Defendant St John Vianney High School, Inc is a Missouri non-profit corporation in good standing, with its principal place of business in St Louis County, Missouri. At all times relevant to the allegations of this cause of action, defendant was wholly owned,



operated and/or managed by defendant Marianist Province of the United States. At all times relevant to the allegations of this cause of action, defendant was the supervisor of defendant Brother William Mueller.

4 Defendant Brother William Mueller is believed to be a citizen of Texas, residing in the city of San Antonio, Texas. At all times relevant to the allegations of this cause of action, defendant was a member, associate and/or employee, and was under the supervision of, defendants Marianist Province of the United States and/or St. John Vianney High School.

5 Jurisdiction and venue are proper in this Court because plaintiff asserts claims under Missouri common law only, because the acts, omissions, and/or occurrences giving rise to this cause of action arose in St. Louis County, Missouri, and because at least one defendant is a citizen of the state of Missouri, where this action is being brought.

6 Each of the acts or omissions of defendants as set forth below caused or contributed to cause the injuries and damages to plaintiff, and therefore each defendant is jointly and severally liable for said injuries and damages.

7 In approximately 1984, defendant Brother William Mueller repeatedly assaulted and/or battered plaintiff. Plaintiff believes such assaults and batteries included, but were not limited to, sexual misconduct. Said assaults and/or batteries occurred on property which defendants Marianist Province of the United States and/or St. John Vianney High School owned and/or controlled, and/or had the right to control the activity thereon.

8 The aforementioned abuse of plaintiff, and the circumstances under which the abuse occurred, caused plaintiff to develop various psychological coping mechanisms which made him incapable of ascertaining the resulting damages from that conduct until approximately 2005, when specific details of defendant Mueller's abuse of minors emerged publicly.

9 Due to the way in which defendant Mueller abused plaintiff, in that he would initially render him unconscious prior to his assault and battery of plaintiff, prevented plaintiff from ascertaining the resulting damages from that conduct until 2005, when specific details of defendant Mueller's abuse of minors emerged publicly.

10 Prior to defendant Brother William Mueller's assault and battery of plaintiff, defendants Marianist Province of the United States and/or St John Vianney High School had knowledge and were aware of several previous assaults and batteries, including sexual misconduct, by defendant Mueller on minors during the 1960's, 1970's and/or early 1980's

Count I- Intentional Failure to Supervise Clergy
(Plaintiff v. Marianist Province of the United States and
St. John Vianney High School)

11 Plaintiff incorporates by reference the allegations made in paragraphs 1-10, above

12 At the time of the assaults and batteries described above, defendant Brother William Mueller was under the supervision of defendants Marianist Province of the United States and/or St John Vianney High School

13 At the time of the assaults and batteries, defendant Brother William Mueller's supervisors, defendants Marianist Province of the United States and/or St John Vianney High School knew that harm was certain or substantially certain to result

14 Defendant Brother William Mueller's supervisors, defendants Marianist Province of the United States and/or St John Vianney High School disregarded the known risks

15 As a result of defendant Brother William Mueller's supervisors' inaction, damage was caused to plaintiff

16 The harm that occurred to plaintiff occurred on premises owned or controlled, or with the right to control the activity thereon, by defendants Marianist Province of the United States and/or St John Vianney High School

17 Defendants' conduct as stated above was outrageous because of defendants' evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages

WHEREFORE, plaintiff prays for judgment against defendants Marianist Province of the United States and St. John Vianney High School, jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper

Count II- Intentional Infliction of Mental Distress

(Plaintiff v. All Defendants)

18 Plaintiff incorporates by reference the allegations made in paragraphs 1-17, above

19. Defendant Brother William Mueller assaulted and battered plaintiff

20 Defendants Marianist Province of the United States and/or St John Vianney High School intentionally failed to supervise defendant Mueller, which resulted in his assaulting and battering plaintiff

21 Defendants' actions, inactions and/or omissions were extreme, outrageous, and intolerable

22 Plaintiff sustained severe emotional distress which was medically diagnosable and medically significant

23 Defendants' conduct as stated above was outrageous because of defendants' evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages

WHEREFORE, plaintiff prays for judgment against all named defendants in this action, jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper.

Count III- Assault

(Plaintiff v. Brother William Mueller)

24 Plaintiff incorporates by reference the allegations made in paragraphs 1-23, above

25 Defendant Brother William Mueller physically grasped, held, touched, fondled, choked and/or groped plaintiff in threatening and highly inappropriate ways during which he brandished what plaintiff believed was a knife and placed it to his neck and face

26 Defendant's actions put plaintiff in fear of bodily harm

27 By reason of defendant's actions, plaintiff suffered damage

28 Defendant's conduct as stated above was outrageous because of defendant's evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages

WHEREFORE, plaintiff prays for judgment against defendant Brother William Mueller, jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages. and for such other relief as may be just and proper

Count IV- Battery

(Plaintiff v. Brother William Mueller),

29. Plaintiff incorporates by reference the allegations made in paragraphs 1-28, above.

30. Defendant Brother William Mueller physically held, touched, and groped plaintiff in threatening and highly inappropriate ways during which he brandished what plaintiff believed was a knife and placed it to his neck and face

31. Defendant's actions constituted harmful and offensive touching upon plaintiff.

32. By reason of defendant's actions, plaintiff suffered damage

33. Defendant's conduct as stated above was outrageous because of defendant's evil motive or reckless indifference to the rights of others, thus justifying an award of punitive damages

WHEREFORE, plaintiff prays for judgment against defendant Brother William Mueller, jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper

Count V- Negligence

(Plaintiff v. All Defendants)

34 Plaintiff incorporates by reference the allegations made in paragraphs 1-33,
above

35 Defendants had a duty to protect children served by their schools

36 Upon information and belief, defendants, by and through their agents, servants and employees, knew or reasonably should have known of defendant Mueller's dangerous and exploitive propensities and/or that he was an unfit agent, and despite such knowledge, defendants breached their duty to protect plaintiff when they failed to protect plaintiff from the sexual and other abuse described herein

37. Defendants' actions and/or inactions were willful, wanton and reckless for which punitive damages and/or damages for aggravating circumstances are appropriate

38. As a direct result of the acts or omissions described herein, plaintiff has suffered, and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life, was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling

WHEREFORE, plaintiff prays for judgment against defendants jointly and severally, in an amount that will fairly and reasonably compensate plaintiff for his damages, for costs incurred, for prejudgment interest, for punitive damages, and for such other relief as may be just and proper

Count VI- Negligent Supervision, Retention and Failure to Warn

(Plaintiff v. Marianist Province and St. John Vianney)

39. Plaintiffs incorporate by reference the allegations made in paragraphs 1-38, above.

40. Upon information and belief, defendants, by and through their agents, servants and employees, knew or reasonably should have known of defendant Mueller's dangerous and exploitive propensities and/or that he was an unfit agent, and despite such knowledge, defendants negligently retained and/or failed to supervise defendant Mueller, who was in a position of trust and authority as a Brother, teacher and Assistant Principal, where he was able to commit the wrongful acts against the plaintiff. Defendants failed to provide reasonable supervision of defendant Mueller, failed to use reasonable care in investigating defendant Mueller and failed to provide adequate warning to plaintiff and his family of defendant Mueller's dangerous propensities.

41. Defendants' actions and/or inactions were willful, wanton and reckless for which punitive damages and/or damages for aggravating circumstances are appropriate.

42. As a direct result of the acts or omissions described herein, plaintiff has suffered, and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life, was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling

Respectfully Submitted,

SANDERS & SIMPSON, L C

By: 
DANIEL W CRAIG, #43883
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Kansas City, MO 64106
(816) 471-6444, FAX (816) 471-6664

ATTORNEYS FOR PLAINTIFF

IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS
STATE OF MISSOURI

ROBERT WILLIAM VISNAW,)
)
 Plaintiff,)
) Case No O6CC-000008
 v)
) Div No 15
)
 MARIANIST PROVINCE OF THE)
 UNITED STATES, ST JOHN VIANNEY)
 HIGH SCHOOL, INC and BROTHER)
 WILLIAM MUELLER,)
)
 Defendants)

**PLAINTIFF VISNAW'S ANSWERS TO SEPARATE INTERROGATORIES OF
DEFENDANT ST. JOHN VIANNEY
HIGH SCHOOL, INC. DIRECTED TO PLAINTIFF**

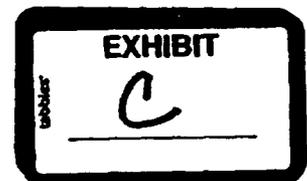
COMES NOW, plaintiff, and hereby provides answers to the interrogatories of
defendant, St John Vianney High School, Inc , as follows

INSTRUCTIONS

These interrogatories call for all information (including information contained in or on
writings, records, photographs, or any other tangible thing or material) that is known or available
to plaintiff, including all information in the possession of plaintiffs agents, attorneys,
accountants, auditors, directors, officers, employees, or other persons or experts and any
investigator or any person acting on plaintiffs behalf of under his attorney's employment,
direction or control

Each interrogatory is intended to and does request that each and every particular and part
thereof be answered with the same force and effect as if each part and particular were the subject
of partnership, and were asked by a separate interrogatory

If you are unable to answer any interrogatory completely, answer to the extent possible
and set forth the reasons for your inability to answer more fully



In responding to these interrogatories, the definitions set forth below are to apply unless the context of the interrogatory indicates otherwise,

DEFINITIONS

1 "You" or "your" refers to plaintiff and any other person (as defined below) acting on said Plaintiffs behalf

2 "Person" refers to the plural as well as the singular and means any natural person, firm, association, corporation or other form of legal identity

3 "Document" as used herein is defined to include any and all manners of written, typed, printed, computer generated messages, electronic e-mail, faxed, reproduced, filmed or recorded material, and all photographs, pictures, plans or other recorded material, and all photographs, pictures, plans or other representations of any kind of anything pertaining, describing, referring or relating, directly or indirectly, in whole or in part, to the subject matter of the interrogatory, and the term includes, without limitation all matters and items contemplated within Rule 57 of the Missouri Rules of Civil Procedure

4 "Identify" or "identification" means such designation of such person or document as to facilitate discovery

- (a) Unless otherwise indicated, when the terms are used to refer to any person, state such as person's name, last known business and residential address, last known place of employment, employment title, and last known business and residence telephone numbers,
- (b) Unless otherwise indicated, when the terms are used to refer to any document, state with respect to each such document the nature and substance thereof, the date it bears, the date it was prepared, the identity of the present custodian thereof, the identity of the author thereof, the identities of each addressee, the present location of identifying the document. As an alternative, a copy may be attached to Plaintiffs responses
- (c) Unless otherwise indicated, when the terms are used to refer to any oral communication or conversation, state with respect to each such oral

communication or conversation the date and place thereof, whether it was in person or by telephone, the identity of each person who participated in or heard any part of the communication, the substance of what was said by each person who participated therein, and the identity of any document that recorded summarized or confirmed the communication

INTERROGATORIES

1 Please state the following

- (a) Your full legal name and any assumed names, aliases or any other name that you have ever used,
- (b) Age and date of birth,
- (c) Citizenship status date and place of birth,
- (d) Social security number;
- (e) Present residential address and length of time at this address,
- (f) All addresses of all places of residence from the age of five (5) to the present,
- (g) Present marital status; name and address of present spouse, if any, the date of such marriage, and the name, age, and address of any and all children,
- (h) The name, address and telephone number of any and all past Spouses and the dates of such marriages, and name, age and address of any and all children

ANSWER:

- (a) Robert William Visnaw.
- (b) Age 38. born April 9, 1967
- (c) U.S. citizen, born Pueblo, Colorado.
- (d) Social security number withheld pending protective order.
- (e) January 1999 to present, plaintiff has resided at current address in Johnson County, Kansas, address withheld pending protective order.
- (f) 1972 to 1976, military housing, San Diego, California
1976 to 1977, 727 Questover Lane, Creve Couer, Missouri
1977 to 1980, Memphis, Tennessee, address unknown.
1980 to 1991, 4825 Bankfield Court, St. Louis, Missouri 63128
1991 to 1996, various military housing in Missouri, California, Arizona, and Korea.
1996, 4825 Bankfield, Missouri
1996 to 1999, various addresses in Kansas City, Missouri area
- (g) Married, Brandi Visnaw, same address as plaintiff, married October 9, 1999.
Three children, ages 12 (step-child), 5, and 1. Names withheld pending protective order
- (h) Dennisha Marie Gialdini, current address and telephone number unknown, married May 2, 1992, no children.

5

7

1 MR. GOLDENHERSH. Edward Goldenhersh for the
2 Archdiocese of St. Louis and Catholic High School
3 Association of the Archdiocese of St. Louis

4 MR. HADICAN: Marty Hadican for Bill Mueller

5 MR. NOCE: Amanda Mueller is my co-counsel
6 She's here with me also.

7 VIDEOGRAPHER: The court reporter will now
8 swear in the witness

9

10 O-O-O

11

12 ROBERT WILLIAM VISNAW,
13 being of lawful age, being produced, sworn, and
14 examined on the part of the Defendants, deposes and
15 says.

16

17 DIRECT EXAMINATION

18 BY MR. NOCE:

19 Q. Sir, would you state your name, please, for
20 the record.

21 A. Sure. My name is Robert W. Visnaw,
22 V-as-in-Victor, I, S-as-in-Sam, N-A-W.

23 Q. Mr. Visnaw, we just met

24 A. Sure.

25 Q. My name's Jerry Noce. I'm a lawyer for

1 Q. Just tell us. All right, sir. Now,
2 Mr. Visnaw, we have some information that you've
3 answered for us in interrogatories. I want to go
4 through it a little bit with you. And as I understand,
5 you were born in 1967?

6 A. Yes, sir.

7 Q. And can you tell me where did you grow up?

8 A. I grew up throughout the United States. My
9 father was in the military. He was in the United
10 States Navy, so I was born in Colorado, moved to
11 San Diego, California, spent several years in Coronado,
12 California.

13 After his retirement, I moved to St. Louis,
14 Missouri. He got a job with a restaurant. They
15 transferred him to Memphis, Tennessee where I lived for
16 three years.

17 And then they transferred him back up to
18 St. Louis in about 1980, June of 1980, and that's
19 where -- from there -- from then until 1991 when I
20 enlisted in the military, it's St. Louis.

21 Q. So who was your father's employer that
22 transferred him?

23 A. Steak 'N Shake.

24 Q. And when you moved back to St. Louis in 1980,
25 did you attend grade school here?

6

8

1 Vianney and Marianist in the case that you filed
2 against them.

3 I'm going to ask some questions today about
4 your lawsuit and about your claims and about your
5 damages.

6 If at any time you don't understand any of the
7 questions I ask you, would you tell me that?

8 A. Yes.

9 Q. Because I am going to assume that if I ask a
10 question and if you answer it that you, one, understood
11 it, and two, you were trying to respond to it the best
12 that you could.

13 A. Yes, sir.

14 Q. And also -- and you're doing a good job.
15 Conversationally we often say uh-huh and huh-uh. With
16 a videotape, it's not as bad as if we were just with
17 the transcript, but sometimes it's unclear.

18 So if you're going to make either negative or
19 affirmative responses, would you say yes or no to make
20 a clear record for us?

21 A. Yes.

22 Q. If at any time you need a break -- I think Dan
23 mentioned to you, this is no marathon here, so you can
24 take a break if you need it. Is that okay?

25 A. Yes.

1 A. Yes, I did.

2 Q. And what grade school did you attend?

3 A. I went to Assumption Parish Elementary School.

4 Q. On Mattis?

5 A. Yes, sir.

6 Q. And what grades did you attend?

7 A. 8th grade only.

8 Q. And when you graduated from Assumption, did
9 you enroll and attend Vianney?

10 A. Yes, I did.

11 Q. So what year did you enroll at Vianney?

12 A. I believe I started in August of 1981 and
13 graduated in May of 1985.

14 Q. Were there other classmates from Assumption
15 that attended Vianney with you?

16 A. Yes. Right now the only one I can remember
17 would be Matthew Eddy.

18 Q. Matt Eddy, the lawyer?

19 A. Uh-huh.

20 Q. Is that correct? Was he a friend of yours?

21 A. Yes, he was.

22 Q. Is he still a friend of yours?

23 A. I haven't really spoken to him since we
24 graduated from Vianney.

25 Q. Who was your best friend in high school while

9

1 you attended Vianney?
 2 A. While I attended Vianney?
 3 Q. Yes, sir, best friend in high school, whether
 4 he or she attended Vianney
 5 A. Greg Meyer
 6 Q. Where did Greg go to school?
 7 A. Mehlville.
 8 Q. Do you still have any communication or contact
 9 with Greg?
 10 A. Unfortunately, the only time I really see him
 11 is at funerals, so no.
 12 Q. Did you participate in any sports at Vianney?
 13 A. Yes, I did.
 14 Q. What sports?
 15 A. My freshman year, I ran track and was a member
 16 of the swimming and diving team, and then swimming and
 17 diving my sophomore, junior, and senior years.
 18 Q. Were you in any other activities at school?
 19 A. At school?
 20 Q. At Vianney
 21 A. No. I mean, we had the -- people would play
 22 chess after school or do like Dungeons & Dragons after
 23 school, and I partook in that occasionally, but not on
 24 a regular basis
 25 Q. Were you involved in student council at all or

1 O'Connell, who was my Spanish teacher for three out of
 2 the four years I was there and Gary Corbin who was the
 3 swimming coach and my biology teacher.
 4 Q. Is Ms O'Connell or Mr Corbin still there, do
 5 you know?
 6 A. I believe Ms. O'Connell is I don't know. I
 7 believe my mom told me that Mr. Corbin had gone to
 8 another high school, but I'm not certain which one. I
 9 think it may have been SLU.
 10 Q. Was he your -- strike that, please. Did --
 11 swimming and diving, was that a fall or a spring
 12 activity?
 13 A. That usually started officially in the fall
 14 and ended in February at the state swimming and diving
 15 championships
 16 Q. So it would be a --
 17 A. A fall sport
 18 Q. A fall sport?
 19 A. Uh-huh
 20 Q. But fell in -- it bled into the spring
 21 semester?
 22 A. Correct
 23 Q. Was there anybody else involved -- strike
 24 that, please And swimming and diving were at the same
 25 time?

11

10

1 any other activities?
 2 A. No.
 3 Q. Who would have been your best friend at -- who
 4 attended Vianney?
 5 A. I don't think I really had one. Because of
 6 the sports, I was pretty much going to school or going
 7 to swimming or diving practice
 8 Q. Did you have counselors at school?
 9 A. We had school counselors, but I couldn't tell
 10 you who they were.
 11 Q. You don't recall?
 12 A. I think one was a Mr Stevenson, but I can't
 13 be certain of that.
 14 Q. And what year was he your counselor?
 15 A. I don't think he -- he was not my counselor.
 16 He was a school counselor.
 17 Q. Did you have a counselor who you would see
 18 from time to time to help you with class -- you know,
 19 line up your classes, maybe line up taking SATs, things
 20 of that nature?
 21 A. I can't recall if I ever used a counselor in
 22 that fashion or not.
 23 Q. Do you recall any teachers that you were close
 24 with at all at Vianney?
 25 A. Well, there would be Miss O'Connell, Ms Judy

12

1 A. Correct
 2 Q. And did you participate in both of those or
 3 just diving or swimming?
 4 A. Diving was my main emphasis, but in a pinch,
 5 Mr. Corbin would throw me into a relay or into a short
 6 race if he needed to fill a spot.
 7 Q. And was he the diving coach, or was there
 8 someone else who also helped him out?
 9 A. On record he was the diving coach for the
 10 team, but we never had an official diving coach.
 11 Q. One thing I forgot to tell you, Mr. Visnaw, I
 12 will do my best to wait until you're finished answering
 13 if you can wait until I finish the question. It's
 14 better for the record, again, if that's okay.
 15 Were there any team members who were friends
 16 of yours?
 17 A. Do you mean outside of school or just in
 18 school?
 19 Q. Sure, either way
 20 A. Outside of school, no
 21 Q. How about in school?
 22 A. We were teammates.
 23 Q. Can you remember any of those people?
 24 A. I can see their faces, but I can't remember.
 25 There was -- during my freshman and sophomore year,

1 there was Brian Bell, Robert Trotter -- I think it's
 2 Robert Trotter or Robert Tretter
 3 I can't think of -- there was Allen Bell who
 4 was a swimmer, and I can't think of anybody else's
 5 names on that.
 6 Q. Did you work while you were in high school?
 7 A. Yes.
 8 Q. Where did you work?
 9 A. I worked at Hardee's which used to be located
 10 down by the South County Mall
 11 Q. On Lindbergh down there?
 12 A. Yeah. I believe now it's a Barnes & Noble or
 13 a B. Dalton Bookstore
 14 Q. And is that the only place you worked while in
 15 high school?
 16 A. Pizza Hut on Tesson Ferry, and then I worked
 17 for a Mexican restaurant maybe two nights that's no
 18 longer in existence.
 19 Q. What was that name?
 20 A. I think it was Old Mexico
 21 Q. Where was that?
 22 A. On Tesson Ferry as well
 23 Q. Did you have any friends of yours who worked
 24 with you at these places?
 25 A. Matt Eddy actually got me the job at the

1 63128
 2 Q. And what's -- is mom still living?
 3 A. Yes.
 4 Q. And where does she live?
 5
 6
 7 She just moved there I believe
 8 in August, so I don't know her exact address
 9 Q. Did she move there from the address?
 10 A. Yes
 11 Q. So is there anybody else that would have been
 12 a friend of yours that you hung out with who attended
 13 Vianney other than the people you've already mentioned
 14 to us throughout the four years you attended there?
 15 A. I'm trying to recall if there was anybody.
 16 I'd have to say no. I didn't really have many outside
 17 of school friends because of the -- I would be swimming
 18 or I would be diving pretty much year round.
 19 Q. Did you dive in a club?
 20 A. No. It was -- we had a coach -- I won't say
 21 he was a coach -- Craig Tapperson who was a former
 22 diver at Mehlville and was running a diving class, so
 23 to speak.
 24 Some of the other divers, Allen Bell and Bob
 25 Trotter or Tretter, had gone to him in the past, and I

1 Mexican restaurant.
 2 Q. I may have asked you this, and I forget
 3 already, but have you had contact with Matt Eddy over
 4 the years?
 5 A. No
 6 Q. When's the last time you saw him?
 7 A. Actually seen him, I haven't seen him since
 8 graduation.
 9 Q. Have you attended any high school reunions at
 10 all?
 11 A. No.
 12 Q. Have you received any information about any of
 13 those like notice that 5 year, 10 year, 20 year reunion
 14 is being held or anything like that?
 15 A. I -- the information I do find, if I go out to
 16 the Vianney website, I would find it there. I have not
 17 received information
 18 They used to have my mother's old address and
 19 would send things there, and they either got forwarded
 20 to me or they didn't.
 21 Q. And mom's old address was down in Assumption
 22 Parish area?
 23 A. Uh-huh, yes, sr.
 24 Q. What was that address?
 25 A.

1 hooked up with him through there
 2 He had -- he was running like a learn how to
 3 dive class, but we'd go there and he would coach us as
 4 well.
 5 Q. Where was that?
 6 A. Out of Mehlville out of their swimming pool.
 7 Q. At the high school?
 8 A. At the Mehlville High School, yes, sr.
 9 Q. Was he the high school coach there?
 10 A. No He -- he would be -- I guess you'd
 11 classify him more as an AAU coach or an amateur
 12 athletics coach for myself and some of the other divers
 13 that he had.
 14 And he -- we would go out to Clayton -- the
 15 pool out in Clayton during the summers and practice out
 16 there, or on Thursday nights we'd go to the Mehlville
 17 High School pool and practice out there over the
 18 summers as well.
 19 Q. Aside from competing on a high school level,
 20 you know, interscholastic like that, did you compete in
 21 diving on any other basis, the AAU?
 22 A. I attended a couple AAU meets but really
 23 nothing significant, because typically during the
 24 summer it would be practice and then work.
 25 Q. Did you compete in the state high school

1 diving championships?
 2 A Three out of the four years that I was at
 3 Vianney, yes.
 4 Q. And how did you do?
 5 A. My first year, I was 22nd. That would be my
 6 sophomore year My junior year, I was 7th. And in
 7 1985, I was the champion
 8 Q. So you were state champion in 1985?
 9 A Yes, sir
 10 Q. In diving?
 11 A Yes.
 12 Q. And was that -- were they in divisions at that
 13 time, in other words, Class IV or something like that
 14 or one class for everybody?
 15 A. This was the entire state of Missouri from
 16 what I understand. I mean, we had representation from
 17 all parts of Missouri
 18 Q. And did Vianney win the diving or swimming
 19 state championship that year, or were you simply the
 20 individual champion?
 21 A I was the individual champion for diving
 22 Q. I want to kind of -- do you recall who your --
 23 any of your freshman teachers were at Vianney?
 24 A Kurt Clodeus was, I believe, my English
 25 teacher

1 Coach Cozinski, I don't know his first name.
 2 We called him coach because he was one of the football
 3 coaches.
 4 Obviously Ms O'Connell was my Spanish
 5 teacher Mr Corbin was my biology teacher ;
 6 Brother Pace, P-A-C-E, was a religion teacher I believe
 7 in my junior year
 8 Coach Ferrell was my home room teacher, if I
 9 remember correctly, for my senior year.
 10 Q. What did he coach?
 11 A. I think it was soccer
 12 Q. That was before Villa?
 13 A. I think he was -- Coach Ferrell was like an
 14 assistant for Coach Villa. I want to say soccer, but
 15 it may have been football Again, I'm a swimmer I
 16 had water on the brain kind of thung
 17 Q. Okay
 18 A. Ms. O'Connell. I'm trying to go through. And
 19 there were various teachers that may have only been
 20 there for a year or came in at the end of a year
 21 that --
 22 Q. As you sit here today, can you recall any
 23 other teachers or brothers that you had while at
 24 Vianney?
 25 A. Well, as teachers?

1 Q. Was he a member of the order, or was he --
 2 A. No, he was a layperson
 3 Q. Was he your home room teacher?
 4 A. I couldn't recall. Ms. Di Grossa was my
 5 Spanish teacher for my freshman year I can't remember
 6 who my band teacher was
 7 And to be exact, I think those are the only
 8 two teachers that I can recall that I had that year I
 9 believe I had a brother or two for like religion and
 10 maybe another course here or there.
 11 Q. Who was the principal when you attended
 12 Vianney? Was it Brother Grieshaber?
 13 A. He was for my senior year. Really, I didn't
 14 get to know the principals when I was there.
 15 I believe one of the assistant vice principals
 16 was Brother Rudy, and I can't remember if he was there
 17 for my freshman and sophomore year or just my freshman
 18 year
 19 Q. Can you recall any other teachers or brothers
 20 that taught or instructed you or that you dealt with at
 21 school?
 22 A. Oh, sure. There was -- Mr Isley was an
 23 English teacher. Brother Mason was my algebra/geometry
 24 teacher. I think he was predominantly my geometry
 25 teacher.

1 Q. As teachers or people that you recall.
 2 A. Well, there was Brother Mueller who was an
 3 assistant vice-principal while I was there My senior
 4 year, Brother Grieshaber was the principal that was
 5 there.
 6 Coach Villa was obviously the soccer coach.
 7 Don Heed was the football coach. I can picture their
 8 faces. I just can't put their names to them.
 9 Q. William Mueller, Brother Mueller as you
 10 referred to him, was he there only your junior and
 11 senior year?
 12 A He -- he was there my senior year. I first
 13 met him in 1984
 14 Q. And you would have been there '84/'85 for your
 15 senior year?
 16 A. Correct.
 17 Q. Do you recall him being there at all at any
 18 time before that?
 19 A. No
 20 Q. And he was still there when you graduated?
 21 A Yes.
 22 Q. I'm going to ask you a little bit about your
 23 family background, Mr Visnaw.
 24 A Uh-huh
 25 Q. You mentioned your dad had been in the Navy?

1 A. Yes.
 2 Q. [REDACTED]
 3 A. [REDACTED]
 4 Q. Okay. And when he came home from the Navy,
 5 eventually he went to work for Steak 'N Shake?
 6 A. Yes
 7 Q. All right. And then he worked for them in
 8 Memphis and the family moved there and then moved back
 9 here to St. Louis?
 10 A. Yes
 11 Q. And did he continue to work for Steak 'N Shake
 12 until he retired?
 13 A. He was medically retired due to a heart
 14 condition. He was considered 100 percent disabled
 15 through the military
 16 Q. And was that before he actually went to work
 17 for Steak 'N Shake or after?
 18 A. He had had a heart attack in the Navy. He
 19 retired from the Navy in 1976 and got picked up by
 20 Steak 'N Shake I want to say it was that same year.
 21 He spent a year with Steak 'N Shake before he
 22 got transferred to Memphis, came back up to St. Louis,
 23 and while he was in St. Louis with Steak 'N Shake is
 24 when he had -- throughout that four or five year period
 25 he had several more heart attacks, and finally, he was

1 it, but --
 2 Q. How old was he when he passed?
 3 A. 60's. I couldn't tell you his exact age
 4 Q. Okay. And then mom is still with us?
 5 A. Yes, sir
 6 Q. All right. And her name is?
 7 A. [REDACTED]
 8 Q. Do you know how old she is?
 9 A. I believe she's going to be 63 this November.
 10 Q. And do you have brothers and sisters?
 11 A. I have two sisters that are alive, and
 12 one sister passed away in May of 2005.
 13 Q. What are your sister's names, and where do
 14 they live?
 15 A. [REDACTED]
 16 St. Louis, Missouri, excuse me, off of Bayless, I
 17 believe it is.
 18 Q. What's her last name? Visnaw?
 19 A. Visnaw.
 20 Q. Is she married?
 21 A. No, she's divorced.
 22 Q. And is she -- well, tell me what's the order?
 23 A. [REDACTED]
 24 then my sister who passed away last May.
 25 Q. And what was her name?

1 medically retired by the military
 2 Q. And do you recall he was medically retired?
 3 A. No, I don't.
 4 Q. And when you say medically retired, he was
 5 basically on disability?
 6 A. Correct. He was receiving a disability check
 7 from the military
 8 Q. And he stopped working at that point at
 9 Steak 'N Shake, or did he continue to work?
 10 A. No, he quit working at Steak 'N Shake and quit
 11 working all together.
 12 Q. And he passed away, didn't he?
 13 A. Yes, he did.
 14 Q. When did he pass away, sir?
 15 A. 15 years ago today
 16 Q. And so that would be --
 17 A. October 18th, 1991
 18 Q. 1991. At that time did he have a heart attack
 19 and die as a result of that, or do you recall?
 20 A. I don't -- I did not get to see the autopsy
 21 The way it was explained to me is that he had a heart
 22 cramp and passed away
 23 There was no damage to the -- he had had a
 24 heart transplant, and there was no damage to his new
 25 heart as stated in the autopsy. I didn't get to read

1 A. [REDACTED]
 2 Q. And what did she pass from?
 3 A. A brain aneurysm.
 4 Q. How old was she?
 5 A. She would have been 35, so he was 34.
 6 Q. [REDACTED]
 7 Was it Visnaw?
 8 A. She was married, [REDACTED]
 9 Q. Married at the time of her death?
 10 A. No, she was divorced.
 11 Q. Married only once?
 12 A. Correct.
 13 Q. What was the husband's name?
 14 A. Joe -- Joseph [REDACTED]
 15 exact
 16 Q. And did they have children born of that
 17 marriage?
 18 A. They have one, yes
 19 Q. And that child's with [REDACTED]
 20 A. Correct.
 21 Q. And do you have any contact with either the
 22 child or Joe?
 23 A. No, I don't. Being that I live in Kansas
 24 City, I may see her at a family holiday function or
 25 along those lines.

1 Q. What's her name?
 2 A. [REDACTED]
 3 Q. [REDACTED] okay. [REDACTED]
 4 A. Early 40's
 5 Q. And where does she live?
 6 A. She lives -- I believe it's St Charles or
 7 St. Peters.
 8 Q. And her last name?
 9 A. [REDACTED] She actually -- it's hyphenated,
 10 [REDACTED]
 11 Q. And she is married?
 12 A. Correct.
 13 Q. And her husband's name?
 14 A. John
 15 Q. Does she work outside the house?
 16 A. She's a schoolteacher
 17 Q. Do you know who she works for?
 18 A. I do not know the school district, no.
 19 Q. Is it the public school system or private or
 20 parochial?
 21 A. I want to say maybe parochial, but I can't
 22 guarantee that.
 23 Q. Is it out in St. Charles?
 24 A. I couldn't tell you. I don't know.
 25 Q. [REDACTED] how old is [REDACTED]

1 A. She's probably I want to say 43, going to
 2 be -- I want to say 42 going on 43 or 43 going on 44.
 3 Q. [REDACTED]
 4 A. She's a nurse, and she gets calls and says
 5 that she's going to work at one hospital one night, so
 6 I don't know exactly which hospital you would say she
 7 works for.
 8 Q. Where does she live?
 9 A. Over off of 55 and Bayless. I think that's
 10 the street.
 11 Q. And is she married?
 12 A. No, she's divorced
 13 Q. What's her ex-husband's name?
 14 A. [REDACTED]
 15 Q. Not the lawyer?
 16 A. Oh, no, he's probably the farthest thing from
 17 an attorney.
 18 Q. Okay. I don't know how to take that, but
 19 okay.
 20 A. No, no
 21 MR. HADICAN: He meant it in a nice way.
 22 MR. NOCE: I don't know if in high regard or
 23 not, but okay
 24 MR. HADICAN: He meant it in a nice way
 25 THE WITNESS: I'll defer to his statement.

1 Q. (By Mr. Noce) Okay. [REDACTED] have any
 2 children?
 3 A. She has four
 4 Q. And are they with her on [REDACTED]
 5 A. Two are with her and two are with [REDACTED]
 6 Q. Are you particularly close with any of your
 7 siblings?
 8 A. Since my sister's death in May of 2005 [REDACTED]
 9 and I have gotten to be a lot closer. I'm not really
 10 close to my sister [REDACTED] I mean, we do talk, but it's
 11 not where I would call her on the phone and carry on a
 12 conversation or expect her to do the same.
 13 Q. How about with your mom?
 14 A. My mom, we try to talk as often as possible.
 15 Recently it's been a lot more space in between the
 16 phone calls just because of my work and her moving and
 17 whatnot.
 18 Q. When you were growing up here in St. Louis,
 19 did you have a pediatrician or physician that you would
 20 go to for if you had the mumps or if you had a cold or
 21 anything like that?
 22 A. Dr Munchnik
 23 Q. Where was he -- is that M-U-C-H-N-I-C-K?
 24 A. I believe so I couldn't tell you the exact
 25 spelling.

1 Q. All right. And where was Mr Munchnik's
 2 office located?
 3 A. Located -- I want to say it was on Old Tesson
 4 The best way I put it, it was between Tesson Ferry and
 5 there was one street that was just south of that. I
 6 believe that was Old Tesson He had -- him and another
 7 doctor, there was like a little medical complex office
 8 space there
 9 Q. So if you had to get a physical to compete in
 10 sports or if you had the flu --
 11 A. He would be the one I went to, yes, sir.
 12 Q. And do you know was he a pediatrician or was
 13 he an internist?
 14 A. At that time, I didn't know the difference I
 15 believe he would just be considered a general
 16 practitioner.
 17 Q. Was there any other doctor you would have seen
 18 while you were in grade school or high school here in
 19 St. Louis other than Dr Munchnik that you can recall?
 20 A. On occasion, if Dr. Munchnik wasn't available,
 21 I believe I'd go to his partner I want to say it was
 22 Dr. Ortleby, but again, Dr. Munchnik was the primary
 23 doctor for me.
 24 Q. Same office?
 25 A. Exactly.

29

1 Q. And do you know is the office still operating,
2 or do you know one way or the other?
3 A. I don't know.
4 Q. Do you recall Dr Munchnik's first name?
5 A. No, I don't.
6 Q. When you attended Vianney, did you have any
7 kind of scholarship?
8 A. To go to Vianney?
9 Q. Yes, sir
10 A. No.
11 Q. Or did you have any financial assistance of
12 any kind for the high school?
13 A. My -- between my junior and senior year, I
14 tried to work at the school to help pay some of the
15 tuition, but the diving got in the way I had to
16 eventually stop that.
17 Q. Who would you report to for that program?
18 A. I don't know his name. There was a brother
19 that I would go to, and I can't remember his name.
20 Q. What type of work were you doing, Mr Visnaw,
21 in that program?
22 A. Putting grass, watering grass, just general,
23 you know, picking up trash, whatever it may have been
24 Q. And would that be restricted to the Vianney
25 grounds, or would it include going up to Maryhurst in

31
1 after that I was on the silver honor roll after that
2 Q. So freshman, sophomore, junior year you were
3 on the gold honor roll?
4 A. Correct.
5 Q. And then senior year, you were on the silver
6 honor roll?
7 A. For three out of the four quarters, yes
8 Q. And was the fourth quarter the gold honor
9 roll?
10 A. No, my first quarter was.
11 Q. Okay. No, I meant -- so you had another
12 quarter of gold honor roll, and then you finished up
13 with the silver?
14 A. Silver, yes, sir.
15 Q. Was the silver the lesser of the two?
16 A. Correct.
17 Q. Like the second honors?
18 A. Right.
19 Q. As opposed to first honors?
20 A. Right You never want to see your name show
21 up on silver honor roll, but it did three quarters.
22 Q. How many people were in your graduating class,
23 do you remember?
24 A. Under 200 Maybe 130 to 150
25 Q. Do you recall what your class rank was?

30

1 the whole vicinity, or do you recall?
2 A. We considered -- at the school, we considered
3 the entire complex where Vianney sat and Maryhurst, the
4 gymnasium and the museum sat is all one property, so it
5 encompassed the whole thing
6 Q. Did you go all the way out to Lindbergh doing
7 your work?
8 A. No.
9 Q. Was there anything between Vianney and
10 Lindbergh back then?
11 A. The -- my senior year, it was the Missouri
12 Senate of the --
13 Q. Lutheran Church?
14 A. Lutheran Church.
15 Q. Okay. That's when they built that?
16 A. They started it my junior year and finished it
17 my senior year.
18 Q. Were you on the honor roll at school?
19 A. Yes
20 Q. All semesters do you think?
21 A. We had two different classifications We had
22 the gold honor roll, and then we had the silver honor
23 roll
24 And up until my first semester my senior year
25 I was on the gold honor roll, and then I want to say

32
1 A. My class rank?
2 Q. Yes Like were you 10th or 12th or 20th out
3 of the class?
4 A. The number 33 sticks in my mind for some
5 reason
6 Q. Is it fair to say you were in the top quarter
7 of your class?
8 A. I think that would be a fair estimate.
9 Q. And I asked you this before about student
10 council, and I want to make sure Were you involved in
11 any other activities other than diving such as
12 yearbook, student newspaper, anything like that?
13 A. No, sir.
14 Q. Were you in the band?
15 A. I was in the band It was an elective I took
16 from freshman year up through my graduating year.
17 Q. What did you play in the band?
18 A. The clarinet
19 Q. And who was the head of the band?
20 A. That's a good question. I can't remember his
21 name.
22 Q. Was William Mueller ever involved with the
23 band while you were there?
24 A. Not to my knowledge.
25 Q. Did you take -- what is the class -- whatever

1 it is -- student driving or a driving class at Vianney?
 2 A No
 3 Q. Did you take any kind of class like that --
 4 you know what I mean -- the driving class?
 5 A. Driver's education?
 6 Q. Driver's ed, did you take that anywhere?
 7 A. No, sir.
 8 Q. Did you get a driver's license when you turned
 9 16?
 10 A. Yes
 11 Q. Was it on your 16th birthday or closely
 12 thereafter?
 13 A It was after I turned 16 I don't know the
 14 exact date that it was issued or the date that I got
 15 it, but I know it was around that time.
 16 Q. And were you -- did you pass the test the
 17 first time, the written test?
 18 A. I passed the written test, yes
 19 Q. How about the diving test?
 20 A It took two times.
 21 Q. Two times Parallel parking Right?
 22 A Exactly
 23 Q. And after you passed the test, did you have
 24 your own car, or did you use a family car?
 25 A. A family car

1 freshman?
 2 A. Correct.
 3 Q. Did you stay in that same car pool your
 4 sophomore year?
 5 A I believe so.
 6 Q. And then junior year is when people start
 7 turning 16 and they don't want mom driving them to or
 8 from school Right?
 9 A. Yes
 10 Q. It's the same in every high school that I can
 11 recall. How did you get to school your junior year?
 12 A That would be one of the family cars at that
 13 point
 14 Q. Did you car pool with other guys?
 15 A I think on occasion, but I can't remember
 16 exactly if there was an established car pool.
 17 Q. And then senior year is the time you started
 18 driving yourself?
 19 A. Correct
 20 Q. Your sisters, they were both older and younger
 21 than you Right?
 22 A Yes
 23 Q. And were they -- where did they attend high
 24 school?
 25 A. My oldest sister [redacted] actually graduated from

1 Q. And how many cars did the family have?
 2 A. Two
 3 Q. Did you drive it to school from the time you
 4 were 16, or what did you do in that regard?
 5 A. My father was retired I believe when I -- this
 6 is to the best of my knowledge -- was retired when I
 7 got my driver's license, so there would be -- I can't
 8 remember if the car pool stopped when I turned 16 or
 9 not, but there would be like a car pool.
 10 I started driving to school every day in my
 11 senior year. I can't remember if we still did the car
 12 pool my junior year or not.
 13 Q. Did you -- were you in the same car pool your
 14 freshman year throughout the entire year?
 15 A. In my freshman year?
 16 Q. Yes, sir
 17 A. Yes
 18 Q. Was that somebody's parents driving four or
 19 five of you to school?
 20 A. Yes, sir.
 21 Q. Who was in your car pool that you recall your
 22 freshman year?
 23 A Dave Kristante, Matt Hackett, myself, and
 24 one other individual. I can't remember his name.
 25 Q. Were these all kids from Assumption, all

1 high school from Collierville, Tennessee
 2 Q. So she was a graduate by the time she got here
 3 from Memphis?
 4 A No She actually was allowed -- my parents
 5 allowed her to stay in Tennessee to finish out her high
 6 school, so she would have graduated high school before
 7 actually relocating to Missouri.
 8 But when we initially relocated to Missouri
 9 from Memphis, during the summer, my parents decided she
 10 could go back down to Memphis and finish school down
 11 there.
 12 Q. How about your other sisters? Where did they
 13 attend?
 14 A. [redacted] went to Mehlville High School. My
 15 youngest sister started off at Cor Jesu and then
 16 transferred to Mehlville
 17 Q And was that their choice, your parents'
 18 choice?
 19 A It was their choice
 20 Q. And going to Vianney, was that your choice, or
 21 how did that happen?
 22 A. Well, I was given an option. You can either
 23 go to Mehlville or you can go to a private school,
 24 which one.
 25 And having been educated in the public school

1 system for -- excuse me -- kindergarten through 7th
2 grade and getting into the parish school, I felt that I
3 would like to try a private school, so I took the test
4 for Vianney and was accepted.

5 Q. I want to take sort of William Mueller out of
6 the equation and ask you about the rest of your
7 experience at Vianney. Did you have any problems
8 attending Vianney at all if you take away William
9 Mueller?

10 A. No.

11 Q. Aside from that, did you enjoy attending the
12 school?

13 A. Most certainly.

14 Q. Did you feel like you obtained a good or
15 excellent education there?

16 A. Yes, I do.

17 MR. NOCE: Can we take just a short break?

18 VIDEOGRAPHER: We're going off the record at
19 9:44 a.m.

20 (A break was taken)

21 VIDEOGRAPHER: We're back on the record at
22 9:54 a.m.

23 Q. (By Mr. Noce) We were talking about Vianney
24 and the education you received which you thought was
25 very good?

1 A. Yes, sir.

2 Q. Now while you were a student living in
3 St. Louis, did you ever have to be hospitalized or were
4 you ever hospitalized?

5 A. While I was attending Vianney?

6 Q. The whole time you lived in St. Louis say from
7 your 8th grade until the end of your freshman -- end of
8 your period at Vianney is what I'm asking if you were
9 hospitalized?

10 A. Yes.

11 Q. Okay. And where were you hospitalized?

12 A. I believe it was St. Anthony's

13 Q. Okay. And what was the reason for the
14 hospitalization?

15 A. I had -- I'm sorry. I had a bone spur removed
16 from my right elbow, and I had some tissue removed from
17 my left knee.

18 Q. Was that Dr. Dusek and Dr. Perron that did
19 that for you?

20 A. I believe that was their name.

21 Q. Okay. So St. Louis Orthopedic Group down
22 there?

23 A. I don't know if that's what they were called
24 then, but --

25 Q. And were you kept overnight, Mr. Visnaw, for

1 either of those surgeries?

2 A. They were done at the same time on the same
3 day, same operating room, so I believe I was. I don't
4 know exactly how long the stay was

5 Q. And do you recall when that was?

6 A. It would have been the summer of 1985. I want
7 to say July of 1985.

8 Q. So after graduation?

9 A. Yes, sir.

10 Q. And were there any physicians involved that
11 you can recall other than Perron and Dusek in that?

12 A. No, sir

13 Q. Any other hospitalizations?

14 A. Since then?

15 Q. No, during that time period other than the
16 elbow and knee surgeries

17 A. None that I can recall.

18 Q. Did you ever have any -- not -- while in high
19 school -- strike that. I'm going to start over

20 While in high school, from time to time you
21 might have had some high school counselors perhaps help
22 you sign up for grades or courses or maybe even for
23 college testing.

24 I want to take that aside, because I assume
25 that probably happened and you just don't recall. But

1 aside from those counselors, did you have any other
2 counselors that you saw while you were in high school
3 at Vianney, counselors of any kind?

4 A. Well, I'm a little confused on your definition
5 of counselor, because when I think of a counselor, I
6 think of somebody who is specifically there to give
7 counsel

8 If you're speaking of somebody that I may have
9 gone to to seek advice from -- is that what you mean?

10 Q. That would be -- thanks. And that's exactly
11 what I want you to do. If you don't understand me,
12 tell me that, and we'll try to clarify it.

13 So any type of counselor that you had during
14 say grade school, high school days while here in
15 St. Louis?

16 A. There was none in grade school. I was only
17 here for the 8th grade. While I was at Vianney, I
18 really didn't get into too many, you know, personal or
19 family issues.

20 There was -- my senior year, there was
21 Brother Mueller that, you know, would -- we'd talk to
22 after class or in between classes

23 Q. Did he teach you in any class?

24 A. I don't believe so, no. I know that he did
25 teach some of the religion courses or he would

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1 substitute for some of the religion courses, but he was
 2 never one of my direct teachers
 3 Q. Did you consider him to be a counselor of
 4 yours?
 5 A. Because of his position at the school as an
 6 assistant vice-principal, you know, myself and a lot of
 7 students thought you could go to talk to him if you had
 8 an issue, whether it be school related or outside of
 9 school
 10 Q. And did you do that on any occasions, speak
 11 with Brother Mueller about school or out of school
 12 issues?
 13 A. There -- out of school issues, no. There were
 14 some issues in school where -- you know, just the high
 15 school, you know, rivalries between other students and
 16 whatnot.
 17 And he would -- you know, he'd be like what's
 18 going on, and you'd tell him the issue at hand, and
 19 you'd talk about that.
 20 Q. In-school rivalries?
 21 A. Between students, just the egos, you know, 16,
 22 17 year old kids full of testosterone
 23 Q. He'd give advice or things of that nature?
 24 A. He would always for some reason find a way to
 25 be there at the right time to keep whatever might

1 that were made at that point.
 2 And when I was reading the complete news
 3 article from the *Post*, the statement that Bryan Bacon
 4 had made was very similar to my experiences, and I
 5 sought him out to say, you know, what do I do Here's
 6 what I have. What do I do?
 7 Q. Did you know he was a lawyer?
 8 A. Only from the newspaper article
 9 Q. Did you read the article that ran in the
 10 *Kirkwood-Webster Times* that he was interviewed on?
 11 A. If that is -- is that when he came public?
 12 The only article originally that I read was one I
 13 believe -- excuse me -- was published in the
 14 *Post-Dispatch*.
 15 Q. In other words, you're not familiar with an
 16 article -- an interview that he gave in the
 17 *Webster-Kirkwood Times* about William Mueller?
 18 A. I may be I don't know if it's specifically
 19 from the *Webster-Kirkwood Times* or if it was the
 20 one that was published in the *Post-Dispatch*, but what
 21 I -- the website that I went to was the *St. Louis*
 22 *Post-Dispatch*, and that's where I found the
 23 accusations.
 24 Q. And that would have been in September of 2005?
 25 A. Correct.

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1 happen from happening I was never involved in a fight
 2 at school with anybody from my high school or even out
 3 of school.
 4 But, you know, if there were issues that
 5 needed to be handled or needed to be addressed, and I
 6 would have -- you know, I say I'd probably be speaking
 7 for the majority of my classmates felt that you could
 8 go to him and say, hey, I have an issue. What can we
 9 do?
 10 Q. Do you know Bryan Bacon?
 11 A. I do know Bryan Bacon.
 12 Q. How long have you known Bryan Bacon?
 13 A. He was an underclassman of mine, but we didn't
 14 talk or anything while we were at school. I didn't
 15 really get to know Bryan Bacon until September of 2005
 16 Q. And how did you get to know him in September
 17 of 2005?
 18 A. In September of 2005, my mom had called and
 19 said, hey, Brother Mueller's in the news Do you know
 20 why? And she had left it -- it was a voice mail on our
 21 home phone on the answering machine I thought, you
 22 know, that's kind of odd. Why would my mom be calling
 23 about that?
 24 So I went out and did some internet searches
 25 on the *St. Louis Post-Dispatch* and saw the accusations

1 Q. And was that the first time you were aware
 2 that there were accusations being made about William
 3 Mueller?
 4 A. Yes, sir.
 5 Q. Aside from William Mueller, were there any
 6 other counselors during your high school days in the
 7 broadest sense of the term?
 8 A. No. Well, strike that. Let me say that, you
 9 know, Mr. Corbin and Ms. O'Connell, they were -- if
 10 anybody -- you know, everybody has a favorite teacher
 11 from some point in time in their education.
 12 Ms. O'Connell is to this day my favorite
 13 teacher from high school. And Mr. Corbin, obviously we
 14 had a relationship because of the four years of
 15 swimming and diving
 16 I felt that if I had issues at school or
 17 whatnot that I could go to them as well. Did I do
 18 that, I can't recall, but I always felt comfortable
 19 enough with those two individuals that I could have.
 20 Q. In other words, if something came up that
 21 troubled you, you felt comfortable and confident that
 22 you could discuss it with either Coach Corbin or
 23 Ms. O'Connell?
 24 A. Yes, sir
 25 Q. Did you -- did you attend college?

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1 A. Yes
 2 Q. Did you enter college upon graduation from
 3 high school or two months thereafter?
 4 A. Yes.
 5 Q. Where did you attend college?
 6 A. I went to the University of Missouri-Columbia
 7 for one semester I had a partial scholarship for
 8 diving to go there. I wasn't happy there and came back
 9 to the University of Missouri-St. Louis
 10 Q. When you went to school in Columbia for the
 11 one semester, you had a partial scholarship. Was it
 12 related to diving?
 13 A. Yes, sir.
 14 Q. And was the diving team or the swim team, was
 15 that a fall sport down there?
 16 A. It was pretty much -- you would say that the
 17 competitive portion of it would have been fall, but it
 18 was my understanding that it was going to be a
 19 year-round team where we would practice even after the
 20 season ended.
 21 We started pretty much right away as soon as I
 22 got to school that fall, and then the competition
 23 started later that year
 24 Q. And when you went down to Columbia, where did
 25 you live?

1 A. I lived in a dorm
 2 Q. And was it the athletic dorm?
 3 A. No, it was not. It was -- I want to say it
 4 was Johnson -- the Johnson dormitory, but I can't --
 5 that's the name that I can recall. I don't remember if
 6 that's the exact name of it or not.
 7 Q. Was that the one behind Brewer Field House,
 8 right back in that area?
 9 A. No, I don't think so. I haven't been -- I
 10 haven't set foot on Mizzou property in --
 11 Q. Since you left there?
 12 A. Since I left there.
 13 Q. Did you complete the semester there?
 14 A. I did.
 15 Q. And did you complete, what, 15 hours and then
 16 transferred to UMSL?
 17 A. I believe it was probably 13 or 14 hours and
 18 then transferred, but I did carry a full course of
 19 study.
 20 Q. Did you while you were in high school go out
 21 on dates with girls?
 22 A. Yes.
 23 Q. Okay. Did you have a girlfriend?
 24 A. Several.
 25 Q. Say senior year, did you have a girlfriend?

1 A. Probably a couple, not -- nothing too steady.
 2 Q. Senior prom at Vianney?
 3 A. I didn't go.
 4 Q. Did you go to any other proms at any other
 5 schools?
 6 A. My senior year, I went to a senior prom. I
 7 can't remember the name of the school. I want to say
 8 it was like St. Mary's Institute, the female school
 9 that was kind of in Ladue. I can't remember the name.
 10 I do know I went to one.
 11 Q. Villa Duchesne?
 12 A. Could have been. I'm not certain which school
 13 it was, but I do know that it was a female school that
 14 I went to.
 15 Q. On Conway Road?
 16 A. I believe so, but I can't be certain of that.
 17 Q. Do you recall who you went with?
 18 A. No, I don't. One of the younger divers that
 19 Craig Tapperson, the AAU coach had, his older sister
 20 invited me, and I said yeah, yes.
 21 Q. Aside from that, did you have a girlfriend you
 22 went out with on more than one occasion during your
 23 senior year?
 24 A. During my senior year, there was one that was
 25 off and on.

1 Q. Who was that?
 2 A. Stephanie Lesmeister, but we really -- most of
 3 my senior year we didn't talk just due to -- you know,
 4 adolescent issues.
 5 Q. Where did Stephanie go to school?
 6 A. Narix.
 7 Q. Do you recall -- how do you spell her last
 8 name?
 9 A. L-E-S -- I'm sorry -- L-E-S-M-E-I-S-T-E-R.
 10 Q. Do you know her whereabouts at all these days?
 11 A. St. Charles.
 12 Q. Is she married?
 13 A. Yes. I don't know her married name, though.
 14 Q. Any other girls you can remember going out
 15 with say during your junior or senior years?
 16 A. Donna Faulkner, but I don't know if that was
 17 my junior year or not. I think it would have been
 18 because I was driving, but I have no idea where she's
 19 at.
 20 Q. Where did she go to school?
 21 A. She went to Mehlville.
 22 Q. Was she the same age as you, same class in
 23 school?
 24 A. I believe so, yes.
 25 Q. When you went down to Mizzou, did you have a

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1 girlfriend?
 2 A No.
 3 Q. When you returned to go to school at UMSL, did
 4 you take part in sports, diving?
 5 A Not initially The coach for the swim team
 6 contacted me towards the end of the school -- towards
 7 the end of the competitive season and asked me if I'd
 8 be willing to come out on a diving team, and I had
 9 advised her -- you know, I really -- it's not something
 10 I want to do.
 11 And she had me come out and just said, you
 12 know what, just try it. Just come out and help us out.
 13 And from that point on, I want to say it was March of
 14 '86 I started diving for UMSL and continued that
 15 through my senior year
 16 Q. Okay And you competed as a varsity team
 17 member?
 18 A. Yes.
 19 Q. Did you win any awards or anything while
 20 diving at UMSL?
 21 A I went to nationals my senior year for
 22 Division II.
 23 Q. How did you do?
 24 A. 17th.
 25 Q. Did you obtain a degree from UMSL?

1 Criminal justice. I'm sorry
 2 Q. Did you receive some sort of certifications
 3 from these institutes?
 4 A. Conferring the degrees, no
 5 Q. Or conferring some sort of a certification or
 6 an acknowledgment or recognition of your completion of
 7 a course of study?
 8 A. We would have gotten quote/unquote a diploma
 9 from FLETC which is the Federal Law Enforcement
 10 Training Center saying that you completed the criminal
 11 investigations training program.
 12 And from the Defense Language Institute, we
 13 would have gotten a diploma or a certificate saying
 14 that you completed the course of study in a particular
 15 language.
 16 Q. After you graduated from UMSL in 1989, where
 17 did you go to work?
 18 A. I went to work for Citicorp Mortgage,
 19 Incorporated It used to be located out in Ballwin,
 20 Missouri
 21 Q. Is that out there at Clayton and Clarkson?
 22 A. Clayton and Clarkson, yes, sir.
 23 Q. How long did you work for Citicorp out there?
 24 A. Just -- I started working there the summer --
 25 towards the end of the summer of '89 and left there

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1 A. Yes, I did
 2 Q. What was your degree in?
 3 A. Spanish
 4 Q. And when did you graduate?
 5 A. May of '89
 6 Q. That would be a BS degree?
 7 A. Yes, sir. Actually, I think it was a bachelor
 8 of arts.
 9 Q. Do you have any degrees conferred upon you by
 10 any other institutions other than your bachelor's
 11 degree from UMSL?
 12 A. Official degrees, no.
 13 Q. Unofficial?
 14 A. I attended the Defense Language Institute
 15 Foreign Language Center out in Presidio, and their
 16 course of study equates to like five or six hours short
 17 of a bachelor's degree, so they consider it an
 18 associate's degree.
 19 The military training that I went through and
 20 the criminal justice when I went to the Federal Law
 21 Enforcement Training Center down in Glencoe, Georgia,
 22 the criminal court proceedings, the education that we
 23 got there they say equates to an associate's degree
 24 in -- what is it -- I can't think of the term now.
 25 There is a whole course of study for it in colleges

1 February or March of '91 right before I enlisted in the
 2 military
 3 Q. In order to attend -- strike that, please As
 4 a part of going to work for Citicorp, did you have to
 5 take any kind of physical examination?
 6 A. Not to my knowledge
 7 Q. Any psychological testing completed there?
 8 A. Not to my knowledge.
 9 Q. Did you have any counselors while you attended
 10 UMSL at all?
 11 A. We had a student counselor, but that was just
 12 someone that you would go and talk to to get your
 13 grade -- to get your classes for graduation
 14 And I think I only had contact with her once
 15 or twice going into my senior year so that we could
 16 ensure that I had the proper amount of credits and the
 17 proper coursework to graduate
 18 Q. Would that counseling have been limited to
 19 like you say academic?
 20 A. Yes, sir.
 21 Q. Any other counselors that you had during
 22 college at all other than the student counselors who
 23 helped you academically?
 24 A. No, sir.
 25 Q. Did you receive a scholarship to UMSL?

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1 A No, I did not.
 2 Q. Did you have anybody that you went out with,
 3 dated more than one occasion or more than a couple of
 4 occasions while you attended UMSL?
 5 A. Well, that would go back to Stephanie I
 6 mean, again, we were on again, off again for most of
 7 that. And then towards the -- my senior year,
 8 junior/senior year, we stopped seeing each other
 9 altogether
 10 We didn't really -- we broke up on really -- I
 11 don't want to say bad terms It just wasn't -- I guess
 12 we were pretty much tired of one another at that point.
 13 And then a girl by the name of Tracy Dry.
 14 Q. How do you spell the last name?
 15 A. Dry, D-R-Y. I dated her for probably about
 16 six, seven months.
 17 Q. Now Stephanie you would have dated off and on
 18 for four or five years?
 19 A. Maybe
 20 Q. Did she go to college?
 21 A. Yeah. She actually started off at Quincy, I
 22 believe it was, and transferred back to UMSL.
 23 Q. While you were attending UMSL, where were you
 24 living?
 25 A. With my family at the [REDACTED] address.

1 A Yes.
 2 Q. And during the time, you know, you're living
 3 at home attending high school and then ultimately
 4 attending college until you went in the military, were
 5 you close with your father?
 6 A It wasn't until actually probably about my
 7 senior year, we became more distant. I just didn't
 8 want to be around him or really any kind of adult male
 9 authoritative figure at that point. It was -- there
 10 were some issues with that.
 11 Q. You became more distant your senior year of
 12 high school?
 13 A. Yes, sir And that continued through college
 14 and pretty much right up until I enlisted in the
 15 military
 16 Q. And what branch of the service did you enlist
 17 in?
 18 A. The Army
 19 Q. Did your -- did you seek your dad's advice
 20 about whether or not you should go into the service?
 21 A. No.
 22 Q. What led to that decision?
 23 A. I needed to get away and I think try to
 24 establish who I was, my own identity, so instead of
 25 always being around him and the animosity that was --

1 Q. When you graduated and went to work for
 2 Citicorp, did you still live at home?
 3 A. Yes.
 4 Q. Did you live at home until you entered the
 5 military?
 6 A. Yes.
 7 Q. Were you in any kind of a fraternity while you
 8 attended UMSL?
 9 A No, sir.
 10 Q. Were you involved in any type of campus
 11 activities at UMSL other than the swimming and diving
 12 team?
 13 A. No, sir
 14 Q. And Tracy Dry, you went out with her for a
 15 period of time Do you know where she is now, or is
 16 she married or single still?
 17 A. I know nothing about her whereabouts or her
 18 current marital status.
 19 Q. Where did she live when you went out with her?
 20 A. I guess you would say it would be Kansas
 21 City -- or St. Louis, Missouri, the actual city, off of
 22 Grand. And I don't remember the exact street that was
 23 off of Grand.
 24 Q. And did she live at home when you went out
 25 with her with her parents?

1 that had developed between us.
 2 Q. You needed to get away from your dad?
 3 A. I needed to get away from not only my dad, but
 4 I needed to get away from the whole St. Louis
 5 environment
 6 I needed to -- I was becoming -- I think in
 7 adulthood I was becoming stagnant in who I was. I was
 8 always, you know, at home, diving, you know, just
 9 everyday work, going to work, or you know, nothing new.
 10 Q. Were you still diving after you graduated from
 11 UMSL?
 12 A A little bit, not much It wasn't
 13 competitive, but I would go to -- you know, I would go
 14 to the pool and try to work out, but not -- for the
 15 most part, no.
 16 Q. With anybody in particular in those days?
 17 A. My high school coach -- or not my high school.
 18 Strike that. My college coach who was picked up by
 19 UMSL my junior year, Kevi Hardwood I want to say H A
 20 R -- I want to say it's H-A-R-D-W-O-O-D.
 21 Q. What was the first name?
 22 A Kevi, Kevin without an N, K-E-V-I.
 23 Q. Oh, okay
 24 A She and I -- she and I -- actually, after
 25 college, she became a good friend of mine, and we ended

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1 up having a boyfriend/girlfriend type of relation for
2 the next couple years.

3 And then when I enlisted, that ended. It
4 actually ended prior to that, but we still stayed in
5 touch until I enlisted in the Army, and that ended

6 Q. And Kevi, where is she these days?

7 A. I have no idea, sir

8 Q. What part of town was she from?

9 A. She used to live in Kirkwood, but I don't know
10 where she -- she lived in Kirkwood, moved to St. Louis
11 City, and then after that when we lost touch, that was
12 it I'm sorry Excuse me

13 Kirkwood, St. Louis City, and then Creve
14 Coeur/Olivette. She used to live on Creve Coeur -- I
15 can't remember the exact street address, but she lived
16 right across the street from a grocery store that was
17 on Creve Coeur if you headed in towards the city.

18 Q. Okay Like Dierbergs or something?

19 A. It was a Schnucks.

20 Q. Was she from Kirkwood to your knowledge, like
21 her parents lived in Kirkwood?

22 A. I believe so

23 Q. Did you develop at any time after you got into
24 the service a relationship with your father?

25 A Yes, I did

1 training, you went out to the Presidio?

2 A. Of Monterey, yes, sir.

3 Q. And attended the language center out there?

4 A Correct.

5 Q. And what was your rank at that point?

6 A It was an E-4, specialist E-4.

7 Q. What was the rank that you -- what was the
8 highest rank you attended?

9 A It was a staff sergeant, E-6

10 Q. And where did you leave -- where were you
11 stationed when you separated?

12 A. Fort Lewis, Washington

13 Q. During the military service -- I think you
14 were in for five years?

15 A Yes, sir.

16 Q. Did you have any psychological counseling or
17 any psychological testing at any time while in the
18 military?

19 A. You know, I don't think so. I don't think it
20 was part of the entrance requirements. And because of
21 the job description I went in to, there was no further
22 requirement other than being able to pass what they
23 called the D-Lab, the Defense Language Aptitude Battery
24 which was a test that quote/unquote scored your ability
25 to learn a foreign language

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1 Q. When did that take place?

2 A Probably it would have been shortly after
3 basic training when, you know, it wasn't -- growing up
4 in a military family having rules and regulations put
5 down that you as a child don't understand or even as a
6 young adult you don't understand, and then when you're
7 put in that same situation, I realized that some of the
8 things that were going on in my life growing up, there
9 was a purpose behind, that it wasn't a bad thing to
10 have a father who set down rules.

11 Q. You realized that after completing basic
12 training?

13 A. Right around that time, yeah. It would have
14 been towards the end of basic training and right before
15 I went to the Defense Language Institute.

16 Q. And where did you do basic training?

17 A. Fort Leonard Wood.

18 Q. Now when you entered the service, did you
19 enter it as -- did you go through OCS?

20 A No, sir. I applied for OCS, but it was at the
21 time that they were conducting their reduction in
22 force, so they had closed the OCS process shortly after
23 my packet was received at the Department of Army.
24 That's what I was told by the recruiter.

25 Q. So then after you completed your basic

1 Q. And what did you do while you were in the
2 service?

3 A. I was a Korean interrogator, Korean language
4 interrogator to be more exact.

5 Q. Okay What does that mean?

6 A. That means I was trained on how to
7 interrogate/debrief/interview foreign nationals or
8 anybody, and then as part of that, the Korean language
9 was brought into play, because we would be stationed in
10 Korea or we would interview Koreans, either North or
11 South Koreans.

12 Q. Were you -- did you actually go to Korea
13 yourself?

14 A. Yes, I did.

15 Q. How long were you stationed there?

16 A. I entered country I believe it was December of
17 1992, late November, early December 1992, and I
18 departed to the United States in February of 1995.

19 Q. And is that about the time that you left the
20 service, in '95?

21 A. No, sir. I didn't leave until '96

22 Q. What languages do you speak?

23 A I speak Spanish, I understand Portuguese,
24 Italian and some Korean I speak some Korean and
25 understand some Korean

1 Q. Have you -- I know you're married now?
 2 A. Yes.
 3 Q. Have you been married in the past?
 4 A. Yes, I was.
 5 Q. And when did you first become married?
 6 A. May 1992.
 7 Q. And who did you marry?
 8 A. Dennisha, D-E-N-N-I-S-H-A, Gialdini,
 9 G-I-A-L-D-I-N-I, and she was a service -- service
 10 person or service man of the United States Air Force
 11 who was also at the Defense Language Institute in
 12 Presidio.
 13 Q. And do you know where she is now?
 14 A. I have no clue
 15 Q. And how long were you married to her?
 16 A. Six months before we separated. I believe it
 17 was just about a -- I want to say a year, maybe under
 18 that, before the divorce was final.
 19 Q. Where were you divorced?
 20 A. Green County, Texas, I think. I know it was
 21 in Texas. It was in whatever county in Texas her
 22 Air Force base was at, and I can't remember the name of
 23 the Air Force training base where she was at.
 24 Q. Was it around Corpus Christi?
 25 A. No, it was actually north near Odessa,

1 Q. So somewhere there's a Dennisha Visnaw vs.
 2 Robert Visnaw divorce case?
 3 A. I would believe that to be true.
 4 Q. And you think that's in Texas somewhere?
 5 A. Yes
 6 Q. And you think it's Green County?
 7 A. Green -- San Angelo, Texas
 8 Q. San Angelo, okay
 9 A. Is where I think the Air Force base is at,
 10 Goodfellow Air Force Base. Talk about it long enough,
 11 it shows up in your brain
 12 Q. Were there any children born of the marriage?
 13 A. No, sir
 14 Q. Did she tell you why she wanted a divorce?
 15 A. She told me it was -- the common term of
 16 irreconcilable differences I just think that she
 17 didn't want to be married
 18 She had gotten -- she had conceived a child
 19 prior to us getting married and had a miscarriage
 20 shortly after -- or shortly before we got married.
 21 So I don't know if that had anything to do
 22 with her not wanting to be married, but that was the
 23 reason I was given is that it was irreconcilable
 24 differences
 25 Q. Do you know where she was from?

1 Odessa/Midland. I'm sorry. I just can't remember the
 2 name of the Air Force base where she was at
 3 Q. How was it that the divorce took place there?
 4 Were you a resident of the state of Texas?
 5 A. No. Actually, she was because she was
 6 training there. I had already gone to Fort Huachuca,
 7 Arizona for my interrogation training.
 8 And she had let me know that she wanted to get
 9 divorced. I did not want to get divorced, but she
 10 wanted to get divorced, and she took care of all the
 11 paperwork through an attorney there
 12 I had then went to Korea, and she was then
 13 subsequently sent to Korea to Osan Air Force base, and
 14 she brought the paperwork with her. I signed the
 15 paperwork, and she sent it back to her attorney
 16 Q. Did you receive any kind of paperwork or
 17 documentation confirming the fact that you are
 18 divorced?
 19 A. I did. I cannot find it, because it's -- for
 20 my five year periodic security clearance update, it's
 21 one of those things that they like to see copies of,
 22 but in my personal records I can't find it, but yes, I
 23 did receive a copy of the certified divorce decree
 24 Q. Okay. Did she take your name?
 25 A. Yes, she did.

1 A. She -- her father is from Wisconsin, the
 2 Milwaukee area, and her mother who died in 1993 was
 3 from the Chicago area.
 4 Q. So when you married her, she was pregnant?
 5 A. No, she was not pregnant when we married. She
 6 had a miscarriage shortly before our marriage was to
 7 take place
 8 Q. Okay She was pregnant when you were getting
 9 ready to marry her?
 10 A. Correct.
 11 Q. And was it your child or no?
 12 A. To the best of my knowledge, yes.
 13 Q. Oh, it was your child, okay. Where did the
 14 miscarriage take place?
 15 A. While we were at Presidio, she was taken to
 16 the Fort Ord Medical Center which is just on the other
 17 side of the bay from the Presidio.
 18 Q. And so the entire time -- you were married in
 19 California, and a divorce took place and was issued in
 20 a court in Texas?
 21 A. Correct.
 22 Q. And the entire period of your marriage was
 23 about six months?
 24 A. I would say the entire time that I thought we
 25 were married -- was that six months Legally it didn't

1 end until sometime in 1993
 2 Q. Did you -- when you got married to her, what
 3 year was that?
 4 A '92.
 5 Q. Family members attend the marriage?
 6 A My mother did not. Her father came down
 7 Q. Was your dad already passed?
 8 A My father had passed away already
 9 Q. Did he pass in 90?
 10 A '91, October -- October 18th, 1991
 11 Q. Were you in the service by that time?
 12 A. Yes, sir, I was.
 13 Q. Was his death a surprise or was it --
 14 A. It was a surprise, but it wasn't such a
 15 surprise that it -- we knew that if he was ever going
 16 to die, he was going to have another heart attack and
 17 die. We didn't think he would go from any other cause
 18 besides that.
 19 So when I was called into my first sergeant's
 20 office and saw the chaplain and my first sergeant
 21 there, my first words were, okay, so when did my dad
 22 die.
 23 Not that it was unexpected -- or not that I
 24 expected it, but it wasn't as a shock as it would be
 25 say to most people who had a completely healthy father

1 point?
 2 A Correct.
 3 Q. Prior to that, did you attend with your
 4 family?
 5 A. I didn't attend with my family, but I did
 6 attend mass. My mom would go like on Saturday nights,
 7 and I would get up and go to --
 8 Q. 7 30 or something?
 9 A. Yeah, the one that was only like a half an
 10 hour long.
 11 Q. Okay And when you went to -- down to Mizzou,
 12 you were away from home for the first time Did you go
 13 to Newman Center, or what did you do down there?
 14 A We went to the Newman Center once.
 15 Q. Did you go to the other churches like Sacred
 16 Heart over by Stephens or anything like that?
 17 A. No, sir.
 18 Q. Did you register at Newman Center at all, do
 19 you remember?
 20 A No, sir, I don't recall. I don't believe I
 21 did
 22 Q. So you were at Mizzou '85 -- well, '85 for the
 23 fall semester and then back to live at home and go to
 24 UMSL by probably around Christmastime?
 25 A Correct

1 and he just all of a sudden dies from a heart attack.
 2 Q. Okay So did you come home for the funeral?
 3 A. Yes, I did.
 4 Q. And was the service at Assumption?
 5 A. Yes, it was
 6 Q. Father Dempsey?
 7 A. I don't know who -- I don't know who would
 8 have said the mass, but Dempsey does ring a bell.
 9 Q. I think he would have been the pastor at the
 10 time. And did you speak at all at the service?
 11 A. No, sir
 12 Q. And you, of course, attended the service?
 13 A. Yes
 14 Q. Did you at some point quit attending mass or
 15 church?
 16 A. Oh, yeah.
 17 Q. When did that happen?
 18 A That would have probably been on a regular
 19 basis as far as where I felt part of the church
 20 probably would have been about '86/'87
 21 I did attend mass after that only because, you
 22 know, the family of the girl that I was dating,
 23 Stephanie, they were into the church, and I went kind
 24 of as a show.
 25 Q. So you quit after you were in college at some

1 Q. All right. And then it was sometime after
 2 moving back that you quit attending church?
 3 A Yes, sir.
 4 Q. Okay. So mom came down and attended your
 5 wedding?
 6 A. No, my mother did not
 7 Q. Oh, she did not? I'm sorry.
 8 A No. Her father -- the bride's father came
 9 down from Milwaukee
 10 Q. Was that in a church?
 11 A. It was actually at an oceanside park in
 12 Pacific Grove, California.
 13 Q And who married you?
 14 A. The justice of the peace.
 15 Q. So it was a judge or something like that?
 16 A. Yes, sir.
 17 Q. A civil service?
 18 A. Yes, sir.
 19 Q. Since that time, you have remarried?
 20 A. Yes, sir
 21 Q. And you're married right now?
 22 A. Yes, sir.
 23 Q. And your wife's name is [REDACTED]
 24 A. [REDACTED]
 25 Q. [REDACTED] I'm sorry Is it her daughter who's

1 [REDACTED]

2 A Yes, sir.

3 Q. And [REDACTED] is not your daughter, it's your

4 wife's daughter?

5 A. Correct.

6 Q. Okay. Now where did you meet [REDACTED]

7 A. I met her through my current sister-in-law who

8 was a neighbor of mine in Kansas City

9 Q. [REDACTED] sister?

10 A. Correct.

11 Q. Okay. What's her name?

12 A [REDACTED]

13 Q. [REDACTED]

14 A. [REDACTED]

15 Q. Is that [REDACTED] maiden name?

16 A. No. [REDACTED] maiden name is Inscoc,

17 [REDACTED] The name that she had at the time I met

18 her was Evans

19 Q. Is [REDACTED] last name Evans?

20 A Yes, sir

21 Q. When did you marry?

22 A. Oh, you're going to get me in trouble.

23 Q. She's not here

24 A. October 9th -- October 9th, 1999.

25 Q. How long did you go out with [REDACTED] before

1 Q. Is she a member of any church in particular?

2 A. She is now. I think the name of it is Christ

3 Family Church and that's in Olathe as well.

4 Q. Is that affiliated with any denomination?

5 A I think it's nondenominational.

6 Q. Are you a member of any church?

7 A. No, sir.

8 Q. Have the children -- your children been

9 baptized in any church?

10 A. No, they haven't.

11 Q. Since leaving the service -- I think that was

12 in '96 you told me?

13 A Yes, sir

14 Q. What's your employment been?

15 A. In April of 1996, I went back to work for

16 Citicorp Mortgage as a bilingual collections

17 representative.

18 Q. And where were you employed? What was your

19 employment?

20 A. The same place as before in Ballwin off of

21 Clayton and Clarkson.

22 Q. Where did you live when you worked there and

23 came back to St Louis?

24 A. I lived with my mother for a short time

25 My -- the girl that I was dating at the time insisted

1 that?

2 A. Before we got married?

3 Q. Yes, sir

4 A. We met in July of '98 at her sister's birthday

5 party

6 Q. And how many children do you have with [REDACTED]

7 A. Three

8 Q. Names and ages?

9 A. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 Q. And where did you and [REDACTED] get married?

13 A. We got married in Johnson County, Kansas

14 Q. And where?

15 A. Olathe, O-L-A-T-H-E, and we got married by a

16 judge at a -- I won't say it's a banquet center, but we

17 used one of the banquet rooms at the Holiday Inn

18 located on 151st Street in Olathe.

19 Q. So you had a civil service?

20 A. Correct

21 Q. Okay. Did your wife -- did she -- was she

22 brought up in any organized religion?

23 A. She was -- she considers herself Christian I

24 don't know what exactly religion she was or what church

25 she would have attended

1 on coming back from Fort Lewis, Washington to St. Louis

2 with me, so we moved from there to an apartment complex

3 off of -- I think it's Olive just north of 40 Highway.

4 I don't know the exact name or street address, but --

5 Q. Olive turns unto Clarkson, so it's a straight

6 shot to where you worked?

7 A. Exactly.

8 Q. Now when you were in the service at any time,

9 either as a part of your induction or as a part of your

10 training or as a part of your separation, did you ever

11 take any psychological testing at all?

12 A No, sir

13 Q. Or have any psychological testing conducted?

14 ~~Yes~~ No, sir

15 Q. Did you ever have -- say up to 1996 at any

16 time any counseling either from a social worker or a

17 psychologist or a health care provider of any kind for

18 any psychological reasons?

19 A When I got the call from my ex-wife that she

20 wanted to get divorced, that did upset me because I

21 didn't know why she wanted to get divorced.

22 You know, I thought it was something that I

23 had done, so I did go talk to the chaplain one time

24 about that.

25 Q. And where was that?

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1 A At Fort Huachuca, Arizona
 2 Q. Do you recall the chaplain's name?
 3 A No, sir.
 4 Q. Do you know whether he or she was affiliated
 5 with any denomination?
 6 A All I can tell you is that it was a Christian
 7 chaplain I don't know if it was -- if he was a
 8 Catholic chaplain or Methodist or Baptist or what,
 9 but --
 10 Q. And was that just to sort of talk out --
 11 A. Yes, sir.
 12 Q. -- problems?
 13 A. Yes, sir. It was more of, you know, why do
 14 you think this happened and just to try to calm me
 15 down, because I was not happy that she had just called
 16 me one day on the phone and said, hey, I want to get a
 17 divorce.
 18 Q. Was it a surprise to you?
 19 A. Very much so.
 20 Q. And she never explained the reason she wanted
 21 the divorce?
 22 A. Not that I can recall. Later we had talked,
 23 because we were both stationed in Korea at separate --
 24 separate bases, but it was -- we never really discussed
 25 it after I signed the divorce paperwork.

1 Q. Did you have any kind of counseling or
 2 psychological testing when you came back to work for
 3 them?
 4 A No, sir.
 5 Q. Any kind of examination?
 6 A No, sir.
 7 Q. Paperwork to fill out at all?
 8 A. We filled out -- I filled out I think it was
 9 another -- I don't want to say it was an application
 10 I mean, it could have been just to update my personnel
 11 files and to put me back into a department that I could
 12 be used in.
 13 Since I was working for collections when I
 14 left, that was the obvious choice to put me back into
 15 when I came back.
 16 Q. And when you were in the service at any time,
 17 were you under or using any prescribed medicines at
 18 all?
 19 A. Motrin, but that would have been for, you
 20 know, ankle sprains, body aches. It would seem to
 21 be -- you know, we had a saying in the military. You'd
 22 go to the tactical or the troop medical center and get
 23 your ranger candy, because they'd give 800 milligrams
 24 of Motrin out for everything. It didn't matter what it
 25 was.

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1 I think I saw her on one or two occasions
 2 where, you know, she just wanted to say, hi, how are
 3 you doing, and we'd have a dinner with her friends or
 4 whomever she came up to Osan to Seoul with, and we
 5 never really discussed why we got divorced.
 6 Q. Okay. So after the divorce occurred here in
 7 the states, on a couple of occasions the two of you
 8 would go out to dinner with her friends in Korea?
 9 A. No, it was -- I mean, I saw her maybe twice
 10 while I was in Korea, once to sign the divorce
 11 paperwork and then once after that, you know, just idle
 12 chitchat, hi, how are you doing, I'm in Seoul, you
 13 know, nothing outside of that.
 14 Q. Okay. And aside from that single occasion
 15 with the minister -- the chaplain in Arizona, no other
 16 counseling of any kind while you were in the service?
 17 A. No, sir.
 18 Q. After you left the service and went to work
 19 for Citicorp, was that the first place of employment
 20 after leaving the service?
 21 A. Immediately after separating from the service,
 22 Citicorp Mortgage had an employee clause that if you
 23 went on active duty while you were still employed, they
 24 would hold your job, so that's how I got to come back
 25 with them.

1 Q. But it was a prescribed medicine?
 2 A. Correct.
 3 Q. And did you take that regularly or
 4 irregularly?
 5 A. I would say irregularly.
 6 Q. Any other prescribed medicines?
 7 A. Not when I was -- not when I was in the
 8 military, no.
 9 Q. After leaving the military, how long did you
 10 go to work for Citicorp?
 11 A. I returned back to Citicorp I believe it was
 12 April of '96, and December 2nd of '96 I entered on duty
 13 with the then Immigration & Naturalization Service.
 14 Q. INS?
 15 A. Yes, sir.
 16 Q. And where did you start working for INS?
 17 Where did you get hired?
 18 A. Kansas City. I was actually interviewed here
 19 in St. Louis for a position here. A trainee in Kansas
 20 City had quit, they needed someone to fill his spot,
 21 and they asked me if I'd go to Kansas City, and I said
 22 sure.
 23 Q. You said that you had moved here with a
 24 girlfriend from Washington?
 25 A. Yes, sir.

1 Q. Who was that?
 2 A. Laura Margel, M-A-R-G-E-L.
 3 Q. And where is Laura now, do you know?
 4 A. I believe she's relocated back to Washington
 5 I don't know exactly where I would fathom a guess and
 6 say it would be back near Olympia, Washington or Kent,
 7 Washington
 8 Q. And did the two of you live together in an
 9 apartment somewhere?
 10 A. We lived together in the apartment complex off
 11 of Olive
 12 Q. Do you remember the name of the apartment
 13 complex?
 14 A. No, I don't.
 15 Q. And how long did the two of you live there?
 16 A. Oh, not -- it wasn't very long because we
 17 started not getting along.
 18 And she actually found another place to live
 19 near Shrewsbury just past the Laclede Station/Murdoch
 20 cut-off exit She found a place to live there
 21 I actually stayed in the apartment on Olive at
 22 that point, so we maybe lived together from April until
 23 June or July, maybe August
 24 Q. Of 1996?
 25 A. Yes, sir Again, that's -- the time frame

1 Q. Did you undertake any testing?
 2 A. No, sir
 3 Q. Did you have to have any counseling -- strike
 4 that, please
 5 Did you undergo any psychological testing
 6 while a member of the INS?
 7 A. No, sir
 8 Q. How about physical examinations?
 9 A. We had a physical that was conducted by a
 10 doctor that they sent me to. It was a requirement of
 11 hire to be hired.
 12 Q. Where was that?
 13 A. Here in St. Louis, Missouri somewhere. I
 14 don't -- I couldn't tell you what doctor it was or
 15 anything along those lines, but we had a physical, they
 16 gave us a rudimentary eye exam, hearing exam, they drew
 17 blood for alcohol or drug abuse, that type of stuff.
 18 Q. And this -- the INS office, is it located in
 19 the federal courthouse? Where was it located when you
 20 interviewed here in St. Louis?
 21 A. The interview was here in St. Louis. I want
 22 to say it was off of 14th Street very close to what was
 23 then known as the Savvis Center
 24 Q. Is it the Robert Young building?
 25 A. I believe so

1 is -- I can't exactly recall the amount of months that
 2 we lived together
 3 Q. Were you both on the lease there?
 4 A. Yes.
 5 Q. The apartment?
 6 A. I believe so I -- I'd have to say yes.
 7 Q. And what -- where was that apartment complex
 8 located exactly?
 9 A. You know, I could drive you there It's off
 10 of Olive. I don't know how far down off of Olive.
 11 It's been over 10 years since I've been there, so --
 12 Q. It's Olive say off of 270 or --
 13 A. No, it's actually Olive off of 40. If you
 14 were to go left -- if you're coming into the city on
 15 40, you get off of Olive and you go left. And I don't
 16 know how many miles down the road it is, but it would
 17 sit on the right-hand side
 18 Q. Is it all the way to 141?
 19 A. No, I don't think it's that far. I mean, I
 20 couldn't tell you exactly the distance or the
 21 cross-streets or anything Like I said, it's been over
 22 10 years since I've been there.
 23 Q. After you went to work for the INS, was there
 24 any kind of testing that you had to undertake?
 25 A. It wasn't required.

1 Q. And was the doctor's office there, too?
 2 A. No, sir.
 3 Q. So the office -- INS sent you to a private
 4 physician for this physical exam?
 5 A. I don't know if it was a private physician,
 6 but they have doctors that they want you to see to fill
 7 out the paperwork, because they want -- I don't know if
 8 it's because they want to make sure that you meet all
 9 the requirements, you're just not having your personal
 10 physician say he's healthy
 11 Q. After you obviously passed the examination,
 12 you were assigned to Kansas City?
 13 A. There was a waiting period because they had to
 14 wait for my security clearance to be processed, and
 15 then after that, then the offer of employment was made,
 16 and they gave me an entry on duty date of December 2nd,
 17 '96
 18 Q. And where were you to report?
 19 A. Kansas City, Missouri.
 20 Q. And what was your job title?
 21 A. Criminal investigation or criminal
 22 investigator/special agent
 23 Q. And what were your duties on that first job?
 24 A. On the first job? It's been my job since
 25 then.

1 Q. What were your duties when you started, and if
2 they've changed, what are your duties?

3 A. I entered on duty in December of '96 I did
4 not go to the academy until the following year. We
5 had -- they kept canceling classes, so at that point I
6 was just kind of doing -- filing paperwork, helping --
7 because I was fluent in Spanish, I would help some of
8 the agents that were not totally fluent in Spanish
9 conduct their interviews to help translate

10 At that point, I would help create databases
11 for the some of the agents on their case work, so I was
12 pretty much an administrative processor or in an
13 administrative capacity until I went to the academy.

14 Q. How long did that period last?

15 A. I want to -- I almost want to say it was until
16 May, April or May I don't know the exact dates that I
17 went to the academy, but it was sort of spring/early
18 summer that I went to the academy.

19 Q. And what's the name of the academy, and where
20 is it located?

21 A. It's located in Glencoe, Georgia, and it's the
22 Federal Law Enforcement Training Center Glencoe,
23 Georgia is kind of encompassed by Brunswick, Georgia.

24 Q. How long did that education or program last?

25 A. Let's see. The total course would have been

1 time I left Vianney until the time I entered the
2 military?

3 Q. Right

4 A. Yeah, it was the surgeries that I had on my
5 right arm and my left knee

6 Q. And since that time while you were in -- say
7 after leaving the service -- strike that.

8 During the service, were you ever
9 hospitalized?

10 A. I had my wisdom teeth removed surgically, and
11 it was a one night stay.

12 Q. Where was that?

13 A. That was in Seoul, Korea.

14 Q. After leaving the service up to today's date,
15 have you been hospitalized at all?

16 A. Many times

17 Q. And tell me the first time after leaving the
18 service, when, and what it was for?

19 A. It would have been for shoulder repair, and
20 that would have been September of 2001.

21 Q. In Kansas City, Dr Wardner?

22 A. Dr Wersing. That was September of 2001.

23 September of 2002, I had completely torn my ACL, and
24 that was -- he removed my ACL.

25 Q. Same physician?

1 22 weeks if you took the Spanish course, which I did
2 not have to do, so I think it was like 17, 18 weeks,
3 16, 17, or 18 weeks that I was there

4 Q. And what did that program consist of?

5 A. It consisted of criminal law, constitutional
6 law, and immigration and nationality law, amongst your
7 physical requirements, your basic handcuffing,
8 firearms

9 Q. And as a part of that program, is there any
10 psychological testing at all?

11 A. No, sir.

12 Q. Any physical testing at all?

13 A. We did have to take a physical exam, running,
14 agility, lifting your body weight

15 Q. Was there any further medical examinations as
16 a part of that program?

17 A. Not unless you were injured.

18 Q. Did you get injured during that program?

19 A. No.

20 Q. From the time you left Vianney to the time you
21 entered the armed forces, were you hospitalized on any
22 occasion?

23 A. In '85.

24 Q. And what was that?

25 A. That was the surgery. Again, it was from the

1 A. Correct. But that was -- both of those
2 surgeries were outpatient, but I considered them being
3 hospitalized because I was in the hospital environment.

4 Q. Sure

5 A. September -- July of 2003 or 2004, I don't
6 know the exact year, but it seemed like I was having
7 one surgery after another, I went to Dr. Rasmussen and
8 had my ACL repaired.

9 Q. Again, in Kansas City?

10 A. Correct. And then I was hospitalized after
11 that surgery because I had contracted cellulitis and
12 had to spend several days in the hospital

13 Q. When was that?

14 A. When I was -- that was -- I had the surgery in
15 July of 2003 or 2004 and that -- that was on a
16 Wednesday or Thursday. That Friday night, I was back
17 in the hospital with cellulitis in my leg.

18 And then I'm trying to figure out how old my
19 daughter was when this happened. I think it was 2005 I
20 was hospitalized with an abscess in my face. I was
21 hospitalized for two or three days then.

22 Q. Was that simply drained?

23 A. It was drained, and then I was put on
24 antibiotics after that. I had what they call a PIC
25 line inserted in my left arm for the administration of

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1 antibiotics.
 2 Q. Are all these hospitalizations at the same
 3 location?
 4 A. Goodness. The shoulder repair was done at --
 5 I can't remember the exact hospital. I think it was
 6 Johnson County Surgical Center. It was either there or
 7 Shawnee Mission Medical Center
 8 And my knee, one was done at either Overland
 9 Park Regional or the Surgical Center of Johnson County.
 10 And my reconstruction, if I remember
 11 correctly, was done at Shawnee Mission Medical Center,
 12 and then the abscess was drained at Overland Park.
 13 Q. Any other hospitalizations?
 14 A. Not that I can recall.
 15 Q. Between the time that you were divorced and
 16 then remarried, you already told me you went out and
 17 lived with actually Laura Margel.
 18 Did you go out with anybody else for any more
 19 than one occasion during that period of time?
 20 A. In Korea, we dated for maybe two months
 21 towards the end of my stay in Korea, but it was more of
 22 circumstances that you're there, you're single, I'm
 23 single
 24 Q. Do you have a personal physician since --
 25 strike that.

1 the way -- in some instances it could be a licensed
 2 clinical social worker, it could be a psychiatrist,
 3 psychologist, it could be anything like that, a health
 4 care provider who's trying to treat a psychiatric,
 5 psychologic, or emotional disorders

6 Before Dr. Harris, did you have that kind of
 7 treatment from anyone, anywhere, at any time?

8 A. The only other person that that -- I think
 9 would qualify for that would be my primary care
 10 physician, Dr. Bernard, but that was right around the
 11 same time as well that Dr. Harris -- that I started
 12 seeing Dr. Harris

13 Q. And Dr. Harris, you were referred to him by
 14 the EAP at your work?

15 A. Yes, sir.

16 Q. Okay Had you ever asked for any -- I think
 17 that stands for employee assistance program?

18 A. Yes, sir

19 Q. Had you ever participated or received any
 20 assistance from the EAP at any time in any of your
 21 employment situations prior to that?

22 A. No, sir.

23 Q. When you consulted and talked to Dr. Harris,
 24 you knew he was a psychologist?

25 A. Yes, sir.

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1 When you moved back to St. Louis after leaving
 2 the service, did you have a personal physician during
 3 that time frame?
 4 A. No
 5 Q. Until you moved to Kansas City?
 6 A. Correct.
 7 Q. Did you have any medical treatment for any
 8 reason during that time frame?
 9 A. Not that I can recall. I don't think I did.
 10 Q. And then upon transferring to Kansas City in
 11 '96, have you had any personal physician?
 12 A. Originally when I first got to Kansas City,
 13 no After I met my wife in '98, I started listing her
 14 physician, Dr. John Bernard, with College Park Family
 15 Care, excuse me, as my primary physician.
 16 Q. And your wife is a health care provider?
 17 A. She was a -- she is a licensed practical
 18 nurse. She -- with the birth of her fourth child, my
 19 third, she has quit work to stay at home
 20 Q. In -- I think in September of 2005 or
 21 thereabouts, you started obtaining some counseling from
 22 a Dr. Harris who's a psychologist?
 23 A. Yes, sir
 24 Q. And have you ever received counseling from
 25 anyone -- by counseling I mean it could be anything in

1 Q. Okay And you were there seeking his help,
 2 weren't you?
 3 A. Yes, sir.
 4 Q. And did you understand in speaking with him
 5 and seeking his counseling that you should give him as
 6 full and complete information and as accurate
 7 information as you could?
 8 A. Yes, sir.
 9 Q. And did you do that?
 10 A. Yes, sir.
 11 Q. Have you ever read his records?
 12 A. I reviewed them prior to today, yes, I have.
 13 Q. Okay. And when did you do that?
 14 A. It would have been Saturday, Sunday, and again
 15 last night.
 16 Q. Were there any other records that you've
 17 reviewed in preparation for your deposition?
 18 A. I reviewed my statements to the
 19 interrogatories.
 20 Q. And did you -- so you reviewed Dr. Harris's
 21 records?
 22 A. Yes, sir.
 23 Q. All right. And you reviewed your
 24 interrogatory answers. Correct?
 25 A. Uh-huh

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1 Q. That's true?
 2 A. Yes, sir.
 3 Q. Have you reviewed any other records in
 4 preparation for this deposition?
 5 A. I think those -- I think those are it, the
 6 interrogatories and Dr. Harris's statements Pardon
 7 me. I did read Father Flemming's deposition.
 8 Q. And when did you do that?
 9 A. I'm trying to think. About two -- two,
 10 three weeks ago, I believe. I think that's when it
 11 was. It could be as long as a month, month and a half.
 12 Q. And did you read any other documents regarding
 13 your case that were provided to you to read in
 14 preparation for your deposition?
 15 A. Other than -- if you're describing legal
 16 documents --
 17 Q. I'm talking about any documents.
 18 A. Newspaper articles -- I haven't tried to find
 19 anything on the internet or newspapers for some time
 20 But from September of 2005, I did read the newspaper
 21 articles that came out about the situation and about
 22 the allegations
 23 Q. Okay. I'm going to hand you --
 24 MR. GOLDENHERSH Jerry, can we take a quick
 25 break before we do that?

1 So when I got those, I opened them up, saw
 2 what they were I may have glanced at them I did not
 3 review them in detail.
 4 Q. Okay And I don't want to know what Mr Craig
 5 told you.
 6 A. Sure
 7 Q. Can you identify what those records were that
 8 he provided?
 9 A. One of them would have been -- I think it was
 10 a packet for like medical releases that I had to sign,
 11 release of information documents, and I signed those.
 12 And then there was one that I got that was for today's
 13 events
 14 Q. A notice of the deposition or something like
 15 that?
 16 A. Exactly
 17 Q. Anything else?
 18 A. Not that I -- I mean, I've gotten so many
 19 legal documents, you know, recently with all the ones
 20 that we've described that I'm not discerning one from
 21 the other.
 22 Q. Do you keep those in a file?
 23 A. I keep them at my house, yes.
 24 Q. And are they back in Kansas City?
 25 A. Some of them are here, like the records I

1 MR. NOCE: Sure
 2 MR. GOLDENHERSH. Are you okay with that?
 3 MR. NOCE: Sure.
 4 VIDEOGRAPHER. We're going off the record at
 5 10:59 a.m.
 6 (A break was taken.)
 7 (Defendant's Exhibit A was marked for
 8 identification.)
 9 VIDEOGRAPHER. We're back on the record at
 10 11:07 a.m.
 11 Q. (By Mr Noce) Mr. Visnaw, I want to make sure
 12 you read Father Flemming's deposition, you read the
 13 interrogatory answers, and you read Dr Harris's
 14 records in preparation for your deposition?
 15 A. Uh-huh.
 16 Q. Is that true?
 17 A. Yes.
 18 Q. And did you read any other records of any
 19 kind?
 20 A. There were some things that my attorney had
 21 sent me, but those would have been -- you know, he
 22 would have talked to me on the phone, hey, I'm going to
 23 send you something about your deposition, a schedule
 24 for your deposition. I'm sending you something in the
 25 mail.

1 reviewed last night which were my interrogatories and
 2 Dr. Harris's records I did bring along with me.
 3 Everything else is at home in Kansas City.
 4 Q. Okay. And when you say you brought them with
 5 you, did you bring them here with you today?
 6 A. No, I did not.
 7 Q. Did you leave them at mom's house?
 8 A. Yes, I did. Actually, I left them in the car
 9 at my mom's house
 10 Q. All right. Did you come here by cab, or did
 11 your lawyer bring you down?
 12 A. My attorney, we met, and he drove me down.
 13 Q. Okay. I'm going to hand you what we've marked
 14 as Defendant's Exhibit A It's a copy of the petition
 15 that's been filed in this case
 16 Take your time and take a look at that. I
 17 just want to ask you if you have at any time read and
 18 reviewed that?
 19 A. Yes, I have That was actually towards the
 20 beginning of this year that I received a copy of this
 21 from my attorney.
 22 Q. Do you know whether you reviewed it before or
 23 after suit was filed?
 24 A. I would have -- I would have obtained a copy
 25 of this. This exact document I believe is the -- a

1 copy of this is what I got after the suit was filed.
 2 Q. Had you read it at any time before the suit
 3 was filed?
 4 A. I don't recall, but I believe my attorney and
 5 I discussed everything
 6 Q. And I don't want to know about things such as,
 7 you know, as is listed in Paragraph 2, because that
 8 would be something your lawyer would check for you as
 9 to where these entities are located.
 10 A. Sure
 11 Q. They're legal things. And essentially the
 12 same would be true as to 3, Paragraph 3 and Paragraph 4
 13 and Paragraph 5, and you know, Paragraph 6 are things
 14 that the lawyer would throw in. That's part of his
 15 job.
 16 But I do want to ask you some of the things --
 17 the allegations that are listed in this petition and
 18 make sure to see if they're accurate.
 19 It says in approximately -- I'm looking at
 20 Paragraph 7 -- 1984 Defendant Brother William Mueller
 21 repeatedly assaulted and/or battered the plaintiff
 22 Now I don't know if you have an understanding
 23 of what those terms mean. Sometimes they have a common
 24 meaning, and sometimes they have a legal meaning. Did
 25 something like that occur to you in 1984?

1 in April?
 2 A. Yes, sir
 3 Q. So you'd have been 17, almost 18 years old
 4 during these events?
 5 A. Correct
 6 Q. Did any of these events take place while you
 7 were 18 years old to your knowledge?
 8 A. No
 9 Q. Can you tell me -- strike that.
 10 It took place during your senior year which
 11 would have commenced in late August probably?
 12 A. On or about August I want to say 22nd, 25th
 13 Q. And then your senior year would have probably
 14 ended about May 15th?
 15 A. I believe we graduated Mother's Day.
 16 Q. Mother's Day, so mid May?
 17 A. 1985.
 18 Q. Okay. And when was the first event that
 19 you're complaining about in this lawsuit? When did it
 20 take place?
 21 A. Well, Brother Mueller in late September/early
 22 October had asked me if I would be willing to assist
 23 him with his master's degree. He was doing a thesis on
 24 fear
 25 So it would have been right around that time

1 A. That I can recall?
 2 Q. Yes, sir
 3 A. At the time that I had discussions with my
 4 attorney --
 5 Q. And, again, I don't want to know what was said
 6 between the two of you
 7 A. Yes
 8 Q. I just want to know --
 9 A. Is it an issue if I try to address this as
 10 best I can?
 11 Q. Well, I want you to tell me did something
 12 happen to you in 1984 at the hands of William Mueller?
 13 A. Yes
 14 Q. All right. And at that time, how old were
 15 you?
 16 A. 17
 17 Q. Did you have a driver's license?
 18 A. Yes
 19 Q. Had you ever been -- strike that.
 20 And was that in -- during your senior year of
 21 high school?
 22 A. Yes.
 23 Q. And you would have turned 18 in 1985?
 24 A. Correct.
 25 Q. So you were 17. I believe your birth date is

1 that he had come to me and said, you know, if you're
 2 willing to do this, I have the okay from the order to
 3 do it.
 4 So if you're okay with it, come by, you know,
 5 after school or in the evening hours, and we'll get
 6 started
 7 Q. Okay. And as I understand it, that would
 8 have -- there would have been four occurrences?
 9 A. In my case, yes.
 10 Q. Okay. And the first one, like you say, late
 11 September/early October?
 12 A. Correct.
 13 Q. Had you had any interaction whatsoever with
 14 William Mueller before he asked you to take part in
 15 this experiment?
 16 A. Other than seeing him in the hallway and
 17 saying hi to him, again, he was an assistant
 18 vice-principal, so we saw him every day. Personal
 19 interaction, no. It was more of a school official and
 20 a senior
 21 Q. How did he contact you?
 22 A. He just -- he came up to me in the hallway
 23 after school. We were there -- at that time -- around
 24 that time, we would start going to Chaminade for swim
 25 practice.

1 Q. Well, I was going to ask you that Did
2 Vianney have its own pool then?
3 A. No, sir.
4 Q. Okay. Where did you train?
5 A. Chamunade
6 Q. How did you get there?
7 A. Drove
8 Q. Would it be team members driving, or was there
9 a coach that drove or how?
10 A. You were responsible to get there, either
11 through car pooling with somebody that had a car or mom
12 and dad would pick you up and take you there or you
13 would take the bus.
14 Q. And you were driving at this time?
15 A. Yes.
16 Q. Did you have people who would ride with you?
17 A. Occasionally, but not on a regular basis
18 Q. And was that strictly after school?
19 A. The?
20 Q. Training
21 A. Yes.
22 Q. So after what, 3 00?
23 A. I want to say it started -- I mean, we got out
24 of school at about 3, 3.30 and we would pick up
25 training around 5, maybe 6.

1 A In a study for his master's degree which
2 included these tests
3 Q. And was that during school hours that he
4 contacted you or pulled you aside or whatever he did?
5 A. The first time, it was after school.
6 Q. And what was your occasion for being there
7 after school?
8 A. It -- you know, like I said earlier, it was
9 several of us would play -- stay around and play chess
10 or Dungeons & Dragons, you know, after school on
11 occasion, and it just happened to be on one of those
12 occasions
13 Q. And did it take place -- the experiment take
14 place that day?
15 A. Not that day He caught me again in the hall
16 and say, hey, do you remember what we talked about,
17 yeah, and can you come by tonight. And I don't
18 remember how long after that, but that's how it was --
19 how that subject was broached.
20 Q. And come by where?
21 A. Actually come by his office after school It
22 was more towards the evening hours after dusk, so --
23 Q. So this is late September/early October?
24 A. Yes, sir.
25 Q. And so he's asking you to come by after dusk

1 Again, the time frame -- the exact times I
2 couldn't give you, but it was shortly after school,
3 maybe an hour after school, an hour and a half after
4 school that we would drive
5 When I say we, anybody after school that
6 needed a ride to swim practice, we would go
7 Q. I mentioned earlier Dr. Harris, the counselor
8 through EAP, that you've been seeing about this.
9 A. Uh-huh
10 Q. And you've reviewed his records?
11 A. Yes, sir.
12 Q. Did you see anything inaccurate in those
13 records at all?
14 A. Not that I can -- not that I can recall
15 Again, his reading was -- his handwriting is a little
16 bit hard for me to discern, but I think -- I think for
17 the most part it was accurate. I didn't see any
18 discrepancies.
19 Q. In other words, when he recorded in the
20 records and in the notes what you had told him, you
21 thought he recorded what you told him accurately?
22 A. Yes, sir.
23 Q. All right So the first incident with
24 Mueller, you knew who he was, and he asked you to
25 participate in an experiment?

1 and see him?
2 A. Uh-huh.
3 Q. Correct?
4 A. Yes, sir
5 Q. All right. And what time would that be?
6 A. 6. I mean, at that time, just like if we
7 weren't on daylight savings time here, it would be
8 getting pretty -- fairly dark or after dusk around 6,
9 6:30.
10 Q. So he asked -- and you came by his office 6 or
11 6:30?
12 A. Yes, sir
13 Q. Was there anybody -- now strike that.
14 Where was his office located?
15 A. I have to go back to -- I think it was
16 located -- if we walked in the main doors, it was
17 straight back.
18 I almost want to say it was to the right of
19 the main entrance, not near the gymnasium but up
20 towards the administrative office. It was co-located
21 with like the secretaries' area
22 Q. Would it be the president's office was located
23 in the general vicinity and the vice-principal, the
24 secretaries, and the administrative offices all in one
25 sort of location?

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1 A. Well, when you say the president, do you mean
2 the principal's office?
3 Q. The principal or president. Did they have a
4 president then, do you know?
5 A. You know, I don't remember
6 Q. Well, Brother Grieshaber was the principal at
7 the time?
8 A. Correct. It was located in that same general
9 area up there.
10 Q. So you have -- and now they have a president.
11 That's why -- I don't know how long that's been the
12 case
13 But they had Brother Grieshaber's office, you
14 had Brother Mueller's office, you had some
15 administrative offices, and then you had the
16 secretaries' offices?
17 A. Yes, sir.
18 Q. And then the library across the hall?
19 A. Down the hall.
20 Q. Down the hall?
21 A. It was at the intersection, at the
22 T-intersection
23 Q. And when you would go by those offices, were
24 there windows?
25 A. At the administrative section, yes. There was

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1 a -- you were actually partitioned off from the
2 administrative section.
3 There was a little -- I won't say it was a
4 hallway, but there were two doors at the end with glass
5 windows. You would go into there and contact the
6 people sitting behind another wall
7 Q. Okay. And Brother Mueller's office at the
8 time, were there windows in that office also?
9 A. I don't recall.
10 Q. And at dusk, at 6 or 6:30, did -- you went to
11 his office?
12 A. Yes, sir.
13 Q. And when you say dusk, you mean it was almost
14 dark outside?
15 A. It was getting dark or already there, you
16 know. It wasn't as light as it is out now. It was
17 darker. You know, sunset, it just gets dark very
18 quickly.
19 Q. Was this after football practice was already
20 over and the team was gone?
21 A. I'd have to say yes, I mean, just because of
22 the time frame.
23 Q. And soccer practice and the team was gone?
24 A. Usually about that time, all the practices
25 were done.

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1 Q. Do you recall what day of the week it was?
2 A. No, I don't.
3 Q. Was there anybody still at the offices,
4 Brother Grieshaber or any of the secretaries?
5 A. No, sir.
6 Q. Was there anyone there other than William
7 Mueller and yourself?
8 A. Not that I know of.
9 Q. I mean in the offices?
10 A. In that general area?
11 Q. Yes, sir.
12 A. No, there was no one
13 Q. And the athletic department, that's not
14 located right there, is it?
15 A. No, it's at the opposite end of the building.
16 Q. And there were no coaches still walking around
17 the hall?
18 A. No, sir.
19 Q. How about maintenance staff at all?
20 A. By that time, any students that were involved
21 in say cleaning the classrooms, chalkboards or
22 whatever, were gone. Maintenance staff I believe would
23 have been gone as well.
24 Q. Okay. You walk in, in past the glass windows
25 and wall and the doors into that area and you have the

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1 two -- the secretaries' desks?
2 A. Yes, sir.
3 Q. Okay. And then you'd have
4 Brother Grieshaber's office and then Brother Mueller's
5 office?
6 A. Correct.
7 Q. And did they have windows in those offices
8 also?
9 A. I don't think they had -- I don't know if they
10 had windows that projected out to the secretaries'
11 area, but I'm pretty certain that they would have had
12 windows looking over say like the football field, but
13 they kept those with blinds. I mean, it was --
14 Q. And when you went into William -- or where was
15 Mueller when you arrived there?
16 A. He met me at the main entrance right there in
17 the foyer and unlocked the doors or let me in. I can't
18 say if the doors were chained or not, but opened the
19 door for me.
20 Q. You mean into the building?
21 A. Yes.
22 Q. Had you gone home that day?
23 A. No.
24 Q. So you got off of school at 2:30, and then
25 what did you do?

1 A. I went to swimming practice, diving practice,
2 and then went back.
3 Q. So you went up to Chaminade, did your diving
4 practice. How long did that last?
5 A. For me, it would only last about an hour, hour
6 and 15 minutes, only because I was also -- I had the
7 Craig Tapperson that would be my coach, and I was
8 diving all year long, so Mr Corbin was like get your
9 workout in, and then you can take off.
10 Q. So that's done by 4:30?
11 A. Oh, no We didn't usually start, like I said,
12 until about 5.
13 Q. Okay So what did you do from the time school
14 got out until the time you went to Chaminade?
15 A. Well, on occasion, we -- some of us would stay
16 behind and play chess. And when I say some of us,
17 there were other students that were there.
18 Q. Do you recall that occasion?
19 A. No, not necessarily, no.
20 Q. So you started your practice up at Chaminade,
21 and practice is over. Did you go directly from
22 Chaminade back to Vianney?
23 A. Yes.
24 Q. Did you have anything to eat or anything like
25 that?

1 diving, homework, and occasionally on the weekends
2 going out with, you know, whomever, a school dance or
3 however it was at that point.
4 Q. So you went back to Vianney, and Mueller let
5 you in the building?
6 A. Yes, sir.
7 Q. And then took you back to his office?
8 A. Yes, sir
9 Q. And you didn't see anybody from when you
10 arrived to when you reached his office?
11 A. Correct.
12 Q. Did you see anybody from when you were
13 finished in his office to when you left?
14 A. No, sir.
15 Q. When he invited you or asked for your
16 assistance in this experiment or with this study, was
17 there anybody there present at the time he asked you to
18 take part in it?
19 A. He was -- he would never -- and speaking for
20 myself, he would never ask you to either come to the
21 office or come see him if there was other people
22 around. He would make sure that you were -- it was one
23 on one.
24 Q. And was that the situation when he asked you
25 that occasion?

1 A. I don't know
2 Q. How long were you with William Mueller on that
3 first occasion?
4 A. I could not tell you
5 Q. Was it a matter of hours?
6 A. No, I can't tell you. During that -- during
7 that first time that I was with him, when everything
8 was said and done and I left, time was -- to me was
9 irrelevant because I was confused, I was -- you know, I
10 was leaving and I didn't really -- at the time, I don't
11 think I wore watches at all.
12 But I could not put if I was there for a half
13 an hour, ten minutes, five minutes, or whatnot I know
14 when I left, it was considerably darker than when I
15 came
16 Q. And did you have an after school job during
17 that time period?
18 A. No
19 Q. During the season, you didn't work or --
20 A. During -- from school up until I graduated --
21 I mean, during the school year, no It was during the
22 summers that I had my jobs, just so that I had some
23 spending money
24 And during the school year, I mean, you could
25 say literally it was school, diving, homework, school,

1 A. That was the situation every single time he
2 asked me to come and have a session with him.
3 Q. Were you aware back then of any other people
4 taking part in these experiments?
5 A. At the first -- at the first one, no.
6 Through -- at one of the four sessions, the later
7 three, Brother Mueller did mention two names of
8 individuals that he wanted me to talk to and say that,
9 you know, here's -- I'm doing these studies along with
10 Brother Mueller. There's nothing to worry about.
11 Q. He wanted you to vouch for the studies?
12 A. Yes, sir.
13 Q. And who were the individuals?
14 A. One is Matthew Eddy and the other one -- I'm
15 going to get his last name probably wrong -- is Daniel
16 Finnegan, F-I-N-N-E-G-A-N.
17 Q. Do you know Dan Finnegan now?
18 A. No, I do not. I haven't had contact with him
19 since graduation
20 Q. High school graduation?
21 A. Yes, sir.
22 Q. Okay And Matt Eddy, were they both in your
23 class?
24 A. They both graduated with me, yes
25 Q. And did you actually talk to them about it?

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1 A. I did not talk to Dan Finnegan. And I want to
2 say I said something to Matt Eddy, but I don't recall
3 what his response would have been. Really, I think it
4 was just something in passing, and that was it
5 Q. What happened at that first incident?
6 A. We went into his office, and he had asked
7 me -- he'd gone through the same thing he had said
8 before is that the reason he was actually brought to
9 Vianney was to try to find out why brothers were
10 leaving the order, that he was put there by the order
11 itself to talk to them as -- find out why are these
12 people leaving the order when they shouldn't be, when
13 everything seemed to be happy-go-lucky then
14 So he then said he had the permission of the
15 order to use students to complete his master's degree,
16 and he explained that it was a thesis on fear and the,
17 you know, various types of fear, what was being done.
18 He had asked me if I'd ever been -- I'd ever
19 passed out, and I said no. He asked if I'd ever been
20 rendered unconscious, and I said no. He goes, well, I
21 can do that. Do you have any problem with that? No, I
22 don't
23 And he then instructed me to bend over at the
24 waist and begin breathing very, very, very quickly
25 And that went on, I don't know, maybe 30, 40 seconds.

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1 Again, time was irrelevant at that point.
2 And then he said, when I tell you to, stick
3 your thumb in your mouth, hold your nose, and blow
4 against your thumb. And he said, go ahead. And I
5 stuck my thumb in my mouth, held my nose, and blew
6 against my thumb, and that was it until I woke up.
7 Q. And you don't know how long you were passed
8 out?
9 A. No, sir.
10 Q. Do you know of anything that took place while
11 you were unconscious?
12 A. No, sir.
13 Q. Were you administered any materials,
14 substances at any time on that occasion that you know
15 of?
16 A. I don't know
17 Q. Did you ever see any evidence of any materials
18 or substances being used on you on that first occasion?
19 A. None that I saw. That was -- if there was
20 anything there, he kept his office very low lit and
21 dark, so if there was anything there, if I was to wake
22 up, I would be confused enough to where I probably
23 wouldn't even notice it.
24 Q. Were there lights on in the hall when you
25 entered the school?

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1 A. The school was dark when I came in
2 Q. The school was dark?
3 A. There was enough light to see where we were
4 going because of the ambient light from outside.
5 Q. Were there lights on in the office when you
6 entered the office?
7 A. No.
8 Q. Were there lights on in Brother Mueller's
9 office when you entered that?
10 A. Again, they were -- it was very low lit. It
11 could have been a desk light or -- it was not the
12 fluorescent lights in the ceiling.
13 Q. Would it be light enough in the office that
14 you could see where you were going but not light enough
15 in order to read, something like that?
16 A. I think that would be a fair estimate.
17 Q. So you didn't have any problem entering,
18 avoiding, you know, desks or anything else?
19 A. No, sir.
20 Q. But you wouldn't want to read in that
21 lighting?
22 A. Correct
23 Q. Are you able to testify under oath that any
24 foreign material or substance of any kind was used on
25 you that day on the first instance?

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1 A. I don't know if there was anything used on me
2 because I was unconscious.
3 Q. For that reason, you can't say that one way or
4 the other?
5 A. Correct
6 Q. And was there any -- when you came to or
7 awoke, tell me, you know, what were the circumstances?
8 Were you on the ground, were you standing, were you
9 sitting?
10 A. Well, obviously I was standing up when he had
11 me pass out the first time. There were several -- on
12 that first instance, there were several instances of
13 hyperventilating, passing out, hyperventilating,
14 passing out.
15 When I came to, I was seated. And his
16 question immediately to me was how long do you think
17 you've been out. And not knowing, I'd say, oh, 10, 15,
18 maybe 30 seconds. And he'd be, exactly, that's how
19 long you were out
20 Then he would ask questions about, well, while
21 you were passing out, how did you feel. I would answer
22 that with it was very weird to all of a sudden become
23 very helpless and just limp
24 While you were passing out, what did you see?
25 And, you know, what colors did you see? Did you see

1 any patterns of colors? And, you know, we'd -- I'd
 2 answer yes. Or like maybe one time I think I said I
 3 saw red, a very vibrant red or I saw zebra stripes,
 4 that type of thing. He would say, good, okay.
 5 Then we would sit and just kind of idle
 6 chitchat, and then he said let's do it again. And I
 7 think there was on that first instance maybe four or
 8 five repetitions of that.
 9 Are you afraid? No, I'm confused but not
 10 afraid. And this same pattern of questioning would
 11 happen each and every time. And, again, the very first
 12 question when I awoke and while I was confused was how
 13 long were you out.
 14 Q. Was he taking notes of your responses?
 15 A. I didn't see him write anything down.
 16 Q. Was he recording anything in any way that you
 17 know of?
 18 A. Not that I saw.
 19 Q. And if you had to testify, could you give us a
 20 number as to how many instances on that occasion he had
 21 you pass out?
 22 A. The number of repetitions?
 23 Q. Yes, sir.
 24 A. I'd say four or five.
 25 Q. Can you testify today that you were sexually

1 MR. CRAIG. Again, Bob, if you need any
 2 breaks, just say so. Okay?
 3 MR. NOCE. That's exactly correct. That's the
 4 deal.
 5 Q. (By Mr. Noce) This first situation or first
 6 incident, have you explained it completely?
 7 A. To the best of my recollection, yes.
 8 Q. Have you always recalled what happened at
 9 that -- on that instance?
 10 A. I've always recalled the passing out and
 11 waking up with the questions, but I've always recalled
 12 it as part of the quote/unquote test or experiments.
 13 Q. So you recall what took place. You don't know
 14 obviously what happened while you were unconscious?
 15 A. Correct.
 16 Q. Other than that, you recall the incident
 17 itself?
 18 A. Yes.
 19 Q. And everything that took place while you were
 20 conscious?
 21 A. I recall everything up to the point of passing
 22 out, nothing after passing out, waking up, again, the
 23 idle chitchat, passing out, not knowing what happened.
 24 Q. And do you know anything that took place while
 25 you were unconscious?

1 abused on that occasion?
 2 A. No. I was unconscious.
 3 Q. Did you -- did he have his hands on you that
 4 you know of on that occasion in any respect, Mueller?
 5 A. Yes, he did.
 6 Q. How was that?
 7 A. When -- with all the hyperventilation or the
 8 repetition of fast breathing, he would stand behind me.
 9 And while I was bent over at the waist, he would -- as
 10 I was breathing very heavily, he would grab my head and
 11 start moving it side to side and say keep moving your
 12 head, and he would actually have his hand in my hair.
 13 And I'm about to cry, so hold on. And then he
 14 would say go ahead and blow on your thumb and hold your
 15 nose, and then he would grab me about the waist I would
 16 assume to let me down easy. I was 140 pounds,
 17 150 pounds of dead weight. It's pretty hard for
 18 someone to grab instantly.
 19 Q. To your knowledge, were you injured in any
 20 way -- injured physically during that first instance?
 21 A. Not that I can recall.
 22 Q. Other than him holding you so as you wouldn't
 23 fall, do you know of any other touching that he did of
 24 you?
 25 A. Not on that first session, no.

1 A. No, I don't.
 2 Q. Is there any -- and I'm talking about the
 3 first incident. Is there any evidence that you had or
 4 have or recall or can testify to that would indicate
 5 that you were in any way sexually abused on that first
 6 incident?
 7 A. No.
 8 Q. That's true, there is no such evidence?
 9 A. That's correct.
 10 Q. And as far as you know, you sustained no
 11 physical injury on that occasion?
 12 A. To the best of my knowledge, yes, sir.
 13 Q. Did you consider or after you left that night,
 14 did you consider the incident to be -- I mean, did you
 15 believe it was a test or experiment?
 16 A. I believe -- pardon me. I believed it right
 17 up until September of 2005 that that's what it was. I
 18 had no reason to believe otherwise.
 19 Q. You mean every incident was?
 20 A. I thought every incident of -- out of the
 21 four sessions that I partook of was done as part of his
 22 master's degree.
 23 Q. As far as you could tell, did it seem to be a
 24 bona fide type of series of tests to you?
 25 A. At 17 years old, I took him at his word. I

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1 mean, he was the assistant vice-principal. He was part
2 of the order that was instructing me, giving me a great
3 education. I had no reason to believe otherwise.

4 Q. Did you find any of the -- anything that
5 occurred on that first instance to be or first incident
6 to be physically offensive to you?

7 A. No.

8 Q. Harmful to you?

9 A. No.

10 Q. Injurious to you?

11 A. No.

12 Q. As far as you know, did you sustain any injury
13 from that first incident?

14 A. No.

15 Q. Did you discuss William Mueller and these
16 incidents with your father at some point in time?

17 A. We were -- after I got out of basic training,
18 I had gone home for a short period of time, and then I
19 went out to the Presidio of Monterey.

20 And that July, I flew home to get my car so
21 I'd have a mode of transportation out in California.

22 And on that trip, he said, oh, I forgot to give you
23 this. It was a letter from Brother Mueller.

24 I said, oh, you know what, just go ahead and
25 throw those away. I mean, if you get any more, I quit

1 he was writing other students as well, that he tried to
2 keep in touch with those students

3 Q. Did you ever confirm that with anybody,
4 whether he continued to write people even up to 1991?

5 A. After the news came out in September of 2005,
6 I -- after I spoke with Bryan Bacon and he had stated
7 that there was some attempt at communication with him
8 after he left Vianney

9 And he related the same thing, that other
10 students had had the same experience where
11 Brother Mueller had tried to contact them either, you
12 know, letter or what have you, telephone or whatnot.

13 Q. Did you receive letters yourself and actually
14 read them that were sent to you from Mueller after you
15 graduated from Vianney?

16 A. Uh-huh, yes, sir.

17 Q. For how long a period of time?

18 A. I was receiving them right up until 1991 that
19 I know of. Sporadically -- they would not come on a
20 regular basis. They would just come out of the blue

21 But that's how I found out he left the order.
22 He didn't talk to me over the phone about it. He put
23 it in --

24 Q. Did he call you also on occasion?

25 A. On a couple, but not very often.

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1 writing him back a long time ago

2 He's like, well, you know, why is he writing
3 to you? I said he -- he writes to everybody. He still
4 keeps in contact with a lot of students that I
5 understand that he had at Vianney.

6 Q. When would this be?

7 A. July of '91 shortly before his death

8 Q. Before your dad's passing?

9 A. Yes, sir.

10 Q. Okay.

11 A. And I had said, you know, he was -- while he
12 was at Vianney, he was working on a master's degree
13 And he had been given permission by the order to -- if
14 he wanted to enlist students to help him in conducting
15 whatever he needed to, it was okay

16 And that's exactly how I presented it to my
17 dad. And he was like, okay, well, if anything else
18 comes in the mail, we'll just go ahead and toss it.

19 Q. So you discussed what these experiments were
20 with your dad?

21 A. No, no. I just told him that he had a group
22 of students that were assisting him in -- as part of
23 his master's degree, and I was one of those students

24 And he kept in touch -- from what I was --
25 what I believed, because he was writing me, I figured

1 Q. Did you know he left Vianney at about the time
2 he left?

3 A. He -- in one of his letters to me, he stated
4 he had left Vianney. He was leaving Vianney, not the
5 order, to go down and be near his mother in San Antonio
6 and that he was still going to be part of the order
7 down in San Antonio. That was the reason he gave me
8 for leaving Vianney.

9 Q. Did he ever tell you that he actually left the
10 order?

11 A. He in a subsequent letter or telephone
12 conversation -- excuse me -- he had called or written
13 me and said he was leaving the order because he could
14 not care for his mother while being part of the order.

15 And I remember at that point kind of feeling,
16 you know, why would you be leaving the order? You're
17 close enough to your mom. You know, I don't think the
18 order would have any problem with you having to tend to
19 your ailing mother, so I was kind of bitter about him
20 leaving the order

21 But you've got to do what you've got to do,
22 and that's how I looked at it at that point, that he
23 was leaving so he could better care for his mother.

24 Q. Did you ever write him back or respond?

25 A. I did on occasion. It wasn't like it was, you

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1 know, I'd get a letter and write back immediately. I'd
2 get a letter and see it and go, okay, set it aside,
3 read it, and if I felt like it, I would write back to
4 him.

5 Q. How many times did you write him?

6 A. Three, maybe four. I don't recall an exact
7 number

8 Q. During -- what would be the time period or
9 time frame of these letters back to Mueller?

10 A. After graduation, after he left Vianney,
11 probably for the next several years after that.

12 Q. Three to four?

13 A. Maybe five. Again, like I said, they wouldn't
14 come on a consistent basis. It was, you know, every
15 now and then I'd get a letter from him out of the blue

16 Q. Did you consider him to be a friend of yours
17 during that time period that you were writing him?

18 A. I wouldn't say a friend. I looked at it as
19 somebody that I had developed a relationship with
20 because of, you know, thinking that I was part of his
21 master's degree and he wanted to continue with the
22 communication.

23 I wouldn't call him a mentor or a friend. It
24 was casual acquaintance I guess using -- as I say in
25 adult terminology, he was a casual acquaintance type of

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1 relationship

2 Q. So it would have been up until about when you
3 were 23 years old, something like that?

4 A. I believe so, yes.

5 Q. And up to that age, you considered that what
6 he was doing was a bona fide master's study, and you
7 considered that he was an acquaintance to whom you'd
8 write?

9 A. I -- until -- like I said, until September
10 2005, I thought it was a legitimate study. We stopped
11 communicating, so you know, it wasn't always
12 acquaintance, you're correct. It was casual
13 acquaintance communication. That was it.

14 Q. How many other people say other than family
15 members did you actually write letters to from age
16 18 to 23 other than members of your family?

17 A. I wrote to people in Spain because I had
18 studied in Spain.

19 Q. Did you study abroad?

20 A. I studied in school over there, yes

21 Q. While you were in high school?

22 A. While I was in college.

23 Q. College, okay.

24 A. From -- for the most part, I didn't have to
25 write anybody else, because they all lived within

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1 communication distance. I went into the Army at 24.

2 I had some -- again, some friends that I had
3 made in Spain that lived here in the United States that
4 lived in California that I would communicate either
5 telephonically or in letter form.

6 Q. When you were at UMSL, did you graduate with
7 honors?

8 A. No, I did not

9 Q. What was your grade point average?

10 A. 2.3.

11 Q. Have you been tested for IQ?

12 A. No, sir

13 Q. Do you have any idea what it is?

14 A. No, sir

15 Q. Me neither. I'm afraid to look for mine,
16 so -- okay I want to go back on this. Aside from
17 these people in Spain -- by the way, do you know the
18 names of the people in Spain that you corresponded to?

19 A. They were my house mother. I couldn't
20 remember her last name, but her first name was Maria
21 And then -- Maria De Los Dolores. I don't remember her
22 last name

23 Christina Voght or Voght, V-O-G-H-T, her
24 father was the minister or he was the head of the
25 Evangelical Mission in Spain, and I met her and

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1 communicated with her. And she actually came to the
2 United States to go to school, but after he came here
3 we lost touch, because I went into the military and
4 whatnot

5 The ones from California that I had met, her
6 name was Leslie Lamson. We were in classes together.
7 And then just various other people.

8 MR. NOCE: It's 10 till. Do you want to take
9 a break now for lunch?

10 MR. CRAIG: That's fine.

11 VIDEOGRAPHER: We're going off the record at
12 11:47 a.m.

13 (A break was taken.)

14 VIDEOGRAPHER: We're back on the record at
15 12:52 p.m.

16 (Defendant's Exhibit B was marked for
17 identification)

18 Q. (By Mr. Noce) Mr. Visnaw, we're back on the
19 record. We're going to discuss -- I think we've fully
20 discussed the first incident that you referred to as it
21 related to William Mueller and that incident, and that
22 happened in late September/early October of your senior
23 year.

24 When was the next incident relative to that
25 first incident? Was it a matter of days later, weeks

1 later, or what?

2 A. It probably would have been several weeks
3 after that.

4 Q. Okay. Can you tell me whether it was in the
5 month of October or November?

6 A. I'm not certain. The two middle times, the
7 second and third time, I don't know of an exact date,
8 because there's nothing for me to really associate with
9 those times.

10 But it would have been I think three, maybe
11 even a month after -- three weeks, maybe a month after
12 the first one.

13 Q. When was it that Mueller asked you to speak to
14 Matt Eddy and to the other young man that --

15 A. If I remember correctly, it would have been --

16 Q. Finnegan.

17 A. Either the second session or the
18 third session. I'm leaning more towards the second
19 session.

20 But, again, he had asked me to -- if I have an
21 opportunity to talk to these two individuals, and as
22 you had said earlier, pretty much vouch for them -- for
23 him with them.

24 Q. Now as of September/October of your senior
25 year, had you already taken the SAT or other college

1 father and I weren't getting along -- we were getting
2 along at that time -- to try to carry on that
3 tradition.

4 Q. You were still getting along with your dad
5 throughout your senior year of high school do you
6 think?

7 A. For the beginning of my senior year.

8 Q. Was your dad -- by this time, was he disabled?

9 A. He was disabled prior to this time.

10 Q. When did that occur relative to your high
11 school?

12 A. It was while I was in high school, maybe right
13 before I started. I don't know how long he worked for
14 Steak 'N Shake after returning from Memphis, but I
15 think at that particular time he was in the process of
16 becoming -- you know, going through all the exams and
17 whatnot.

18 Q. Did he have a lawyer help him on that process
19 or do you know?

20 A. No, I don't know.

21 Q. But he was disabled under the Navy guidelines
22 or whatever?

23 A. Correct. He was considered 100 percent
24 disabled according to the Veterans' Administration.

25 Q. Did he also get disability as far as you know

1 entrance exams?

2 A. I don't think I took those until the winter or
3 spring quarters.

4 Q. Had you made application for college?

5 A. Not at that time, no

6 Q. Had you decided at this point that you did
7 intend to attend college?

8 A. Yes.

9 Q. And had you decided where you would attend
10 college?

11 A. No.

12 Q. As of September?

13 A. No.

14 Q. Were you considering a number of schools or
15 what?

16 A. Yes.

17 Q. And what schools were you considering?

18 A. University of Arkansas, Kirksville -- what was
19 known as -- what we called Kirksville at that time I
20 guess it's Northeast Missouri State

21 Q. Truman?

22 A. Or Truman University is what they call it now
23 I had -- I even anticipated trying to get an
24 appointment to the Naval academy to kind of carry on
25 the tradition of the Navy in my family, even though my

1 through Social Security?

2 A. That I don't know. I believe he did, but it
3 would be speculation

4 Q. Did your mom work outside the home while you
5 were in high school?

6 A. Yes, she did. I'm trying to see if it was --

7 Q. Who did she work for?

8 A. She worked for Maloney -- the same person she
9 works for now, Maloney & Jackson. It's an accounting
10 firm

11 Q. Where are they? South County?

12 A. Yes, they're on Gravois -- near Sappington and
13 Gravois I believe it is

14 Q. And what type of work did she do?

15 A. She was a staff accountant.

16 Q. Is she a CPA?

17 A. No, she is not.

18 Q. Is she a college graduate?

19 A. I don't know if she graduated or not. I know
20 she attended Missouri for a while, but I don't know. I
21 don't think she is a college graduate

22 Q. She works under their direction?

23 A. Correct

24 Q. On bookkeeping work and tax preparation?

25 A. Exactly

1 Q. And she did that even back then?
 2 A. I believe she started right around the time we
 3 came back. I don't know the time frame in which she
 4 started or how long she's been there. I couldn't tell
 5 you.
 6 Q. And your sisters, I know one of them is a
 7 teacher? One of them is a teacher?
 8 A. Correct.
 9 Q. One sister is a nurse?
 10 A. Right.
 11 Q. And did your other sister work outside the
 12 home?
 13 A. She was a nurse as well.
 14 Q. And when we say nurse, registered nurse?
 15 A. A RN, BSN, bachelor of science in nursing.
 16 Q. When your dad was disabled while you were in
 17 high school, in other words, he was not working
 18 anywhere outside the home?
 19 A. No.
 20 Q. And was he able to do anything, get around,
 21 drive a car, things of that nature?
 22 A. Yes.
 23 Q. Attend your sporting events?
 24 A. Yes.
 25 Q. And did he do that?

1 Q. And when did you -- and I may have read in
 2 between the lines on this. I kind of concluded that by
 3 the time you graduated college you were no longer a
 4 practicing Catholic. Is that correct?
 5 A. Correct. That actually happened while I was
 6 in college. I got away from the church.
 7 Q. And was that just an unconscious decision of
 8 not wanting to get up Sunday morning, or was it based
 9 upon anything?
 10 A. I had started to become disenchanted with the
 11 institution known as the Roman Catholic Church. I did
 12 not and to this day I'm not -- I don't attend a
 13 Catholic church, but I still believe very strongly in
 14 my Catholic faith in the fact that there's God, Jesus,
 15 and the Trinity and the teachings of the Catholic
 16 faith.
 17 But as an institution, I lost -- I became
 18 disenchanted with them as an institution because of how
 19 the pastors were reacting to things that were going on
 20 at Assumption Parish for my high school career.
 21 Well, for as long as I was in high school, I
 22 was a member of the CYC, and after we -- after
 23 everybody graduated, then the pastor changed.
 24 Q. From high school?
 25 A. Correct. The pastor started to enforce some

1 A. On occasion. He wasn't always a regular
 2 visitor there, because I -- when I was in high school,
 3 my sister -- my youngest sister was still kind of in
 4 grade school and had just started Cor Jesu like my -- I
 5 think it would have been my junior/senior year, she
 6 started Cor Jesu.
 7 So he would -- he was pretty much a
 8 stay-at-home dad because of the disability when my mom
 9 worked outside the home. So on occasion he would come,
 10 but I'd say he was infrequent at best.
 11 Q. Was he a member say of the father's club at
 12 Vianney if you know?
 13 A. Not that I know of.
 14 Q. Did he have anything to do with like attending
 15 events at Vianney other than maybe your sporting
 16 events?
 17 A. No.
 18 Q. Was dad a practicing Catholic?
 19 A. No. He had -- we were all -- everybody in my
 20 family was raised Catholic. Of probably the six people
 21 that were in my family, my mom, my sister Tere, and
 22 myself were considered the practicing Catholics at that
 23 time.
 24 Q. Is mom still?
 25 A. I believe so.

1 things that really didn't feel right as far as, you
 2 know, how they treated the CYC.
 3 Every May, we would have the May Day
 4 Coronation of the Blessed Mother, and he just said
 5 we're not going to have that this year.
 6 Q. Was that Monsignor Dempsey that did that or do
 7 you know?
 8 A. I don't recall which person it was, but he was
 9 very -- he was very -- he became very strict in his
 10 observance of certain things.
 11 And I at that point was like, you know, I'd
 12 already -- already become I think a little bit -- and I
 13 found this out through counseling that I'd already
 14 become a little bit non-tolerant of the clergy to begin
 15 with, and that didn't come out until I was in
 16 counseling. So I believe that that had a little bit to
 17 play in why I walked away from the Catholic church.
 18 But, again, it was also the attitude that we
 19 saw, that when I say we, my generation saw of how we
 20 felt we were being treated.
 21 We thought that things that had been tradition
 22 in Assumption Parish for decades was now, you know, you
 23 can't do that anymore because I say so. That's when I
 24 kind of started to actually feel myself walk away.
 25 Q. Okay. That would have been, at least as far

1 as you knew in those days, unrelated to Vianney?
 2 A. Correct, at that time.
 3 Q. And even after you left the church which would
 4 have been while you were in college or shortly after
 5 graduating high school, you still had the situation
 6 where you were writing letters to Father -- or to
 7 William Mueller?
 8 A. Correct, on occasion
 9 Q. The second incident which occurred several
 10 weeks after the first, what led -- how were you
 11 notified or how -- what did he do? Did he send you a
 12 message, or how did he get in touch with you?
 13 A. Pretty much the same way as the first. He
 14 would find you in between classes to say hold up a
 15 minute until the halls cleared
 16 And then he'd walk with us to -- walk with me
 17 to the class to kind of tell the teacher, hey, it's
 18 okay. He's with me. Or he'd find you in the hallway
 19 after school and say, hey, can you come by tonight.
 20 Q. Okay. So it would have been a time period
 21 while you're still participating in diving?
 22 A. Correct
 23 Q. And it would have been during that -- either
 24 during class time which ended when, 2 40 or 3 00?
 25 A. I think at that time it was around 3 15.

1 pleased as there were things involved, but on the
 2 nights that I had occasion to meet with
 3 Brother Mueller, you have to understand that I was told
 4 don't let anybody know about what's going on, so --
 5 Q. Did you think that was odd at all?
 6 A. No, I didn't, because here's a man that I --
 7 because of his position and what he did, he was
 8 religious. You know, we're taught from knee high
 9 catechism classes that you should be able to trust
 10 somebody.
 11 Q. Did anybody ever tell you at any time during
 12 your upbringing that when an adult tells you don't tell
 13 anybody else what's going on that you should follow
 14 that direction?
 15 A. I was always taught to respect authority
 16 Q. And my question is were you ever told one way
 17 or the other that when anyone tells you not to tell
 18 anybody else what's going on that you should alert
 19 people to that?
 20 A. No.
 21 Q. Okay.
 22 A. But then again, that goes to my upbringing in
 23 a military family that you respect the authority
 24 presented to you.
 25 Q. Did you think that was odd at age 17 1/2 that

1 Q. Okay So it would have either been before
 2 3:15 while you're still in class or in the halls
 3 between classes, or it would have been after 3 15
 4 during that time but before you'd go to Chamunade to
 5 practice?
 6 A. Correct.
 7 Q. And what did he say to you on that occasion?
 8 A. He would just say can you come by tonight and
 9 just meet me -- on that particular one, can you meet me
 10 down by the gym.
 11 Q. You know, after the first incident, you would
 12 have driven home after that?
 13 A. Uh-huh
 14 Q. Correct?
 15 A. Yes.
 16 Q. And you don't recall how long that took?
 17 A. Huh-uh
 18 Q. Correct?
 19 A. Correct.
 20 Q. Would your normal day have been -- but for
 21 going to see Brother Mueller that night, would it have
 22 been go to Chamunade, practice, complete practice,
 23 drive home for dinner, and do your homework, or what
 24 would it have been?
 25 A. Well, I was pretty free to come and go as I

1 somebody would give you that direction?
 2 A. At age 17 1/2 presented with -- the way it was
 3 presented to me?
 4 Q. Yes, sir.
 5 A. No.
 6 Q. Okay.
 7 A. But now yes.
 8 Q. Okay. So on the night of the first incident,
 9 do you know what time you got home that night?
 10 A. No, I couldn't tell you.
 11 Q. Do you know whether -- you mentioned it was
 12 darker when you got home, so it was nighttime?
 13 A. Uh-huh
 14 Q. Certainly after dusk, completely dark out?
 15 A. Correct
 16 Q. Okay. And did your mother, father, any of
 17 your sisters ask you, you know, how come you're home
 18 this late?
 19 A. No.
 20 Q. Or what you were doing or anything?
 21 A. Huh-uh
 22 Q. That's a no?
 23 A. That would be a no Yes, I'm sorry.
 24 Q. Now did your -- what would your dad while he
 25 was disabled and not working outside the home, what

1 would he do during the day, if you know?
 2 A While I was in school?
 3 Q. Yes, sir
 4 A I have no clue I know that he attended
 5 classes at Meramec. What they were, I believe they
 6 centered around art, because he had learned to paint
 7 while he was in San Diego in the Navy, so he took
 8 classes on that.
 9 Q. Was he an officer?
 10 A. No, he was enlisted
 11 Q. So he took classes, and were those during the
 12 day, do you know, or at night?
 13 A. They were at various times I couldn't tell
 14 you I think some were during the day Some were in
 15 the evening. I don't know
 16 Q. Did he take care of say cooking for the family
 17 or anything like that?
 18 A. Once he became disabled, he would cook, he did
 19 laundry, he cleaned, you know, the household duties,
 20 the household chores
 21 Q. And would you be -- you know, would people ask
 22 you are you coming for dinner or things like that?
 23 A No, because usually I would be home after they
 24 ate because of swim practice, so it would be I'd either
 25 eat leftovers or I'd fend for myself.

1 how that's changed since they've reconstructed it. And
 2 went back to the locker room
 3 Q. And did the incident itself take place in the
 4 locker room?
 5 A. Yes, it did
 6 Q. Was there -- now which locker room would it
 7 be? Was there more than one locker room at the time?
 8 A. We had two locker rooms. One would have been
 9 say the guest or the visiting team locker room, and the
 10 other one was the -- what we called the varsity locker
 11 room
 12 Q. And was the visiting team locker room, was
 13 that used by the B team, C teams during the week?
 14 A It could have been.
 15 Q. You don't know one way or the other?
 16 A. No, sir.
 17 Q. All right. So did the incident take place in
 18 the varsity or in the visiting locker room?
 19 A. In the varsity.
 20 Q. Do you have a recollection of there still
 21 being football equipment hung in the room?
 22 A. No, I don't, because when we walked in, we
 23 didn't go all the way into the locker room. We went
 24 to -- there was a row of lockers, and every student
 25 had -- you know, had a locker if they were taking PE,

1 Q. I'm kind of jumping around here. Let's go
 2 back to the second incident He asked you to come by.
 3 And when? Did he tell you when to come by?
 4 A. He just said come by tonight, and I understood
 5 that to be after practice.
 6 Q. And so you go to practice, and then you came
 7 back straight from Chaminade to Vianney?
 8 A. Uh-huh.
 9 Q. Correct?
 10 A. Uh-huh, yes, sir I'm sorry
 11 Q. That's okay And did he -- was he there when
 12 you got there?
 13 A. Yes.
 14 Q. Did he have to open the front door?
 15 A He was out -- outside the gymnasium entryway.
 16 Q. Were they still playing football at that time,
 17 do you know?
 18 A I don't recall I think if they were, the
 19 session was during the week, not on a weekend, and
 20 practices would have been over at that point
 21 Q. Was there anybody around at all?
 22 A. No, sir
 23 Q. So where did the second incident take place?
 24 A. We walked in from the gymnasium door, walked
 25 into the -- what I call the trophy area I don't know

1 if they were doing physical education at the school.
 2 So we walked in through the doors to the first row of
 3 lockers that was separated by a bench
 4 Q. And what happened then?
 5 A. He had asked me if I was -- if I was
 6 comfortable, and I'm like yeah There's -- what -- are
 7 we going to do some more stuff? And he's like, yeah,
 8 but I'm going to have you pass out -- I'm going to make
 9 you pass out right away.
 10 And he had me bend over, and I remember
 11 standing up, bending over. Again, he placed his hand
 12 on my head and started moving my head in various
 13 directions.
 14 And I don't know how long that went on for,
 15 but I was -- I was breathing very rapidly and started
 16 to get dizzy Then he said on the count of three go
 17 ahead and make yourself pass out, and I did that.
 18 And from that point on, I remember very little
 19 as far as when I was unconscious I mean, in fact,
 20 there's nothing that I can remember from the point that
 21 I stuck my thumb in my mouth and blew against my hand
 22 until the point where I started to wake up
 23 Q. Did -- on any of these occasions after they
 24 took place, any of the four occasions you reference in
 25 the interrogatory answers, did you ever notice anything

1 in your hair?
 2 A Yes.
 3 Q. What did you notice?
 4 A. Let me clarify that On one of the
 5 occasions --
 6 Q. And I mean hair on your head.
 7 A. Yes, sir. On one of these occasions after
 8 waking up, and I believe that was the third one, he had
 9 asked me to put hair gel in my hair.
 10 I didn't understand why, but I remember him
 11 having me put hair gel in my hair and leaving it in for
 12 several minutes, and then he asked me to go to the
 13 shower and wash it out
 14 Q. And were you passed out from the time you had
 15 the hair gel in your hair until when you washed it out
 16 at all?
 17 A. I was unconscious prior to putting the hair
 18 gel in my hair. It was I woke up, how long have you
 19 been out, 10, 15 seconds, okay, how do you feel, a
 20 little, you know, disoriented or whatnot, and then,
 21 hey, could you put some hair gel in your hair. Those
 22 are the sequence of events as I remember them.
 23 And I put it in He put -- I even see the VO5
 24 on the tube, if that's even the right one But he put
 25 some in the palm of my hand, I massaged it, and then I

1 felt somebody massaging my groin
 2 And I didn't -- I thought, well, maybe he's
 3 just trying to help me get up And that's when I
 4 realized I was actually kind of laying down on
 5 something. I didn't know what it was.
 6 The locker room was dark, and as I started to
 7 open my eyes, I could see Brother Mueller up kind of at
 8 my shoulder level with his hand extended down, and at
 9 that point I realized what he was doing.
 10 Q. What was he doing?
 11 A. He was massaging my genitals. And as I
 12 started to wake up, I thought I heard moaning or sounds
 13 associated with sexual activity to use an adult phrase.
 14 And as I was trying to come to, I saw him with
 15 his penis in his hand. And he either sensed that I was
 16 waking up or that I was already awake, and he stopped
 17 immediately.
 18 And because I was in a sweat suit, in my sweat
 19 suit from diving, there was nothing I had to pull up or
 20 anything.
 21 And he sat me up very quickly, and that's when
 22 I realized I was laying on the bench, and I had
 23 something underneath my head or underneath my neck.
 24 Q. What was it?
 25 A. It was like a rolled up towel And as soon as

1 put it in my hair.
 2 We talked for a couple minutes, and he said go
 3 ahead and take your shirt off and go ahead and wash it
 4 out in the shower
 5 Q. And is that the only occasion on any of these
 6 incidents where you recall anything going into your
 7 hair?
 8 A. Yes, sir
 9 Q. Did he touch your head at all while you had
 10 that stuff in your hair?
 11 A. Not that I can recall.
 12 Q. You can't testify that he did is what you're
 13 telling me?
 14 A. Yes, sir.
 15 Q. That's true?
 16 A Yes
 17 Q. All right. So you're in the locker room, and
 18 you pass out on the second incident?
 19 A Yes, sir.
 20 Q. And what took place after that?
 21 A I remember beginning to fall when I started to
 22 pass out, and I remember him grabbing me. And, again,
 23 I don't know how long I was out for
 24 As I started to -- you know, I started hearing
 25 noises and whatnot, and I was waking up. That's when I--

1 I sat up, he said how do you feel? And I said, afraid.
 2 He said, good, that's the response I wanted. He said,
 3 that's perfect. That's the response that I need for my
 4 paperwork for my thesis
 5 And I walked out, and I was kind of like -- I
 6 was freaked out by it, but again, here -- I looked at
 7 it as here's this guy that is telling me to trust him,
 8 and I'm trying to trust him believing that he's not
 9 going to cause me any harm, so I took him at his word
 10 that this was all part of his tests
 11 Q. Is -- did you have a discharge at that time?
 12 A. I don't know I don't recall I did. I don't
 13 think I did I mean, there was nothing to indicate
 14 that I had
 15 Q. You didn't have any sperm or anything in your
 16 underwear?
 17 A. Not that I'm aware of, no.
 18 Q. Or anything like that afterwards?
 19 A No, sir
 20 Q. All right And do you know whether he had a
 21 discharge?
 22 A. I don't know.
 23 Q. And is this something that you recalled at the
 24 time?
 25 A. No I mean, as far as what had happened?

1 Q. Yes, sir.
 2 A No I didn't -- this didn't come to light
 3 until I was going through my counseling in September of
 4 2005
 5 Q. This didn't -- you didn't remember this?
 6 A No, I did not.
 7 Q. So you think, what, you repressed it?
 8 A Based upon the definition of repressed memory
 9 that I've been told since I started counseling, yes
 10 Q. Is that what some counselor told you?
 11 A Well, I was -- that's how it was defined to
 12 me, something that would be traumatic enough for you to
 13 bury it as deeply as possible so not to relive it.
 14 Q. Okay. So -- all right. And what happened
 15 after that?
 16 A After that, he -- we talked for a little bit,
 17 probably maybe five, ten minutes after that He said
 18 are you okay to --
 19 Q. Do you remember that, talking to him?
 20 A Talking to him?
 21 Q. Sure
 22 A Yeah, I do I mean, talking to him after this
 23 happened, I remember it now. I didn't remember it in
 24 conjunction with what happened
 25 Talking to him and just, you know, him being

1 Q. Is it about sexual abuse?
 2 A. It's about sexual abuse in which a male child
 3 was abused by a step-father for a period of time.
 4 Q. How old was the child in that book?
 5 A Probably 9, if I remember correctly from
 6 reading the book. But it was more of a tool to say
 7 here's how we start the healing process Read it and
 8 see if you acknowledge that this happened to you, that
 9 you were sexually abused, and it will start the healing
 10 process.
 11 It wasn't used as a tool to -- for anything
 12 other than that, I believe is that here's a guy who was
 13 sexually sodomized, sexually abused for an extended
 14 period of time over years and how he went through his
 15 healing process So acknowledge that it happened, and
 16 let's start the healing process.
 17 Q. Did Mueller on any other occasion other than
 18 this second occasion ever touch any part of your body?
 19 A. Yes.
 20 Q. What other occasion?
 21 A. Well, on each occasion, he would control my
 22 head during the hyperventilation
 23 Q. Okay.
 24 A. He would grab me as I fell. He would assist
 25 me when I got up.

1 the person to try to calm me down from what just
 2 happened, reassuring me that this was part of the
 3 process for him to get his master's degree, that
 4 this -- you know, Bob, I told you this is a study in
 5 fear, and that's the feeling that I wanted to provoke.
 6 Q. Was this a painful event, physically painful?
 7 A At the time?
 8 Q. Yes, sir.
 9 A. I can't vouch for when I was unconscious.
 10 When I was coming to, he stopped fairly quickly, I
 11 guess.
 12 Like I said, he either realized I was awake or
 13 that I was in the process of waking up, so there was no
 14 pain associated with what he was doing to me at the
 15 time.
 16 Q. Are you telling us that what you're recalling
 17 now is what took place while you were unconscious?
 18 A No. This is what I remember as I was starting
 19 to wake up
 20 Q. And you only recalled it as a result of some
 21 counseling you had received?
 22 A. I had gone through some -- I had started
 23 counseling. Dr. Harris had given me a book to read.
 24 Q. What's the name of that book?
 25 A I wish I could tell you. I don't recall... -- --

1 Q. Did he ever on any other occasion touch any
 2 part of your genitals?
 3 A. Yes
 4 Q. What other occasion?
 5 A. That was on the fourth and final session
 6 Q. Whose decision was it that that was the final
 7 session?
 8 A That was mine.
 9 Q. Why?
 10 A. Because we were getting close to graduation.
 11 I had other things -- this would have been in -- it was
 12 after the state diving competition, so I want to say
 13 late February, early March
 14 There was lesser and lesser contact with him
 15 at school, and I was trying to get into colleges. I
 16 was making applications and whatnot.
 17 Q. Were you trying to avoid him?
 18 A No, not intentionally, but maybe
 19 subconsciously yes, but I wasn't trying to avoid him,
 20 you know, see him in the hallway and turn around and
 21 walk the other way I just went about my business at
 22 school.
 23 Q. Would it have been on the first visit to
 24 Dr. Harris that you had your recollection of what
 25 occurred with William Mueller?

1 A. No.
 2 Q. Okay. Did Dr. Harris ever use any medicines
 3 in his treatment?
 4 A. No, sir.
 5 Q. He's not a medical doctor, is he?
 6 A. No, sir.
 7 Q. He's not prescribing any medicines for you?
 8 A. No, sir.
 9 Q. You haven't had any kind of traumatic event
 10 that caused you to have this recollection come back,
 11 have you?
 12 A. Define traumatic
 13 Q. An injury of any kind that's associated with
 14 your recalling these incidents
 15 A. No
 16 Q. Okay And you didn't recall it until those
 17 newspaper articles in September of 2005, did you?
 18 A. I had always known about the sessions, and I
 19 had always looked at those as part of his testing
 20 process for his master's degree
 21 It wasn't until September of 2005 that I
 22 realized what was really going on as part of those
 23 Q. So in September 2005 is when you realized that
 24 you'd been sexually abused?
 25 A That's when I realized at least there was

1 Q. (By Mr Noce) Sure. Was it the statement
 2 where he said that there was nothing sexual that
 3 occurred and that he always remembered it, is that what
 4 triggered your recollection of sexual misconduct?
 5 A. No, it was not.
 6 Q. What was it then? What about what Bryan Bacon
 7 said triggered it?
 8 A. What I -- there was nothing that Bryan Bacon
 9 had said that triggered my recollection. It was having
 10 read -- what he had said was almost identical to my
 11 fourth session as far as being blind-folded and taking
 12 clothes off down to the underwear.
 13 And when I was reading that, I was like, oh,
 14 my gosh. Here's somebody that I didn't know that I'd
 15 never heard -- you know, heard his name in conjunction
 16 with these tests before saying the same thing that had
 17 happened to me on my fourth and final session.
 18 At that point, I made a call to him and said,
 19 hey, what's my next step. I don't know, you know,
 20 where to go from here. And he directed me to the
 21 Kirkwood Police Department
 22 I spoke with the detective there who said,
 23 well, there was no contact, so there's really no crime
 24 that we have at this time. He then directed me to his
 25 attorney, and I talked to his attorney very quickly.

1 cause to believe that I was
 2 Q. And what do you mean by that, cause to believe
 3 there was sexual abuse?
 4 A. Having read Bryan Bacon's statement in the --
 5 Q. Did you read the statement where he said there
 6 was nothing sexual and he always remembered everything?
 7 A. Yes.
 8 Q. Okay.
 9 A. When I read --
 10 Q. Do you have this statement --
 11 MR. CRAIG. Jerry, let me object here. You
 12 guys are doing a real good job of not talking over each
 13 other.
 14 MR. NOCE: I understand
 15 MR. CRAIG: I know you're chomping at the bit
 16 here to see if this guy's making up this stuff
 17 MR. NOCE: Well, I'm just asking --
 18 MR. CRAIG You're cutting me off now All
 19 I'm asking is let him fully finish his answer. I want
 20 you to fully finish your answer, and if he cuts you
 21 off, let him know you haven't finished your answer.
 22 You do a good job of letting him finish his question,
 23 and I think we'll be able to move on with this. Okay?
 24 THE WITNESS: Would you like me to answer your
 25 question -- ask your question again.

1 Q. Ken Chackes?
 2 A. I think Chackes or Chackes. And he felt at
 3 this particular time there was no -- he could help me
 4 out, but he wasn't too, you know, overzealous about
 5 helping me out. I think zealous is a bad word.
 6 Q. Did he tell you he didn't think you had a case
 7 or what did he say?
 8 A. No. He just said, you know, let's see how --
 9 when I spoke with him and I told him what happened, he
 10 goes, well, you were unconscious during that time. You
 11 have no recollection. And I said that's fine. That's
 12 okay
 13 That's when I had contacted my current
 14 attorney and found out that there were more people out
 15 there that were saying I was unconscious for four or
 16 five sessions So I spoke with him and chose my
 17 counsel to go through there
 18 Through starting the counseling and, you know,
 19 having to relive everything that was going on, more and
 20 more, you know, a piece would come here, a piece would
 21 come there And it would be almost -- I hate to use
 22 the word an epiphany, but it would all gel.
 23 And, you know, I had been very upset, very
 24 grumpy, very distracted from my family ever since I
 25 found out about what was going on with the other

1 people
 2 And it turned out that one night my wife and I
 3 were just having a real simple argument over nothing,
 4 and I blurted out, I said, you have no clue what that
 5 man did to me. And she goes what do you mean?
 6 I said he was fondling me and masturbating
 7 while I was unconscious. And she's like, well, how did
 8 that happen? And I said I don't know I was
 9 unconscious. I remember laying on the bench, and when
 10 I was waking up, his hand was down my pants
 11 Q. You said he was masturbating, he being
 12 Mueller, while he was fondling you?
 13 A Yes
 14 Q. And this took place while you were
 15 unconscious?
 16 A. It would have had to have been initiated while
 17 I was unconscious.
 18 Q. Did you see him actually masturbate while he
 19 was fondling you?
 20 A. I saw him with his penis in his hand He was
 21 on my left side with his left hand down my pants, and
 22 he had his penis in his right hand.
 23 Q. Have you had any treatment as a result of
 24 these incidents from anyone other than Dr. Harris?
 25 A. My primary care physician has put me on

1 A. Yes, sir
 2 Q. When do you take it?
 3 A I usually take it in the morning.
 4 Q. What's the dosage?
 5 A. It's the lowest dosage possible. I think it's
 6 75 milligrams.
 7 Q. Does it help you?
 8 A. Yes
 9 Q. Was there any family history of depression?
 10 A. Not that I know of, not that's been known to
 11 me.
 12 Q. Have you ever told that to a physician, that
 13 there's a family history of depression?
 14 A Again, I don't know of any family history of
 15 depression
 16 Q. Okay. Have you ever reported being depressed
 17 to any treating physician on any occasion prior to
 18 September 2005?
 19 A. No, but my general practitioner, Dr. Bernard,
 20 at the request of my wife had me take a little -- I
 21 don't know It's a little color in the dots test.
 22 And it showed -- the answers off of that, he
 23 said, you're fine Don't worry about it. I have never
 24 asked to be diagnosed as depressed or have any social
 25 anxiety or anything like that

1 anti-depressants.
 2 Q. And what anti-depressants are you on?
 3 A. Effexor
 4 Q. Have you ever been on that in the past?
 5 A No, sir.
 6 Q. Before September of 2005?
 7 A. No, sir
 8 Q. Have you ever been on any anti-depressants at
 9 any time in your life before 2005, September?
 10 A. I don't recall. I know that -- I think the
 11 only medication I'd been on prior to that was high
 12 blood pressure medicine.
 13 Q. The Effexor, you have a prescription for it
 14 now?
 15 A Yes, I do. Well, I'm on samples. They've
 16 just been -- he's been giving me samples of it. He has
 17 a prescription written.
 18 Q. Have you ever filled a prescription for it?
 19 A. I have not
 20 Q. When was the first time you took that?
 21 A. Shortly after this all became known in
 22 September of 2005
 23 Q. Is it an as needed?
 24 A. No, it's daily.
 25 Q. So you've been taking it daily since then?

1 Q. Is there any history in your wife -- of your
 2 wife having depression?
 3 A. My wife is also on anti-depressants.
 4 Q. How long has that been going on?
 5 A. Since prior to our meeting when she got
 6 divorced from her first husband because it was a very
 7 traumatic divorce
 8 Q. Is she on Effexor?
 9 A. No. The exact medication, the only one that
 10 comes to mind is Adderall, and I don't know if that's a
 11 daily one. I know she's got at least one other
 12 medication she takes, and I don't know the name of it.
 13 Q. Paxil?
 14 A. It's not Paxil I really couldn't tell you,
 15 sir
 16 Q. So we kind of got off of the plan here We
 17 were talking about the second incident, and you've told
 18 me about what happened there, that you woke up and he
 19 was massaging you and massaging himself?
 20 A. Correct
 21 Q. And then spoke about what was going on and
 22 then you left?
 23 A. Yes.
 24 Q. All right. Did you go home that night?
 25 A. Directly. -

1 Q. And did you talk to -- did anybody ask where
2 you'd been?

3 A. No.

4 Q. And when was the next incident? Was it in
5 1984 or '85?

6 A. I'm trying to think. February -- it would
7 have been closer -- I think it would have been closer
8 to Christmas, sometime right before the Christmas
9 break.

10 Q. And were you still involved in diving?

11 A. Yes, sir.

12 Q. All right. And what happened on that
13 occasion?

14 A. He -- and I don't remember if it was right
15 after school or right before the end of school He
16 caught me and had said, you know, can you come by
17 tonight so we can do some more tests. And I was like,
18 sure, I can do that.

19 I went to diving practice. I went from there.
20 I met him at the main entrance of the school He let
21 us in, and we went back to the locker room the long way
22 from one end to the other.

23 Q. Was there anybody in the school at the time?

24 A. No, sir, and the school was dark.

25 Q. And what time of day or night was this?

1 into the locker room

2 And I woke up The question came out, how
3 long do you think you've been out. My standard answer,
4 10, 15 seconds because that's how long I thought I was
5 out. When I woke up --

6 Q. Did you still not wear a watch at these
7 things?

8 A. You know, I didn't start wearing a watch, sir,
9 until I was in the military.

10 Q. Did you have any -- can you tell us now about
11 what time of day or night you would have gotten home
12 after these incidents?

13 A. I would probably say 7, 7 30, around in there,
14 you know, maybe towards 7.30.

15 Q. Okay

16 A. Getting back --

17 Q. What happened?

18 A. Getting back to that, I -- when I woke up, I
19 was sitting on the floor with my knees brought up to my
20 chest

21 Q. Were you still clothed?

22 A Yes, I was And he had said, are you okay?
23 He helped me get up and put me in -- it was either the
24 bench that was there or the chair from the back door.

25 And he asked how I was doing. I'm fine, kind

1 A. This would have been around the same time,
2 around 6, 6:30, closer to dusk, around sunset. We went
3 back to the locker room, and this time we walked all
4 the way to the back of the locker room

5 And there's a door that leads from the locker
6 room to the football field so you wouldn't have to go
7 through the gated area behind the bleachers, and we
8 were back there.

9 He had me stand up There was a chair in
10 front of me next to the door He had me stand up in
11 front of the chair.

12 And he said go ahead and start the
13 hyperventilation. I took that -- I knew what that
14 meant, go ahead and bend over, start the
15 hyperventilation.

16 He grabbed my hair or grabbed my head and
17 started to agitate my head, I guess, move it from side
18 to side in circles or whatever it may have been. That
19 went on for a period of time, seconds, minutes. I
20 don't know how long

21 And he said, okay, go ahead, you know what to
22 do. And I did that And I made myself pass out. And
23 when I woke up, I was at the front of the gym or at the
24 front of the locker room closer to where the showers
25 would have been by the front -- by the door leading -

1 of a little disoriented. He said, okay, just sit here
2 for a moment or two to catch your breath. And I said,
3 fine.

4 And when it seemed like I was able to stand up
5 or do what I needed to function properly, that's when
6 he asked if I would be willing -- he said, hey, here
7 put this in your hair. And I'm like, what is it? He
8 said, it's just hair gel.

9 Q. This is the VO5 incident?

10 A. Correct. I put it in my hair. We talked for
11 a couple more minutes maybe. It could have been just a
12 minute or two He said, okay, go ahead, take your
13 shirt off, go ahead into the shower and wash it off.

14 I said, well, I don't have a towel He said,
15 well, you can use the paper towels at the sinks. And I
16 said, okay, so that's what I did.

17 I got dressed I put my shirt back on. And I
18 even think he had a comb or brush, and he said, here,
19 go ahead and brush your hair. And after that, I was
20 done. I left.

21 Q. Okay Was there any sexual misconduct that
22 you're aware of that took place on the third incident?

23 A. At that particular time?

24 Q. Yes, sir.

25 A. No, sir.

1 Q. Well, I mean, at any -- I'm talking about the
 2 third incident.
 3 A. That's what I'm saying
 4 Q. Right. There was no sexual misconduct that
 5 took place on the third incident?
 6 A. That I can recall.
 7 Q. Okay. And the same is true for the
 8 first incident?
 9 A. Correct.
 10 Q. And, in fact, as far as you're concerned, your
 11 lawsuit really doesn't involve whatever happened to you
 12 on the first incident, does it?
 13 A. I believe it does, because under the guise of
 14 doing something professionally and then masking it as
 15 this is my master's degree, I need this for my thesis,
 16 all those years I kept those memories as a master's
 17 degree.
 18 And it wasn't until I started seeing things --
 19 the true nature of what happened in September of 2005
 20 that I realized that, hey, here's an issue. Maybe
 21 something did happen to me
 22 And I believe that, you know, through
 23 depositions of other people, I think we're going to
 24 find out that something did happen to me. I just don't
 25 recall it because I was unconscious

1 Q. All right. Were there any witnesses other
 2 than you and Mr. Mueller?
 3 A. No, sir.
 4 Q. All right. Would the same be true as it
 5 relates to the third incident?
 6 A. Having any knowledge of any sexual contact at
 7 that time on the third incident, no.
 8 Q. Correct. That's the incident that occurred at
 9 or before the Christmas break where there was this
 10 reference to the VO5 cream?
 11 A. Yes, sir
 12 Q. Now we've covered three of the four, and
 13 there's a fourth incident?
 14 A. Yes, sir.
 15 Q. There's only four incidents?
 16 A. Yes, sir
 17 Q. When did the fourth incident take place?
 18 A. This happened shortly after the swimming and
 19 diving championships which were held February -- late
 20 February. I want to say it was around like
 21 February 22nd. I'd say it was a Saturday.
 22 They were held at Mizzou in the auditorium at
 23 Mizzou. I came back, and Brother Mueller had gone to
 24 great lengths to have posters and banners put up about
 25 me winning the state championship, you know, Vianney's

1 Q. Well, I'm asking about your case. Are you
 2 telling me there's anything that injured or damaged you
 3 for which you're bringing this lawsuit that occurred on
 4 the first incident?
 5 A. Well, at the time that it happened, no, but --
 6 Q. I mean now as you sit here today
 7 A. That's what I'm getting to, sir.
 8 Q. Right. Was there any -- let me ask you this:
 9 Was there any sexual misconduct that you're aware of
 10 that occurred on the first incident that you've talked
 11 about here in your deposition?
 12 A. Nothing that I know of that happened on that
 13 first incident. I believe because I was unconscious, I
 14 don't know.
 15 So for me to say that nothing happened I think
 16 would be probably either speculation on my part or an
 17 assumption on somebody else's part. I don't know
 18 Q. Let me put it this way: Can you testify under
 19 oath that you were in any way sexually abused at the
 20 first incident that you've talked about today?
 21 A. No, sir, I can't, but I can't say that I
 22 wasn't.
 23 Q. Okay Well, the thing is you have to be able
 24 to say you were And can you say that?
 25 A. No.

1 first individual state champion, so he --
 2 Q. How did you know that he did it?
 3 A. He told me
 4 Q. Okay That's --
 5 A. Yeah
 6 Q. Sorry.
 7 A. He told me that day that he had done this He
 8 contacted the art teacher and whatnot and gotten it
 9 done
 10 It wasn't -- it wasn't immediately right after
 11 that. It was more into March where he just asked me to
 12 come by and meet him at -- there was a spring dance
 13 that night, so it would have been, I believe, on a
 14 Friday night.
 15 Q. A spring dance at Vianney?
 16 A. At Vianney
 17 Q. And it wasn't the prom or anything?
 18 A. No, it was a, you know, let's welcome spring
 19 in kind of dance And I didn't really want to go, but
 20 he said, oh, come on, just show up
 21 Q. Is it one of these deals where seniors --
 22 you're ready to go to college and you don't really want
 23 to go to a high school dance?
 24 A. I just didn't want to go
 25 Q. Okay

1 A. I mean, there was no -- I didn't want to go.
 2 I didn't want to go to a dance that night. I didn't
 3 really want to do much. So he had said -- he convinced
 4 me to come, so I did.
 5 Q. Where was it held?
 6 A. It was held, I believe, in the gymnasium.
 7 Q. And what happened?
 8 A. He had asked me -- he said, well, when you
 9 come up, meet me at the main entrance after the dance
 10 has begun. I said, okay, fine.
 11 Q. Do you know what time that was?
 12 A. No, sir. I think the dance would have started
 13 like around 8. I couldn't tell you what time it was.
 14 Q. It was dark?
 15 A. It was dark. I mean, it was definitely
 16 nighttime when I showed up at the dance.
 17 Q. Did you go there -- drive to the dance by
 18 yourself?
 19 A. Yeah, I did.
 20 Q. You didn't have a date or anything like that?
 21 A. No, sir.
 22 Q. Okay.
 23 A. I drove there. I parked my car.
 24 Q. Where did you park?
 25 A. In the parking lot in front of the school.

1 one away from Lindbergh?
 2 A. It's the closest.
 3 Q. It's the closest? Okay.
 4 A. At least it was at my time. They've done so
 5 many changes to it, I don't know where it's at now.
 6 Q. All right. So were people out in the parking
 7 lot all entering the gym at the time?
 8 A. I don't remember.
 9 Q. Okay. So what happened?
 10 A. I pulled in, walked to the main doors at the
 11 administrative -- by the flag pole. And he was
 12 outside. And he said, come on in. And I said, okay,
 13 no problem.
 14 We walked in. I started heading towards the
 15 administrative area, and he says, no, we're going to go
 16 over here. I was like, okay.
 17 So we went to -- there was a small office
 18 where the bookstore -- I believe where it used to be.
 19 I don't know if it's still in the same place now.
 20 There was a small teachers' office there, and
 21 I remember that because I believe that was
 22 Ms. O'Connell's office.
 23 And we went in -- we went into the hallway
 24 there, and he said, you comfortable? I'm like, yeah.
 25 He says, well, as part of the experiment, would you

1 Q. Okay.
 2 A. And I went to the main entrance near the
 3 administration center. He was waiting outside for me.
 4 And --
 5 Q. Where do people enter, Mr. Visnaw, to go to
 6 the dance?
 7 A. The gymnasium entrance.
 8 Q. So that would be around the side of the
 9 building?
 10 A. No, sir, that would be -- there's two front
 11 entrances, at least there was when I was at Vianney.
 12 There were three front entrances.
 13 There was one on -- if I'm looking at the
 14 school, there would have been one to my right and
 15 behind. It was just a side door near the chapel.
 16 There was the main entrance where the administrative
 17 staff you would see.
 18 Q. A circle drive in front of it or --
 19 A. I don't think we had a circle drive when I was
 20 at Vianney.
 21 Q. Okay.
 22 A. The main doors where the flag pole was at, if
 23 it's still there, and then the gymnasium entrance. You
 24 would enter through the gymnasium entrance.
 25 Q. Is the gymnasium entrance the furthest

1 have any problem with taking your clothes off down to
 2 your underwear?
 3 Well, why do you want that to happen? He
 4 said, well, it's part of the test if you're
 5 comfortable. If you are afraid to do so, that would be
 6 fine, because that would be one of the responses that
 7 we would elicit.
 8 And I said, no, if it's -- nothing's going to
 9 happen, you know, no big deal. So I did. I walked
 10 into -- I was in the office. He stepped out of the
 11 office. I took my clothes off.
 12 When he came back into the office, he told me
 13 to face away from him, so I did. From the time I
 14 walked into that office and took my clothes off, I
 15 never saw him again through the course of that
 16 quote/unquote session.
 17 And I turned my back to him, and he put a
 18 blindfold on me. And he then put his hand on my
 19 shoulder and asked me if I was afraid, and I said no.
 20 Why not? Because right now I trust you. Okay.
 21 And then he would squeeze my shoulder, and at
 22 that time -- there were several instances of are you
 23 afraid, no, why, because right now I trust you.
 24 And then he placed a knife to my throat and
 25 pulled me -- pulled either me closer to him or he

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1 stepped up to me Either way, the gap was closed. And
 2 as he held the knife to my throat, I remember me
 3 putting my hands on the table
 4 Q. Did you remember the knife at all times?
 5 A Yes, I did.
 6 Q. You never repressed that recollection?
 7 A The knife, no.
 8 Q. So you -- from 198 --
 9 A 5
 10 Q. 5 all the way through 2006, you always were
 11 aware that at some point in time he put a knife to your
 12 throat?
 13 A Yes, sir
 14 Q. Did you find that -- were you injured at all
 15 as a result of that?
 16 A. As far as having been cut?
 17 Q. Yes, sir
 18 A I don't believe I was cut.
 19 Q. Did you find that to be an offensive action by
 20 him?
 21 A. I found it to be strange, but when I
 22 questioned him, again, he covered it up under this is
 23 all part of the test This is everything that we --
 24 your fear is understandable. That's what I'm testing
 25 for. That's what I'm working on with my thesis

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1 Q. Would it be fair to say that that would be an
 2 unwelcomed touching?
 3 A Yes
 4 Q. And that's how you felt then, wasn't it?
 5 A I didn't -- I won't say it was -- that I felt
 6 unwelcomed.
 7 Q. No, that you didn't -- you felt him touching
 8 you with the knife to your throat was an unwelcomed
 9 touching of your body?
 10 A. It was a shock that this -- that the blindfold
 11 and then the knife I was shocked. Again, it was are
 12 you afraid. And I said a little, but not to the point
 13 where -- this is strange. Why are you doing this?
 14 Again, it's all part of the test
 15 And when I would say I'm not afraid, then the
 16 knife would get pressed further, and the gap would be
 17 closed even further.
 18 Q. And was that more offensive to you as the
 19 knife got pressed further?
 20 A I think it -- it was the same reaction. As
 21 the knife was pressed harder, it was more of, okay,
 22 what's going on? Again, he'd ask me are you afraid A
 23 little. That's fine That's what we're hoping to get.
 24 How do you feel? And --
 25 Q. You didn't like that, did you?

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1 A. No, I didn't. But I did it because I thought
 2 I was helping the man get a master's degree.
 3 Q. Okay. What else happened then?
 4 A As he went on and carried on with the knife,
 5 he had pulled me literally to where his stomach and my
 6 back were touching, and my hands were on the desk. And
 7 I remember pushing very hard against the desk because I
 8 didn't know what was going on.
 9 And this -- this came out just recently in my
 10 counseling session is that as I was -- as I was being
 11 pulled in to Brother Mueller or as he was stepping into
 12 me, I feel skin on skin on my back, not his hand on my
 13 back, not, you know, an arm
 14 This was skin on skin which is what I would
 15 assume to have been his stomach at that time. And I
 16 remember becoming very -- at that point very afraid.
 17 Why is this happening? And then --
 18 Q. Is that something you always remembered, too?
 19 A. No, it's not
 20 Q. When did you remember being very afraid?
 21 A. When -- this was about three months ago. I
 22 went in to my counselor because I thought I was doing
 23 really well, and he said, you know, come back as
 24 needed.
 25 And I started having just these feelings of

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1 just over -- you know, I was being overcome with
 2 emotion, and it would always be -- the times would
 3 always be when I would start to think about the case,
 4 about Brother Mueller. Everything was triggered on
 5 that
 6 And then, again, it was a little piece here, a
 7 little piece there. And everything kind of fell in
 8 one day, and I lost it I mean, I sat at home and
 9 cried I went in to my counselor as soon as I could
 10 get in to see him, and I lost it.
 11 And to be more exact, I was on detail. I can
 12 tell you exactly. It was in April of 2006. I was on
 13 detail for training class in Denver, Colorado, and I
 14 was watching TV
 15 And I just remember very vividly what happened
 16 at that fourth session, and I remember turning the TV
 17 off and just starting to bawl my eyes out about how
 18 could this have happened and I don't -- I just didn't
 19 do anything to stop it
 20 And as he was pulling me in closer or as I say
 21 closing the gap, he pushed the knife even harder to me,
 22 to my throat, and he said are you afraid? And I'm
 23 like, yes, I am because what's going on?
 24 And he stuck his hand down my pants and
 25 started massaging, and I just remember the very -- from

1 the tips of my fingers to the tips of my toes just
2 being totally, totally, totally scared to death about
3 what was happening.

4 And I don't know how long I was there I have
5 no clue at all And all of a sudden, it stopped.

6 Q. What stopped?

7 A. Everything that happened in that office, it
8 just stopped. I remember waking up at -- in the
9 hallway fully clothed and then him taking me out to the
10 track and saying, okay, you still have the blindfold
11 on.

12 We're going to walk around the track, and I
13 want you to tell me where you're at on the track. I'm
14 going to tell you where we're at. That's where your
15 starting point is going to be, and then we're going to
16 walk around the track, and you're going to try and tell
17 me where you think you are on the track.

18 I don't know if I was right. We stopped
19 three or four times on the track, and we got back
20 around to one of the rear entrances to the school He
21 took the blindfold off and said there's the gate Go
22 through the gate, and go to the dance

23 And I never saw him from the time I had my
24 clothes taken off. It was as if he was always behind
25 me. Never, never did I see him -- did I see him after

1 A. No, sir

2 Q. Did you avoid him?

3 A. Consciously, no, I did not.

4 Q. Did you avoid him?

5 A. I did not go out of my way to avoid him.

6 Q. Did you have any conversations with him on any
7 occasion after the fourth incident? And I mean
8 conversations.

9 A. Maybe. While we were at school, it would be
10 just casual conversation in the hall. He knew who my
11 mom was He knew who my dad was. A lot of teachers
12 know at Vianney know the parents.

13 Q. How did he know your mom and dad?

14 A. From driving You know, he -- I don't want to
15 say he took an interest in me because I was an athlete,
16 but knew who my parents were from the sporting
17 activities.

18 Q. Did you ever have any occasion to be with him
19 at any time after you graduated from high school?

20 A. No

21 Q. Did you have any telephone conversations with
22 him on any occasion after you graduated from high
23 school?

24 A. Yes

25 Q. And when did those take place?

1 that point Once he told me to walk in the room, I
2 never saw him again.

3 Q. Were you conscious or unconscious when this
4 was taking place in the office?

5 A. I was conscious.

6 Q. Did you have a sexual discharge at that time?

7 A. Not that I can recall I know that I -- I
8 know that I had an erection I had the erection when I
9 woke up

10 Q. And when you woke up, you were clothed?

11 A. Yeah. When it stopped, when he -- when it all
12 just -- I mean, it was just whatever happened, he just
13 stopped

14 And I do recall putting the clothes back on,
15 but it was all such a blur. And the next thing that I
16 can definitively say is that I woke up out in the
17 hallway.

18 And we walked down the hallway to the gate or
19 to the door that would have been the farthest from
20 Lundbergh on the back side of the building.

21 It was just a single door that would let
22 people in if they were out walking from the cafeteria
23 to that side of the building.

24 Q. Did you ever have any other incidents with
25 William Mueller on any occasion after that?

1 A. All I know is that I've talked to him -- I
2 talked to him a couple times on the phone, and we
3 corresponded in writing on occasion

4 Q. And when you talked to him on the phone, were
5 you still in college?

6 A. Yes

7 Q. Did you call him or he call you?

8 A. It would be -- I'd get a letter that would
9 say, hey, it'd be nice to talk to you. How are things
10 going? Give me a call. I did not proactively seek him
11 out.

12 Q. He would write you and ask you to call him,
13 and would you call him?

14 A. Yeah, if you have time, drop me a line type of
15 thing. One -- one phone call or letter, I can't
16 remember which one it was, he said he was coming in
17 town for a classmate of mine's wedding, and he wanted
18 to get -- he wanted to see me, and I said I can't. I'm
19 not going to be available then

20 Q. Were you -- do you recall whether it was
21 before or after you graduated college?

22 A. It was before.

23 Q. Who was the classmate?

24 A. Bruce Kellerman, K-E-L-L-E-R-M-A-N

25 Q. Did you go to the wedding?

1 A. No, I did not.
 2 Q. Do you know whether you -- did you get an
 3 invitation?
 4 A. No, I didn't get an invitation.
 5 Q. And -- okay. Kellerman was your classmate?
 6 A. Correct. And from what I understand,
 7 Brother Mueller was very close to the Kellerman family.
 8 Q. Did you know where Brother Mueller at the time
 9 when he was at Vianney where he actually resided?
 10 A. It's my understanding he would have resided in
 11 the brother housing there on the grounds.
 12 Q. Were you ever inside that residence at all?
 13 A. Not in conjunction with Brother Mueller. I
 14 had gone in there while I was doing the work during the
 15 summer, but --
 16 Q. He never had you inside there?
 17 A. No, sir.
 18 Q. Are you -- do you talk or correspond in any
 19 way with any of the other people who filed suit? You
 20 mentioned Bryan Bacon, but any of the other people who
 21 filed suit against William Mueller?
 22 A. Bryan Bacon and -- there's Bryan Bacon and
 23 through my attorney two additional plaintiffs that he
 24 has in the case.
 25 Q. Are these people who went to Vianney or other

1 be best for you to give him a call, because you and I
 2 are not the only ones that have these types of
 3 recollections
 4 And he gave Dan a call, and that was actually
 5 the one and only time I spoke with him about it.
 6 Q. Have you -- you mentioned that you did some
 7 internet research or at least looked up some things on
 8 the internet, and you mentioned the *Post-Dispatch* with
 9 regard to Mueller. Did you do any additional research
 10 regarding Mueller?
 11 A. I had done -- I wanted to see what was
 12 happening out in Colorado, and so I just -- I Googled
 13 Brother William Mueller and got a lot of extraneous
 14 stuff
 15 But some of the -- I think it's the *Pueblo*
 16 *Chiefton* newspaper out there had some articles, and I
 17 just read the accounts of what those students are
 18 claiming out there.
 19 Q. Did you speak with any of the reporters or
 20 editors of the *Chiefton*?
 21 A. No, sir.
 22 Q. Have you given an interview to anybody with
 23 any media outlets or sources regarding William Mueller?
 24 A. No, sir, I have not been contacted by anybody
 25 for -- for an interview.

1 schools?
 2 A. They went to another school.
 3 Q. St. Mary's?
 4 A. Correct.
 5 Q. Gaygoug and Clumpers?
 6 A. Yes, sir.
 7 Q. Okay.
 8 A. There is one other student that actually got
 9 ahold of -- I think he had originally called Bryan the
 10 same way that I did, and Bryan said, well, you probably
 11 need to speak with Robert or Bob about it and see if
 12 you -- you know, talk to him about what he's doing
 13 And that was Greg Stork who was a classmate of mine as
 14 well.
 15 Q. Was Greg -- did you know him from grade school
 16 or --
 17 A. No, sir. It was strictly high school
 18 Q. And was he a friend of yours?
 19 A. No, sir
 20 Q. Just somebody in the class?
 21 A. Just somebody in the class. He ran track,
 22 played football. He was a fellow athlete. And when I
 23 spoke with him, I said you know what, I don't want to
 24 get into any details.
 25 Here's my attorney's name. I think it would

1 Q. Have you -- are you a member of any kind of
 2 support group?
 3 A. No. I go through my counselor, and I use my
 4 family as my support group, my wife. I guess there's
 5 some organization SNAP
 6 Don't ask me what it stands for, but I just
 7 got an e-mail from them saying we're having a meeting
 8 in Kansas City. You're more than welcome to come if
 9 you want to come.
 10 Q. Do you know how they got your name?
 11 A. When one of the -- in the article I think it
 12 was -- I'm not sure if it was Kevin Bacon's article or
 13 one of the articles I read from the *Chiefton*, they had
 14 mentioned the name of Mr. Clossey
 15 Q. David Clossey?
 16 MR. GOLDENHERSH: Clossey
 17 THE WITNESS: Clossey. And the same day I had
 18 spoken with Bryan, I had tried to get ahold of
 19 Mr. Clossey first because of the type of work it
 20 appeared that he did based upon what was said in the
 21 news article to figure out where I could go.
 22 He called me and, you know, just very quickly
 23 talked to me about it and said, well, do you have an
 24 e-mail address that we can send -- you know, if we have
 25 meetings in Kansas City.

1 We have a branch or whatever they want to call
 2 it in Kansas City If you can get to a meeting or they
 3 invite you to a meeting, can we just send you some
 4 information I said yes. I gave them my work e-mail
 5 Q. (By Mr. Noce) Are you on a list now with
 6 SNAP?
 7 A. I've only received one thing from them since
 8 September of 2005, sir, so --
 9 Q. Did he recommend a lawyer for you out of
 10 Minneapolis to handle your case?
 11 A. Do you have a name?
 12 Q. Anderson & Associates?
 13 A. No, sir.
 14 Q. Or Chackes? Did he recommend Chackes to you
 15 or Rebecca Randall in Kansas City?
 16 A. Those names don't sound familiar to me at all.
 17 Chackes does, and that's because of Bryan Bacon.
 18 The attorney out of Miami because -- the day
 19 that all this really sank in, I was just at a loss. I
 20 didn't know what to do, who to contact, who to call.
 21 Q. What day was that?
 22 A. I want to say it was a Monday after it hit the
 23 paper in St. Louis
 24 Q. So sometime in September of 2005?
 25 A. Yes, sir. So I had called Mr. Clossey. I had

1 any of that to you, did he? And I said -- at first I
 2 said no, because she didn't know about the tests or the
 3 experiments or the master's degree.
 4 I had said no I said, well, he must have
 5 done it to some people at Vianney because here's
 6 one from Vianney that's coming forward.
 7 And then it took probably two to three months
 8 before I was able to tell her that, yes, I was a victim
 9 of that.
 10 But that night I just saw the newspaper
 11 article, and then that morning -- the following Monday
 12 morning I went into my office and really -- you know, I
 13 wanted to find out what was going on and if, in fact, I
 14 may have been a victim.
 15 Q. So your mom brings this up to you with the
 16 voice mail message and you call her back, but you
 17 didn't even discuss with her the fact there'd been
 18 these experiments?
 19 A. Correct.
 20 Q. So she didn't even know any of that took place
 21 even as of last September?
 22 A. Correct
 23 Q. But you had told your dad about that?
 24 A. Correct.
 25 Q. And you did that, of course, sometime at least

1 tried to get ahold of Bryan Then I had called --
 2 what's the attorney's name down in Miami? Horowitz?
 3 Q. Horowitz.
 4 A. And his whole guidance to me was I'll send you
 5 some paperwork and sign it and I'll represent you I
 6 was like, you know, that just doesn't seem right. I'd
 7 like to try to find somebody that I can deal with here
 8 locally, and that's what I did.
 9 Q. When you say it all sank in in September 2005,
 10 what do you mean?
 11 A. With going -- I had gotten the message from my
 12 mom on the answering machine
 13 Q. Did you keep that message?
 14 A. No, sir
 15 Q. Oh.
 16 A. No. It was really simple It was just a
 17 couple seconds long. Hey, Bob, Brother Mueller -- I
 18 think she said Brother Mueller is in the news. Do you
 19 have any reason -- do you know why?
 20 And I had -- I was like, okay, no, but popped
 21 open the computer to see what was going on, and that's
 22 where I saw that.
 23 Then I called my mom She says, why do you
 24 think he's in the news? I said, well, sounds like
 25 child molestation And she goes, well, he didn't do

1 before the early 90's?
 2 A. It would have been in the early 90's. Well,
 3 it was on the road trip from St. Louis to Presidio,
 4 Monterey in July, over the 4th of July weekend.
 5 Q. Did he drive with you?
 6 A. He drove with me, yes, sir
 7 Q. And you say that was in July when?
 8 A. It would have been over the 4th of July
 9 weekend in 1991.
 10 Q. 19 --
 11 A. 1991
 12 MR. NOCE: '91, okay. Can we take a break
 13 real quick?
 14 VIDEOGRAPHER: We're going off the record at
 15 2:02 p.m.
 16 (A break was taken)
 17 VIDEOGRAPHER: We're back on the record at
 18 2:17 p.m.
 19 Q. (By Mr. Noce) You had mentioned, Mr Visnaw,
 20 about the fact in July of 1991 you rode with your dad
 21 out to the Presidio, a cross-country trip?
 22 A. Yes, sir
 23 Q. And where did you start that trip, St. Louis?
 24 A. At our house at 4825 Bankfield Court.
 25 Q. And was it you and your dad? -

1 A. Yes, sir.
 2 Q. And how many days did it take you to get
 3 there?
 4 A. Approximately three. I mean, we drove -- we
 5 didn't stop, so --
 6 Q. Was your dad -- I know he was on disability at
 7 the time, but was he able to drive a vehicle without
 8 problems?
 9 A. Uh-huh, yes, sir.
 10 Q. I mean, like maybe drive 500 miles and then
 11 you drive 500 and then whatever?
 12 A. Yes, sir.
 13 Q. Did you split pretty much evenly the driving?
 14 A. We tried to
 15 Q. Did it give you a chance to talk to your dad?
 16 A. It sure did.
 17 Q. And during that three day trip, did you have
 18 occasion to talk about some of this?
 19 A. As I stated earlier, it was, you know, a
 20 really quick conversation about -- we got a letter from
 21 Brother Mueller to you
 22 And as I stated earlier, I was like, I don't
 23 respond back to him. He was curious as to why
 24 Brother Mueller would continue to write. I was like,
 25 I'm sure he writes to a lot of students who helped him

1 And I didn't find him writing me six years
 2 later -- because I did tell him that we did correspond
 3 occasionally with a letter here or there or a phone
 4 call to say, hey, how are things going. I'll be in
 5 town for the Kellerman wedding was one example.
 6 You know, but it would never -- we never got
 7 into exactly the nature of the assistance provided or
 8 anything along those lines
 9 Q. Did you tell your dad that there were these
 10 experiments?
 11 A. No.
 12 Q. Did you tell your dad on that -- I mean, did
 13 you always remember the fact that Mueller told you
 14 don't tell anybody about this?
 15 A. Yes. I mean, that's one of the things that he
 16 ingrains -- ingrains is probably a bad word, but one of
 17 the things that at each session he would say.
 18 Now -- and he would even ask have you told
 19 anybody about what's going on here, because you know if
 20 you do and the brothers here at the school find out, it
 21 will ruin my purpose of having been sent here by the
 22 order.
 23 Q. So you always know -- you always knew and
 24 never forgot on any occasion the fact that he told you
 25 do not tell anybody about the experiments?

1 out with his master's degree
 2 Q. In 1991 was he still signing correspondence as
 3 William Mueller, SM?
 4 A. If I remember correctly, it would be all just
 5 Bill --
 6 Q. Bill?
 7 A. -- is how he would sign off
 8 Q. It was Bill and his address in San Antonio?
 9 A. You know, as far as that is concerned, I don't
 10 know. I don't recall that. I know that he would
 11 always sign it Bill.
 12 Q. Did you still think in 1991 he was a member of
 13 the order?
 14 A. I knew in 1991 that he was not. He -- as I
 15 said earlier, I don't know if it was a phone
 16 conversation or a letter in which he stated that he was
 17 leaving the order so he could better take care of his
 18 mother.
 19 Q. Tell me everything that you spoke to your dad
 20 about as it related to Mueller
 21 A. I've already told you everything
 22 Q. Everything?
 23 A. Exactly. Just that, you know, we helped him
 24 out. Some of the students helped him out with his
 25 master's degree.

1 A. Correct
 2 Q. Although you knew other people were involved
 3 in the experiments?
 4 A. I -- he had mentioned names to me. And then
 5 he had on occasion alluded to he had several students
 6 that assisted him with his master's degree
 7 And only on one time did he ever mention
 8 anybody else's name, and that was Matt Eddy and Dan
 9 Finnegan
 10 Q. So you knew from some source, probably him,
 11 that several students were also going through these
 12 experiments?
 13 A. I was told by him that there was more than
 14 just me.
 15 Q. And were there any occasions when other
 16 students were present during the experiments that you
 17 participated in?
 18 A. No, sir
 19 Q. And I think you told me this, and I just want
 20 to make sure. You never forgot on any -- at any time
 21 since 1985 the fact that he put a knife to your throat?
 22 A. Correct.
 23 Q. You always remembered that?
 24 A. Yes, sir
 25 Q. And did you also always remember the fact that

1 on one occasion, I think it was the fourth incident,
 2 that he had you take your clothes off down to your
 3 underwear?
 4 A. Yes, sir
 5 Q. You always remembered that?
 6 A. Yes, sir.
 7 Q. And did you also always remember waking up on
 8 one occasion with an erection? Did you always remember
 9 that?
 10 A. No, sir
 11 Q. Did you always remember the fact that he was
 12 fondling you on one occasion?
 13 A. No, sir
 14 Q. That's something you forgot?
 15 A. Yes.
 16 Q. Did you --
 17 A. I think the word forgot in that particular
 18 instance is a bad word to use. It was just something
 19 that I either suppressed or chose not to recall through
 20 some state
 21 Knowing -- having it surface since all this
 22 has come about, I believe that it wasn't forgotten. It
 23 was definitely buried deep enough to where I didn't
 24 have to relive it
 25 Q. Okay. Well, let me ask you about that. On

1 actually had his hand on his penis?
 2 A. Yes, sir.
 3 Q. Was he touching you above or below your
 4 underwear?
 5 A. His hand was actually underneath my pants. I
 6 had a sweat suit on with gym shorts on because I had
 7 come straight from practice.
 8 My actual school clothes were still in the car
 9 because I didn't feel like getting them all wet from
 10 practice.
 11 Q. Okay. So what you recall now is him actually
 12 physically touching your penis and his own penis, his
 13 right hand on himself, his left hand on you?
 14 A. Yes, sir
 15 Q. Did you remember that as you drove home that
 16 night?
 17 A. No
 18 Q. You did not?
 19 A. No.
 20 Q. Okay. Did you remember it as you walked out
 21 to your car that night?
 22 A. That -- after that episode and the
 23 fourth episode, a lot of things that happened were kind
 24 of a blur for me
 25 Q. What do you mean a blur?

1 the date of the second incident, you recalled that he
 2 was fondling you now? I mean, you've testified to
 3 that?
 4 A. Yes, sir.
 5 Q. And did you recall on the day it occurred that
 6 that happened?
 7 A. In the fact that it happened then, I would
 8 have to say I know that it happened. But, again, as
 9 far as did I consider myself molested or along those
 10 lines? Is that what you're trying to get at?
 11 Q. No. What I'm asking you is on this date -- I
 12 think the second incident took place in November?
 13 A. Early November, yes.
 14 Q. And that's the first incident where you can
 15 testify that there was sexual contact?
 16 A. Correct.
 17 Q. All right. And what you told me was that when
 18 you came to, you realized that he was massaging your
 19 genitals?
 20 A. Uh-huh
 21 Q. That's true?
 22 A. Yes, sir.
 23 Q. That's what you recollect?
 24 A. Yes, sir.
 25 Q. And you heard him moaning also, and he --

1 A. As if it was surreal. I'm looking at it from
 2 an adult standpoint now trying to articulate it as a
 3 17 year old. It was almost as if it didn't -- I
 4 can't -- here I am walking out I'm afraid. Did it
 5 really happen?
 6 I'm starting to tell myself, okay, that just
 7 didn't happen, that just didn't happen. So I convinced
 8 myself that it didn't.
 9 And it wasn't until I went through counseling
 10 that it came out that, yes, it did happen and you
 11 buried it so you didn't have to relive it again.
 12 Q. Well, let me just make sure I understand what
 13 you're telling me here. In other words, after it
 14 occurred, you recognized what occurred? You knew it
 15 happened, and you appreciated it happening?
 16 A. No. What I'm saying is that from the time
 17 that I went into the locker room until the time that
 18 I -- the next recollection I have after being made to
 19 pass out is him saying how long were you out, are you
 20 afraid, and the answers that I gave at that point and
 21 then leaving
 22 Until I went through counseling and really
 23 started examining everything in my own mind why things
 24 were happening did I realize that there was a part that
 25 was missing that I couldn't account for in my own mind

1 from the time that I was waking up until the time that
 2 I was fully cognizant of what was going on around me
 3 That was missing, and that came through counseling
 4 Q. Well, what you're telling me was it occurred
 5 and it was a blur?
 6 A. Correct.
 7 Q. Okay. And what you did after that is in your
 8 mind you said -- you convinced yourself what just
 9 happened did not happen?
 10 A. That's what I said. And what I mean by that
 11 is from the time that it happened for 20 years, if you
 12 were to ask me, tell me about the sessions that you had
 13 with Brother Mueller, that was something that would
 14 never even come to my mind to relate to anybody
 15 Q. So it happened, and then you consciously
 16 suppressed it is what you did?
 17 A. I don't know if it was consciously or
 18 subconsciously, but I can tell you that until I sat
 19 down with my counselor and started going through -- you
 20 know, not reliving everything but just openly
 21 discussing it and having time to reflect on what
 22 happened, there was a time period there that was lost,
 23 and it was found.
 24 Q. So in September of 2005 when you read about
 25 what was being reported in the paper in St. Louis, did

1 you believe you were sexually molested then?
 2 A. Yes
 3 Q. In September 2005?
 4 A. Yes
 5 Q. Okay. And that was even before you went
 6 through any counseling?
 7 A. Yes
 8 Q. And you believed that because you remembered
 9 it?
 10 A. No, I believed -- I believed that I was at the
 11 very least a victim. A victim of what, I needed to go
 12 figure that out. That's why I started making phone
 13 calls as far as who can help me.
 14 Because of, one, the training that I received
 15 through the government, through my particular job now,
 16 as these things started progressing, as I read Bryan
 17 Bacon's account and from what I understand Bryan only
 18 had the one account, then I went back and said, okay,
 19 here's what happened to me. It's identical to my
 20 fourth session.
 21 I need to do -- I need to get help to figure
 22 out if I truly am a victim from the other ones, from
 23 the other three.
 24 Q. Did you have a recollection in September of
 25 2005 that you were sexually abused?

1 A. At that time when I first found out about it,
 2 no.
 3 Q. Did you --
 4 A. It was through counseling that that -- that
 5 happened. You know, it wasn't -- as I related to it my
 6 Dr. Harris, it was Robert, something happened. We need
 7 to address that, and we need to move on to get you
 8 healthy
 9 Q. Was it only as a result of counseling then
 10 that you have come to a conclusion that you were
 11 sexually abused?
 12 A. I have come to the realization that I was
 13 sexually abused. There's no conclusion involved
 14 Q. Okay. Only through counseling?
 15 A. Through counseling.
 16 Q. And so did you ever claim that you were
 17 sexually abused before the counseling started?
 18 A. Prior to September of 2005?
 19 Q. No, at any time prior to your commencement
 20 with counseling, did you ever claim to be sexually
 21 abused?
 22 A. I made no statement of being sexually abused
 23 prior to finding out about Brother Mueller and what was
 24 going on and what had transpired.
 25 Q. Now my question is you found out about

1 Brother Mueller in September of 2005?
 2 A. Correct
 3 Q. Okay. And just from what you read in the
 4 paper, did that make you believe you were sexually
 5 abused?
 6 A. It made me aware that there was reason for me
 7 to believe that I was and that I needed to seek the
 8 answers to either confirm or deny that
 9 Q. But you only have realized that sexual abuse
 10 occurred I think you said as a result of being -- of
 11 going through counseling?
 12 A. Of sitting down and talking with Dr. Harris,
 13 examining -- you know, not -- examining is not a good
 14 word.
 15 But telling him what I know and then having
 16 those memories come back to me through the counseling,
 17 through the fact of being told constantly by Dr. Harris
 18 you know something happened, dig it up, find it out,
 19 and let's get past it so we can heal you.
 20 It's not dig it up and find it out so we can
 21 profess to the world that you are a victim, but we've
 22 got to get past what has caused you your damages or
 23 whatever has happened from the time that it happened
 24 until the time of today. We've got to heal you
 25 Q. But until Dr. Harris helped you make that

1 realization through counseling, did you believe you had
2 been sexually abused?

3 A I had no need to

4 Q. Okay. Did you claim to be sexually abused
5 before these counseling sessions?

6 A I had no need to claim sexual abuse.

7 Q. Did you claim it?

8 A. May I finish?

9 Q. Did you claim it?

10 A. May I finish?

11 Q. Sure. Now I'm going to ask you, did you claim
12 it? Go ahead.

13 A I did not have a need to claim sexual abuse
14 until September of 2005, because prior to that point,
15 it was my recollection and my understanding that I was
16 being used as an individual who partook to assist
17 somebody in getting their master's degree, that it was
18 purely legitimate.

19 It was not until after that time when I saw
20 the statements by other people that, hey, you were part
21 of this. This happened to you Let's find out the
22 answers

23 Q Now let me ask the question again. Did you
24 claim before you started counseling with Dr. Harris
25 that you were a victim of sexual abuse? Did you make

1 recollection was I was unconscious And through
2 counseling, these other -- these other things
3 manifested themselves.

4 So I believed when I went to Dr Harris, yes,
5 I was a victim of sexual abuse based upon the
6 information that had been printed, his history, and the
7 history of the recollections and recounts of other
8 people's statements that I had read

9 So that led me to believe that even if I
10 cannot recall me being a victim of sexual abuse, I
11 believed I was.

12 Q. What evidence did you have before you went
13 through counseling that you were actually sexually
14 abused, if any?

15 A Prior to the recollections being made?

16 Q. Right.

17 A. The memories being brought back up?

18 Q. Yes, sir

19 A. None

20 Q. Then what was the basis for your claiming to
21 be sexually abused if you had no evidence of it?

22 A. Well, after reading -- after reading all of
23 these statements and putting two and two together, the
24 fact that I assisted this individual in the same manner
25 in which he was having people from the 1960s through

1 that claim? Yes or no?

2 MR. CRAIG: Well, or do you recall?

3 Q. (By Mr. Noce) Well, did you make the claim?
4 That's all I'm asking you Did you make the claim that
5 you were sexually abused before you went through
6 treatment with Dr Harris?

7 A. I believe I started treatment before or right
8 after -- right before or right after I contacted your
9 office, before we met for the first time, so I would
10 say yes

11 Q. You did --

12 A. Based upon the fact that circumstances
13 happened so quickly after I found out about it, for me
14 to say definitively that prior to meeting Dr Harris
15 for the first time that I believed I was a victim of
16 sexual abuse or meeting with my counsel afterwards, it
17 happened very quickly. For me to say on Monday, yes, I
18 did. Oh, wait a minute, that was Tuesday I met with
19 Dr. Harris

20 Q. Before you met with Dr Harris, what evidence
21 did you have that you were sexually abused?

22 A. I look to him here's the circumstances of what
23 I recall.

24 Q. Before you went to see Dr. Harris --

25 A. I was unconscious, so for the most part, my

1 the 1980s, the early 80s assist him, it was my
2 understanding that I should be considered a victim and
3 that I should take appropriate steps to protect myself,
4 and that's what I did

5 Q. Did you -- did you mention to your dad during
6 that three day trip that William Mueller had held a
7 knife to your throat?

8 A. No.

9 Q. Did you mention to your dad during the
10 three day trip that he asked you to take your clothes
11 off?

12 A. No.

13 Q. Did you mention to your dad during that
14 three day trip that he had blindfolded you with?

15 A. No.

16 Q. With your clothes off?

17 A. No

18 Q. You knew all that at that time, though?

19 A I knew that as part of the master's degree
20 program that he was working on, yes

21 Q. Did you know that he was removed from Vianney
22 in November of 1985?

23 A. No He told me he left voluntarily, that he
24 went down to -- he had asked for a request to go to
25 San Antonio to be closer to his mother

1 Q. Did you know -- did you know any of the
 2 circumstances under which he left Vianney?
 3 A. No, sir.
 4 Q. We had marked as Defendant's Exhibit A --
 5 A. You're talking this one here?
 6 Q. Yeah, Exhibit A. We gave you a copy. We were
 7 going through this
 8 A. Uh-huh.
 9 Q. Did you sustain any physical injury that you
 10 can recall as a result of any of these incidents
 11 involving William Mueller?
 12 A. I don't recall.
 13 Q. Did you have any medical treatment on or
 14 following the dates of any of the incidents as a result
 15 of the incidents?
 16 A. I would say when I went to my primary care
 17 physician in September of 2005 Or are you talking
 18 immediately thereafter?
 19 Q. I'm talking about, you know, as a result of
 20 any of these incidents which you've described as
 21 assaults and batteries that took place in 1984, did you
 22 receive any medical treatment or counseling or care at
 23 that time?
 24 A. In 1984 or 1985?
 25 Q. Right.

1 THE WITNESS: Correct
 2 Q. (By Mr. Noce) And then the incident with the
 3 knife, you were fully conscious?
 4 A. Correct
 5 Q. Have you had occasion to read the petition?
 6 A. I read it when it first came to me, and it was
 7 stuck in the file from that point forward.
 8 Q. Was there anything that you read in there that
 9 you thought was inaccurate or that you needed explained
 10 to you?
 11 A. No, sir
 12 Q. We have marked Exhibit B which are your
 13 interrogatory answers that I asked you to take a look
 14 at those I think that's the supplemental which I
 15 think is the latest answers, and --
 16 MR. CRAIG Do you want him to read the whole
 17 document?
 18 MR. NOCE Yeah, take a look at those, would
 19 you, please?
 20 MR. CRAIG Take as much time as you need.
 21 MR. NOCE. Yeah I'll step out to get copies
 22 made here
 23 (Defendant's Exhibit C was marked for
 24 identification)
 25 MR. CRAIG Done?

1 A. No.
 2 Q. Did you -- did you notice anything about your
 3 body in the form of an injury after any of these
 4 incidents?
 5 A. No.
 6 Q. When you were on the diving team, did you
 7 shave your body?
 8 A. No, sir.
 9 Q. On each occasion, each of these four occasions
 10 that you've mentioned that -- did Mueller always render
 11 you unconscious prior to assaulting you?
 12 A. I was always rendered unconscious at some
 13 point during the process.
 14 Q. Did all of these assaults that were
 15 perpetrated on you take place while you were
 16 unconscious?
 17 A. With the exception of the fourth one, yes
 18 Q. Which is the knife?
 19 A. Correct.
 20 Q. So on each and every other occasion, you were
 21 unconscious during the assaults?
 22 A. Yes
 23 MR. CRAIG Well, I want to object.
 24 Notwithstanding his previous testimony about coming out
 25 of sleeping and being abused, so --

1 THE WITNESS Yeah
 2 Q. (By Mr. Noce) I'm going to hand you
 3 Exhibit C I gave you a copy, Dan. I'm just going to
 4 direct your attention to the answers
 5 If you look at B and C and just confirm for me
 6 that the answer given to Interrogatory 10 -- and I'll
 7 tell you this is kind of a tricky deal, but B is your
 8 supplemental answers and C would be your answers, which
 9 it looks to me like your original answers to the
 10 interrogatories are C, and like I said, B are your
 11 supplemental answers
 12 And would you take a look at the answers that
 13 you made to No. 10 in each set and confirm for me that
 14 it's the same answer?
 15 MR. CRAIG You mean just word for word that
 16 it's the same?
 17 MR. NOCE. I think --
 18 MR. CRAIG I can confirm that for you
 19 MR. NOCE. Okay
 20 MR. CRAIG What I did for the supplemental
 21 was, I just -- and I think even in the letter I wrote
 22 to you -- where it's italicized is the information
 23 that's supplemented which really had to do with
 24 personal information that we had to wait for the
 25 --protective order

1 MR. NOCE: Okay.
 2 MR. CRAIG: So unless it's italicized, it's
 3 the same.
 4 MR. NOCE: Then we can stipulate, Dan, that
 5 the answers -- the answer to No. 10 in the -- in
 6 Exhibit C is verbatim to the answer to No. 10 in
 7 Exhibit B?
 8 MR. CRAIG: Yes.
 9 MR. NOCE: All right. That's all I need.
 10 Q. (By Mr. Noce) Now talking about Exhibit C
 11 which is the -- I'm sorry -- Exhibit B which is the
 12 supplemental set of interrogatory answers, we took some
 13 time Mr. Visnaw, did you have a chance -- I think you
 14 had a chance to read these?
 15 A. Yes.
 16 Q. Did you see anything in there that you think
 17 is inaccurate or incorrect?
 18 A. The one thing on Answer No. 10 is that when I
 19 was writing these, the second and third sessions as I
 20 listed them here are reversed. I put the
 21 second session down. It actually should have been the
 22 third, and the third session should have actually been
 23 the second session
 24 Other than that, I don't -- I don't see
 25 anything that would catch my eye other than that to say

1 you know, what does that got to do with what's going
 2 on
 3 Q. Did you -- had you heard from any other person
 4 involved in any of this litigation involving William
 5 Mueller any allegations related to hair gel?
 6 A. Not that I can recall
 7 Q. Okay Is there any medical treatment that
 8 you've received that you believe is related to whatever
 9 happened back in 1984 and 5 while you were enrolled at
 10 Vianney other than the treatment and care provided by
 11 Dr Harris, the psychologist?
 12 A My -- the treatment that I've received from
 13 my -- Dr Bernard and the prescribing the Effexor, the
 14 anti-depressant
 15 Q. So there's the treatment from Dr. Bernard
 16 which would primarily be referring you or prescribing
 17 the anti-depressant, and also then there's the
 18 treatment by Dr Harris?
 19 A Yes, sir
 20 Q. And that's it?
 21 A Yes, sir
 22 Q. Have you been hospitalized?
 23 A For this particular incident?
 24 Q. Yes, sir
 25 A No.

1 that there's an error.
 2 I mean, my son obviously -- or the birth of my
 3 third child isn't listed here in the interrogatories as
 4 they were written, but I don't see anything that would
 5 be glaringly out of place
 6 Q. And as far as you're concerned, these -- the
 7 answers are still -- they were accurate when you signed
 8 them, and they're still accurate?
 9 A. I believe that they're accurate to the point
 10 that at the time that I signed them the hair gel issue
 11 hadn't come out and that the complete history of the
 12 fourth session was not -- I didn't recall that until
 13 after these were signed.
 14 Q. Okay. And that was after that April session?
 15 A. When you say the April session, you're --
 16 Q. With Dr. Harris
 17 A. The --
 18 Q. I'm sorry. Strike that. Let me start over
 19 The April incident while you were working in Denver
 20 A. That was when the -- when my full recollection
 21 or realization of the fourth incident came about And
 22 the hair gel incident came about just through --
 23 through the conversations with Dr. Harris
 24 And it didn't strike me as hard, because I
 25 looked at it as he had me put hair gel in my hair, so-

1 Q. Or for anything related to your litigation
 2 here?
 3 A. No
 4 Q. Have you lost any wages?
 5 A. Outside of using leave to go to -- using
 6 vacation time or sick leave to go to these doctors'
 7 appointments and to come here
 8 Q. Okay Well, I don't know that coming here
 9 counts, so --
 10 A. Well, the question was had I lost wages. I
 11 answered the question
 12 Q. Have you lost wages that are related to the --
 13 you say you did lose some wages related to the
 14 treatment?
 15 A. Well, for me, I look at that as saying if I
 16 have to take sick leave or personal time, personal
 17 vacation time that could be used elsewhere to go to the
 18 counseling sessions or to go talk to Dr. Bernard about
 19 either, you know, monitoring my anti-depressant
 20 medication, I believe that that could be -- in my mind
 21 is considered lost wages
 22 Q. In -- and how many occasions would that be
 23 that you've been to see Dr Harris do you think? Ten
 24 or less?
 25 A. I think it's over ten I don't know the exact

1 number.
 2 Q. Have you had any out-of-pocket expense --
 3 A. I have.
 4 Q. -- seeing Dr. Harris?
 5 A. I have copays. I've paid -- right now, I've
 6 only paid \$90, but that total is going to go up
 7 dramatically.
 8 He just hasn't -- he hasn't submitted me a
 9 bill, but through my health insurance, I can show where
 10 I have a \$30 copay for every time that I see him, and
 11 also the medications from Dr Bernard
 12 Q. And you first went to see Dr. Harris on
 13 November 3rd, 2005?
 14 A. I don't know if it was November 3rd, 2005. I
 15 thought it was in October.
 16 Q. I'm looking at the record. It looks like the
 17 personal data sheet --
 18 A. No, what those were is when I signed -- I had
 19 to sign those because he was actually asking -- I
 20 believe he was asking for an extension on the EAP
 21 program. That's how I recall those
 22 I do recall going to see him in October I
 23 had three visits in October, and he had asked for an
 24 extension.
 25 And in order to get the extension -- we'd

1 I think it's about Brother Mueller. I don't know the
 2 exact content of that e-mail.
 3 I think he was trying to get some information,
 4 background information, but again, you'd have to ask
 5 him that.
 6 Q. And why don't I show it to you and you just
 7 tell me if you understand what that's doing in your
 8 medical record?
 9 MR. CRAIG Again, he doesn't want you to
 10 speculate, so if you don't know, you don't know.
 11 Q. (By Mr Noce) I'm just asking if you have any
 12 explanation for a record regarding Reverend Osborne
 13 that's in your medical record?
 14 A. Okay During one of sessions -- and I don't
 15 know why this particular e-mail is in there, if it does
 16 reference Father Osborne.
 17 But during one of the sessions, I had
 18 mentioned that I had heard that Father Osborne had an
 19 allegation levied against him.
 20 Q. Do you know him?
 21 A. Father Osborne?
 22 Q. Yes, sir
 23 A. He -- I don't know him personally. I do know
 24 that he had things to do with Vianney when I was there,
 25 but I -- you could put him in a room, and I wouldn't be

1 already gone through several sessions, additional
 2 sessions, and he said that I needed to sign those that
 3 day
 4 Q. All right Now were you referred to him by
 5 Dr. Bernard or by somebody else or by EAP?
 6 A. By EAP.
 7 Q. And that's through work?
 8 A. Correct.
 9 Q. You have had a chance to see Dr. Harris's
 10 records?
 11 A. Briefly, yes.
 12 Q. Were you aware that the records include
 13 contact by David Clossey and Barbara Doris?
 14 A. To --
 15 Q. They're in his records I'm -- do you know
 16 who H. Freidman is?
 17 A. No, sir.
 18 Q. Or Helen Freidman?
 19 A. No, sir. I know that there's -- I know when I
 20 reviewed it, I saw there was an e-mail in there But I
 21 didn't -- I don't remember who the sender of that
 22 e-mail is.
 23 Q. Okay. Do you know what it's doing in your
 24 medical records?
 25 A. If -- like I said, I just briefly reviewed it.

1 able to pick him out
 2 So -- then I had brought that up simply just
 3 to say, you know, and here was another instance of the
 4 clergy that was associated with Vianney when I was
 5 there that has an allegation
 6 So if this is in here, I can't speculate, but
 7 I would -- I think it was just to do some research on
 8 it.
 9 Q. Okay So you would have made that mention to
 10 the -- to your counselor, here's another incident of
 11 abuse involving Vianney?
 12 A. It was -- it was brought up -- and I can't
 13 remember the exact way that it was brought up, but it
 14 was brought up as, you know, if it did happen, here's
 15 just another example of, you know, the church trying to
 16 hide something or the order trying to hide something.
 17 So I don't -- you know, again, I'm
 18 speculating I don't want to speculate why this is in
 19 here That's a question you'll have to ask him.
 20 Q. Dr Harris?
 21 A. Yes, sir
 22 Q. All right Do you know who Barbara Doris is?
 23 A. I believe Barbara Doris is -- her name sounds
 24 very familiar I believe she's associated with SNAP
 25 either in Kansas or the Kansas City, Missouri side

1 I'm not -- I'm not -- I think I may have had
 2 one conversation with her where she called me shortly
 3 after I spoke with Mr. Clossey, and that was it.
 4 She just wanted to invite me to a meeting in
 5 the future if they had one, and I haven't had any
 6 contact with her or Mr. Clossey.
 7 Q. And that contact was by phone with both of
 8 them?
 9 A. When she called me?
 10 Q. Yes, sir.
 11 A. Yes.
 12 Q. Did she call you at home or at work?
 13 A. I believe it was on my cell phone, but I'm
 14 not -- I give my cell phone number out for everything
 15 it's the easiest way to get ahold of me
 16 Q. And do you know who Helen Freidman is at all?
 17 A. No, sir.
 18 Q. And you -- before today, you've never read
 19 this other than maybe to glance at it?
 20 A. Correct.
 21 Q. And you knew it was in your records, but you
 22 really didn't have any explanation for why?
 23 A. I didn't even know it was in my records until
 24 I reviewed them with my attorney.
 25 Q. Okay. Did you ask Dr. Harris in February of

1 helping you?
 2 A. Yes.
 3 Q. And as part of this process, you're wanting to
 4 get back to church and feel safe?
 5 A. I would like to go back and believe that not
 6 everybody in the Catholic church has this way, and
 7 that's one of the things that he's helping me to
 8 understand is that I don't need to look at people that
 9 way. I don't need to look at an adult male as someone
 10 who's going to hurt me.
 11 Q. On this session for February 23rd, '06, it
 12 says you were very upset yesterday answering
 13 interrogatories
 14 And the only reason I ask that, is that
 15 about -- do you believe that would have been about the
 16 time that you answered these written questions to fill
 17 in the information?
 18 A. I believe so.
 19 Q. You don't have any reason to doubt that's
 20 about the date?
 21 A. I don't, no.
 22 Q. Were you ever prescribed Paxil?
 23 A. I think I had tried Paxil initially, but it
 24 gave me a very numb feeling, and it wasn't -- I would
 25 go through the day extremely numb

1 '06 to help you get through the legal process related
 2 to the abuse?
 3 A. What I had asked him is that there was
 4 additional stresses being put on me emotionally and
 5 psychologically because of what was going on, and I
 6 needed to find a way to cope with that, not so much to
 7 help me get through the litigation but to help me deal
 8 with the extra pressures and stresses that were -- that
 9 are associated with going through the legal process.
 10 Q. So you didn't ask him specifically to help you
 11 get through the legal process related to the abuse?
 12 A. I had asked him to help me cope with it, to
 13 help me deal with all the extra tension and whatnot
 14 that was going on, because it was starting to take a
 15 toll on my family
 16 Q. Did you tell him you were anxious and
 17 traumatized by the legal process arising from or
 18 delving into abuse?
 19 A. I told him that because of what had happened
 20 to me, the fear of having to relive it over and over
 21 and over again had placed additional strains on me,
 22 stresses that would manifest themselves just in being
 23 quiet or being quick to anger, like that, and I just
 24 said help me get through it
 25 Q. Do you think that Dr. Harris' counseling is

1 As my wife would say, you're not yourself,
 2 there's something wrong, so that was at the very
 3 beginning
 4 Q. Did you provide Dr. Harris with some of the
 5 newspaper articles involving Mueller that were running
 6 in the Post?
 7 A. He had asked me if -- how they could be found
 8 on the web, and I told him how I had -- was able to
 9 Google them, and he wasn't able to because he was
 10 spelling Mueller M-I-L-L-E-R and not M-U-L-L-E-R.
 11 So once he found them, I believe he printed
 12 them off or did whatever he had to do
 13 Q. Did you tell Dr. Harris in November of 2005
 14 that you were upset because, quote, why I kept quiet
 15 for 20 years? Did you make that statement to him?
 16 A. I made the statement to him having been able
 17 to realize that I was a victim and that these things
 18 had happened to me that if I could have been able to do
 19 something, you know, in 1986 -- if I had thought -- if
 20 I had thought that these were incidents of child
 21 molestation or abuse back then, why didn't I speak up
 22 and say something
 23 And he said, well, because you didn't -- you
 24 didn't think like that back then. You thought that you
 25 were doing something okay.

1 Q. What was it that you could have said 20 years
2 ago that you're upset about?

3 A Well, if I had -- if I had known then what I
4 know now, I probably could have kept, you know, Bryan
5 from going through the things that he went through and
6 countless other students from going through what they
7 had done.

8 If I had -- if I had as a 17 year old thought
9 as a 39 year old today, I could have kept that from
10 happening.

11 And potentially through my job, I know that
12 pedophiles or people that are involved in actions like
13 this, you just don't cure them overnight Who else has
14 he traumatized since then?

15 I mean, so that -- that weighs on me a lot,
16 that I could have maybe nipped this in the bud in '85
17 as opposed to having other people go through it for
18 20 years since then.

19 Q. When you say why I kept quiet for 20 years,
20 exactly tell me what it is you kept quiet

21 A. Just about the experiments, not -- nothing
22 about -- just saying, hey, this is what he was doing.
23 You know, he was having us go unconscious and then wake
24 up and ask us all these stupid questions and go through
25 those -- make that known.

1 as they were naked in a bathtub or when I was changing
2 them

3 It made me literally walk away from any
4 clergyman, any man of the cloth that ever came near me
5 I could not be around them. I still not can be around
6 them, because I'm afraid that they are going to do
7 something to me or my children.

8 It made me look at every -- once everything
9 was brought up, it made me look at every adult male
10 that was around my kids as somebody who was going to
11 take them and commit nasty crimes to them.

12 It has cost me five years of relationship with
13 my father who died months after we reconciled, so there
14 was five years that wasn't there.

15 It cost me -- looking back now, it cost me a
16 chance to get a higher GPA, to graduate at a higher
17 class ranking at Vianney, because around the time that
18 I went from the gold honor roll to the silver honor
19 roll, it would be right around that time that all that
20 started.

21 You know, there's just a whole myriad of
22 things that, I mean, I can try to talk about. It will
23 get to me. It will have me break down I don't want
24 to get to that point, but that's where my damages is,
25 not in the fact that he made me pass out.

1 Q. So if you would have -- did you feel what you
2 knew for 20 years was something you should have
3 mentioned in 1985?

4 A. No, I didn't believe that until after -- after
5 it had been made public and the remorse or the anxiety
6 about, you know, why couldn't I put two and
7 two together then like I am now

8 If I had, you know, said something to somebody
9 about, hey, you know, he's making us pass out and
10 whatnot to an adult -- because as a 17 year old, you
11 think you're invincible. The world can't hurt you

12 You know, if I had said just something in
13 passing, maybe somebody would have done that But
14 that's me thinking about it now, not me thinking about
15 it 17 or 20 years ago.

16 Q. And that -- and you always knew he made you
17 pass out?

18 A. I think that's been established, yes

19 Q. And that's part of the damages you're claiming
20 here, that he made you pass out?

21 A. I think my damages are the fact that as an
22 adult now, those things that have happened to me back
23 in 1984 and 1985 have, one, made me walk away from a
24 faith that I thought I was, you know, pretty sound in

25 It made me afraid to look at my own children

1 Q. You knew that -- you've always known that he
2 took you through these experiments and made you pass
3 out?

4 A. That's been established

5 Q. And you knew that was wrong when he did that?

6 A. No, I didn't

7 Q. You didn't?

8 A. Not at the age of 17

9 Q. You thought it was okay for an adult to make
10 you pass out when you were 17 1/2 years old?

11 MR. CRAIG: Hold on.

12 Q. (By Mr Noce) That's what you thought?

13 MR. CRAIG: We have been over this several
14 times. I mean --

15 MR. NOCE: No, I don't think I've asked that
16 question before, but I'm asking now

17 Q. (By Mr Noce) You thought it was okay for an
18 adult to make you pass out at age 17 1/2? That's your
19 testimony?

20 A At the age of 17, 17 1/2, an individual who's
21 in a position of authority in my school who's also a
22 man of the cloth comes to me and says I need your help
23 conducting my master's program and I have the okay of
24 my superiors to do so, yes, I thought it was okay.

25 -Q. -But that's what you kept quiet about for

1 20 years, and that's what you're telling frustrated you
2 when you made that comment to Dr Harris in November of
3 '05?

4 A. The comment that I made to Dr Harris is
5 knowing what I know now versus knowing what I knew
6 then, I'm beating myself up about it, because knowing
7 now through my job and through just being an adult, I
8 should have known better.

9 And Dr. Harris's statement is, you were
10 17 years old You had no idea You went with what you
11 were told, and you believed it because you had no
12 reason to believe otherwise.

13 Now that you're 39 years old, you have a whole
14 world of experience behind you, you have training by
15 the federal government in child pornography,
16 pedophilia.

17 You know better now, but you're beating
18 yourself up over what a 39 year old male would do
19 versus what a 16, 17, 18 year old male would do put in
20 the same situation

21 Q. That's what you kept quiet about? That's what
22 you kept quiet about?

23 A. That statement, and again, that statement
24 right there is -- apparently, he put it in quotes. I'm
25 telling you how that statement -- one, why that

1 record. You need to ask him why he wrote it down.

2 MR. NOCE: That's right I'm asking him is it
3 accurate No, no, I'm asking --

4 MR. CRAIG: May I please lodge an objection
5 for the record so the court reporter can get it down?
6 Okay. You're asking him to speculate on a record he
7 did not create. You're trying to impeach him -- may I
8 please finish?

9 MR. NOCE: I haven't said a word.

10 MR. CRAIG: You were preparing to say a word

11 MR. NOCE: I was

12 MR. CRAIG: There you go And so trying to
13 impeach him with a record he did not create. Why those
14 things were written and for the purpose for which they
15 were written, those are things you can direct to
16 Dr. Harris.

17 You can certainly ask the witness did you say
18 these things, yes or no, and that's all he can do for
19 you.

20 Q. (By Mr Noce) All I'm -- okay Subject to
21 your attorney's objection, did Dr Harris accurately
22 record what you told him?

23 A. If he recorded it having discussed the
24 hyperventilation or the passing out on quite a few
25 occurrences, if he put it in his notes, we talked about

1 statement was put into quotes

2 Because I'm beating myself up about what a
3 39 year old male would have done as opposed to the
4 17 year old kid 22 years ago

5 Q. And did you also tell on November 3rd, 2005
6 Dr Harris that you had only told your father about
7 what occurred at age 17?

8 A As I've already stated, yes

9 Q. But he died in 1991?

10 A. That's correct

11 Q. In fact, did you make this statement to him
12 "Had only told father occurred at age 17 about
13 Brother Mueller, four incidents, 'experimented' by
14 having Robert hyperventilate and pass out? What
15 happened while passed out?" Is that what you told him?

16 A. I told Brother Mueller -- I'm sorry I told
17 Dr. Harris that I had told my father that I was
18 assisting Brother Mueller with his master's degree, and
19 that was that

20 What he put in that report, you know, we had
21 talked about the hyperventilation often and the passing
22 out often through my counseling sessions

23 Q. Did he -- did he record it accurately I guess
24 is what I'm asking you?

25 MR. CRAIG: Strike that. That is Dr. Harris's

1 it

2 Now is it accurate to that particular date I
3 did tell him that I told my father, that I told my
4 father that I assisted Brother Mueller with his
5 master's degree, yes, that's accurate.

6 The hyperventilation, we talked about it quite
7 often.

8 Q. I wasn't going to mark it, but it's a part of
9 your records. It's November 3rd, '05. Could you take
10 a look, and just under the part where it says history
11 of problems, can you just tell me is there anything in
12 that part of the record that you believe is not
13 accurate?

14 MR. CRAIG: All I can say and interject while
15 he's looking is we are presuming that Dr. Harris wrote
16 in this record that Robert told him that he
17 specifically told his father specific details about the
18 assaults that Robert does not recall telling his
19 father

20 And we were presuming that from a witness that
21 is not here testifying That said, review the record.
22 You can answer the question as best as you can. I
23 don't want you to speculate.

24 THE WITNESS. Well, if I may, reading this, it
25 doesn't state that I told my father at the age of

1 17 Brother Mueller had four incidences
 2 Q. (By Mr. Noce) No, it says only told my
 3 father?
 4 A. No, it says, had only told my father, done
 5 Occurred at 17 years old. I mean, that could have been
 6 from us going back and rehashing some of the old stuff.
 7 I can't say why he put it the way he did So
 8 you're asking me to verify if any of this is
 9 inaccurate. I mean, I can't say yes or no to that.
 10 MR. NOCE: Okay That's fine That's an
 11 answer. Is -- I better have this one marked.
 12 (Defendant's Exhibit D was marked for
 13 identification.)
 14 Q. (By Mr. Noce) Exhibit D, Mr. Visnaw, is that
 15 your handwriting?
 16 A. Yes, it is.
 17 Q. Let me see it just for a minute.
 18 A. I'm sorry.
 19 Q. Thanks I want to know if this is a record
 20 that you filled out on the first time you saw the
 21 doctor or on November 3rd, 2005. I'll ask you, do you
 22 remember?
 23 If you look at the record, both before and
 24 after that Exhibit D in the doctor's file, they're both
 25 dated November 3rd, '05

1 A. Yes, sir
 2 Q. Did you do that?
 3 A. I don't recall I don't think there would
 4 have been a cause for me to underline may.
 5 Q. Was there anything written on this page that's
 6 not in your handwriting?
 7 A. No, sir
 8 Q. On Exhibit D? Okay. Can you say that you did
 9 or did not underline it?
 10 A. I don't recall if I underlined it or not. I
 11 mean, like I said, sir, there's no cause for me to have
 12 underlined it
 13 Q. And as of the date, whenever the date was that
 14 you gave this record to Dr. Harris, would it be that it
 15 was still a question in your mind that you didn't know
 16 whether you'd been abused?
 17 A. Yes, sir
 18 Q. And did your dad actually pass away in 1991?
 19 Was that the date? Yes, that's true
 20 A. That's been firmly established, yes.
 21 MR. CRAIG 15 years ago today.
 22 THE WITNESS That's right.
 23 Q. (By Mr. Noce) Do you believe that you have
 24 any depression as a result of these incidents?
 25 A. I know I have depression because of this

1 A. If I remember correctly, I think that this
 2 was -- this was done as the renewal of the EAP program,
 3 and I don't know if he used the same one that I had
 4 originally filled out. As you know, there's no date on
 5 this, so --
 6 Q. I don't know --
 7 A. I know that I filled out something similar to
 8 this when I had to go in to my initial counseling with
 9 him.
 10 Q. Let me just see it real quick. Thanks. On --
 11 there's a series of three questions. The second one
 12 is, "What would you like to be the outcome of
 13 counseling (what would you like to accomplish or
 14 resolve? What are your goals for counseling?)" Would
 15 you go ahead and read what you wrote there in your
 16 handwriting?
 17 A. You want me to read it out loud?
 18 Q. Yes, sir, please.
 19 A. "I had left the Catholic church and not have
 20 attended any church since then Treat religious
 21 figures rudely and do not trust them around my children
 22 or children in general Also because I was
 23 unconscious, I need to come to terms with the fact that
 24 I may have been abused "
 25 Q. And is the word may underlined?

1 Q. Have you been diagnosed with that by anyone?
 2 A. By Dr. John Bernard
 3 Q. Have you ever had any depression at any time
 4 before this?
 5 A. No, sir
 6 Q. And Dr. Bernard's been your primary physician
 7 for an extended period of time, hasn't he?
 8 A. Yes, sir
 9 Q. Five or so years?
 10 A. Yes, sir
 11 Q. And when you first came under his care, like
 12 most doctors, did he ask you to go ahead and fill out a
 13 long questionnaire?
 14 A. Yes.
 15 Q. I'm going to mark this as a group exhibit.
 16 These are the 160 pages of records provided to us by
 17 doctor -- by the CPTCC?
 18 A. College Park Family Care Center
 19 Q. Is that where Dr. Bernard is?
 20 A. Yes
 21 Q. And that's where your wife worked at
 22 one point?
 23 A. She used to, yes
 24 MR. NOCE. Go ahead and mark that.
 25 (Defendant's Exhibit E was marked for

1 identification)
 2 MR. NOCE: We've got Exhibit E. Do you got
 3 these, Dan?
 4 MR. CRAIG: Not here, no.
 5 MR. NOCE: Do you guys want me to make a copy
 6 of them to follow along?
 7 MR. CRAIG: Uh-huh
 8 THE WITNESS: All right.
 9 THE WITNESS: Do you mind if we take a break?
 10 MR. NOCE: Sure, absolutely
 11 VIDEOGRAPHER: We're going off the record at
 12 3 24 p.m.
 13 (A break was taken)
 14 VIDEOGRAPHER: We're back on the record at
 15 3.36 p.m.
 16 Q. (By Mr Noce) Mr Visnaw, I've handed you a
 17 copy of Exhibit E. I gave a copy to your lawyer.
 18 These are the records, 160 pages from CPFCC, with
 19 actually an affidavit telling us that these are all the
 20 records at that medical facility regarding treatment
 21 and care provided to you, and you've already told us
 22 you know who that entity is. What is that again?
 23 A: College Park Family Care Center.
 24 Q. And that's where Dr Bernard practices?
 25 A. Correct.

1 the top?
 2 A. Yes, sir
 3 Q. And you were treating with that physician
 4 for -- what was the problem you were having?
 5 A. A bulging disk in my back.
 6 Q. Okay Did you ultimately have surgery for
 7 that?
 8 A. No, sir
 9 Q. Are you still treating with him for that?
 10 A: No, sir, I'm not
 11 Q. What -- how was that resolved?
 12 A. I went to a chiropractor. And the bulging
 13 disk still gives me pain, but he wanted to do another
 14 epidural, and I already had one epidural done.
 15 And I don't know how women do it when they're
 16 pregnant, but it's the worst thing I ever felt, so I
 17 just decided you know what, I'd rather live with the
 18 minor pain it causes than go back and have an epidural
 19 done again
 20 Q. When you filled out this form, was it your
 21 intention to fill it out as fully, completely, and
 22 accurately as possible?
 23 A: Yes
 24 Q. And I direct your attention under the heading
 25 of head and neck. There was a place for depression or

1 Q. And he's been your physician since at least
 2 about 2000 Right?
 3 A. I think it's actually '99, right after -- it
 4 was either right before or right after I got married to
 5 my wife.
 6 Q. And I'm going to direct your attention to some
 7 of these records and go through it with you to see if
 8 you can verify certain parts of the records as being
 9 accurate or whatever
 10 So if you look at the second page -- actually,
 11 it would be the third page. It's a series of
 12 questions. I think it starts at -- on the first page
 13 and then you keep continuing.
 14 Do you recall that on occasion the physician
 15 would ask you to fill out these records?
 16 A. This was actually I think in regards to some
 17 back pain that I was suffering from a bulging disk, but
 18 yes
 19 Q. Okay. And the only reason I'm directing your
 20 attention to Page 3, was it your understanding you were
 21 there and you're supposed to go through these and tell
 22 him whatever problems you have?
 23 A: Yes
 24 Q. And was there a place -- and the date on this
 25 record, I believe, is January 10th, 2005 if you look at

1 anxiety. It's on the third page Did you check that
 2 you had any problems with that as of January 10th,
 3 2005?
 4 A. No, I didn't
 5 Q. Was that accurate?
 6 A. I believe so at that time, yes.
 7 Q. And there's -- it continues with some more
 8 questions. I think if you keep turning pages with me,
 9 there's a page that looks like this.
 10 The top of it says please answer the following
 11 questions about other symptoms you may have. It's that
 12 page Do you see the one -- it's about the fifth page?
 13 A: Uh-huh, this one here?
 14 Q. Let's see if that's the one Yes, sir.
 15 A: Okay.
 16 Q. On that, does it ask the question again --
 17 well, strike that Let me ask you this: Had you
 18 filled this out all at about the same time back in
 19 November -- or January of '05?
 20 A: It was all part of the in processing for that
 21 particular doctor
 22 Q. Okay And on that page, there's a question
 23 under psych It says, does your pain cause you to feel
 24 sad or depressed on a regular basis, and you answered
 25 no Correct?

1 A. That's what's there, yes
 2 Q. Okay. And was that correct?
 3 A. Yeah, yes, sir.
 4 Q. Thank you. On the next page, it lists -- it
 5 indicates -- and you're asked to fill out and relate
 6 the medicines you're taking. Do you see that?
 7 A. Yes, sir.
 8 Q. List all of the medications you currently
 9 take, and it says Paxil, 12.5 milligrams?
 10 A. Yes, sir.
 11 Q. One a day?
 12 A. Uh-huh.
 13 Q. And is that a medicine that you were taking as
 14 of January 10th, 2005?
 15 A. Yes.
 16 Q. And what was that for?
 17 A. Again, as I stated earlier, at the request of
 18 my wife I had gone in to the doctor. And he gave me a
 19 little written test as far as to see if I was
 20 depressed.
 21 And, I mean, everybody has bad times,
 22 whatever, so he would have prescribed that. If I
 23 remember correctly -- I'm sure it would be in here
 24 somewhere, the purpose for that.
 25 But if I recall, it was because I was having

1 looking from November 2004 to December 2005 or when,
 2 sir?
 3 Q. Well, I don't know. How long were you taking
 4 Paxil once a day?
 5 A. As I said, I was prescribed it. I don't know
 6 how long I actually took it. I don't recall the amount
 7 of whether it was weeks, days, or whatnot.
 8 But it's always been my belief that unless you
 9 have a true reason to be depressed, I shouldn't be on
 10 anti-depressants. So I made -- I made a judgment call
 11 on my own and just stopped taking the medicine.
 12 Q. Is it Bernard or Berard?
 13 A. Bernard.
 14 Q. Bernard, okay. And was Dr. Bernard the first
 15 physician who had prescribed Paxil or any other
 16 anti-anxiety medication for you?
 17 A. I believe so.
 18 Q. And it was your understanding you were taking
 19 it because of some problems at work causing you anxiety
 20 and depression?
 21 A. Like I said, everybody has bad days. I mean,
 22 it was at the request of my wife that I go in and talk
 23 to him.
 24 And he gave me a test and said, you know, I
 25 don't -- I don't think that you are, but just in the

1 some difficulties at work. You know, just at that time
 2 in 2005, I was working for an individual that I didn't
 3 really care for that was pretty much being extra harsh
 4 on me as an agent and just wasn't dealing with it all
 5 that well.
 6 Q. Who was that?
 7 A. Doug Bemis.
 8 Q. Is he still in your office?
 9 A. No, sir. He has since left the agency.
 10 Q. And as a result of that, who was the physician
 11 who prescribed Paxil for you?
 12 A. I'd have to say it was Dr. Bernard, but I
 13 can't --
 14 Q. And how long were you on that medicine?
 15 A. I believe I didn't even -- I mean, I was
 16 supposed to take it once a day. I don't think I took
 17 it at all. He had given me some samples, and I don't
 18 even think -- I don't recall even taking the medicine.
 19 Q. So is the record you filled out accurate or
 20 not accurate?
 21 A. That was -- yes, it's accurate, I mean, at the
 22 time.
 23 Q. And for what period of time is that answer
 24 accurate then?
 25 A. Rephrase the question. I mean, are you

1 event that, you know, you should have some issues.
 2 Q. Did he actually give you a prescription, or
 3 was it just --
 4 A. I don't -- I don't recall. I'm sure it would
 5 be in the medical records.
 6 Q. And do you remember -- and I don't mean to be
 7 repetitious, but do you remember what the period of
 8 time was that you were on --
 9 A. No, sir, I do not.
 10 Q. On Paxil.
 11 MR. CRAIG. Also, Jerry, I'm not sure we're
 12 clear on these dates here. I mean, I'm not trying --
 13 I'm just trying to help you out really.
 14 I don't know if this January stuff is
 15 connected to this stuff where it says Paxil, because it
 16 looks like the date might be, I don't know,
 17 November 30th of '05 or something like that if you
 18 look.
 19 MR. NOCE. Well, I don't know. That's why I'm
 20 trying to ask him if he recalls.
 21 MR. CRAIG. Do you see this?
 22 THE WITNESS. Yeah, I see right here, but --
 23 MR. CRAIG. It looks like it's the end of this
 24 whole section, this whole back pain section.
 25 THE WITNESS. Right, that's --

1 MR. CRAIG: I'm not trying to interject
 2 MR. NOCE: No, no
 3 MR. CRAIG: I'm assuming it's all from January
 4 '05, but.
 5 MR. NOCE: Well, let me just ask
 6 MR. CRAIG: I don't know if it is.
 7 Q. (By Mr. Noce) You do recall being prescribed
 8 Paxil as a result of some anxiety caused at work?
 9 A. I didn't recall it until I just saw it here on
 10 this -- on this -- on this in processing sheet for this
 11 doctor I mean, I don't recall it until I saw this,
 12 and then --
 13 Q. Do you -- you know, were you prescribed Paxil
 14 for something happening at work?
 15 A. I can't guess. I can't say yes or no There
 16 was tensions, anxieties at work. It may have been, but
 17 without actually talking to Dr. Bernard and
 18 reconfirming that, I couldn't say yes or no on that.
 19 Q. Okay. Now do you see the next page? And this
 20 is the one -- I'm not sure I guess it is November 30,
 21 '05 Do you see that page?
 22 It's two after the one we just talked about --
 23 or three after the one that mentioned the Paxil. Do
 24 you see the one I'm pointing to?
 25 A. Yes, sir. This one here?

1 we're looking at -- I'm going to go ahead and mark that
 2 specific page as Exhibit F
 3 A. I mean, that's how I would look at it. Again,
 4 I would have to say that the -- that the official thing
 5 would be in here somewhere.
 6 Q. And the only reason I'm asking you is you
 7 signed it and it's your record. I'm just -- it's a
 8 record from your doctor regarding treatment for you.
 9 A. Sure
 10 MR. NOCE: Mark that Exhibit F.
 11 (Defendant's Exhibit F was marked for
 12 identification)
 13 Q. (By Mr Noce) There's Exhibit F which is a
 14 part of the Group Exhibit E Correct?
 15 A. Correct.
 16 Q. All right And it has your signature. Now
 17 the best you can recall for us, what's the date that
 18 you signed that exhibit, that Exhibit F?
 19 A It appears here to be January 30th, 2005, but
 20 again, I can see how it would be construed as maybe
 21 November 30th, 2005, but I believe it would have been
 22 January 30th, 2005
 23 Q. And you have checked above your signature on
 24 the first box sexual abuse, and you checked yes?
 25 A Yes, I do

1 Q. It's this one Yeah, that's it
 2 A. Yes, sir.
 3 Q. All right. And all these records are a part
 4 of Exhibit E, correct, Mr Visnaw?
 5 A. (Witness nods head)
 6 Q. Okay. And is that your signature there on
 7 that page?
 8 A. Yes, it is.
 9 Q. And can you read the date for us? Is that
 10 November 30?
 11 A. You know, it almost looks like to me that when
 12 it was copied -- if these were actually copies Do you
 13 have an original, or was it a copy of an original?
 14 It would appear to me that it would more
 15 likely be a smudge or something noticing all the other
 16 additional things. It could have very well been a
 17 smudge
 18 I remember seeing this doctor in January of
 19 2005 or early February and having to fill out the
 20 intake sheet, and it's probably possible that I filled
 21 out the intake sheet on January 5th, 2005 and didn't
 22 consent to his treatment until January 30th.
 23 Q. Of?
 24 A. Of 2005.
 25 Q. Okay. So do you believe this record that

1 Q. Okay And --
 2 A Well, that doesn't make sense. The date
 3 doesn't make sense
 4 Q. And, yes. How long ago? 20 years ago.
 5 A. 20 years ago
 6 Q. Okay And is that in your handwriting?
 7 A. Yes, it is, but what I think is that this
 8 is --
 9 Q. Take your time Tell us what you think.
 10 That's why I'm asking you, because it's your record.
 11 A. I think this is something that I completed for
 12 Dr Bernard, and this was not -- these records here are
 13 not for Dr Bernard. These are for a Dr. Wheeler, the
 14 pain management specialist for College Park Family Care
 15 Center
 16 This would have been something in November --
 17 now I -- November 30th of 2005 is when I believe my
 18 first -- when I went to Dr. Bernard and let him know
 19 what was going on and whatnot
 20 And he would have administered -- I wouldn't
 21 say administered He would have given me this to fill
 22 out to say, you know, as part of the quote/unquote
 23 depression/anxiety consultation that I had with him
 24 These records here are from Dr. Wheeler and
 25 the pain management therapy that I was going to seek

1 through him, and --
 2 Q. Was that for your back?
 3 A. That was for my back. And what he described
 4 to me was that it more than likely was not my back or
 5 my neck, so to speak. It was the way -- the position
 6 of the muscles in my scapula were rehabbed incorrectly
 7 after my surgery, therefore, causing them to spasm
 8 occasionally and cause me the pain in my neck -- in my
 9 neck and my back.
 10 And I believe -- I'm going to make a leap of
 11 faith here -- that this is a document that I would have
 12 completed for Dr. Bernard with regards to what had
 13 happened with Dr. -- with Brother Mueller and going
 14 through counseling and so on
 15 Q. And I just want to make sure we're getting it
 16 accurate. Does it look to you -- and take your time
 17 and read it, whatever you need to do Does this look
 18 like one complete record?
 19 Because -- and the only reason I mention that
 20 is none of the other pages have a signature line at the
 21 bottom until we get to the last one, Exhibit F
 22 I mean, does Exhibit F appear to you to be the
 23 last record in a series of, you know, questions that
 24 you answered for -- in order to get treatment from a
 25 physician?

1 A. It is the same. It would be part of that same
 2 record.
 3 Q. And how about the fourth page? Do you think
 4 that is the back of Page 3?
 5 A. Yes, sir
 6 Q. And the fifth page where it says please answer
 7 the following, etc., that we talked about, is that
 8 still a part of this first record?
 9 A. Yes, sir
 10 Q. And how about the next page that says please
 11 answer the following about your past medical history?
 12 Is that all again part of the same record?
 13 A. Again, as well, yes, sir
 14 Q. And the next page, do you take any of the
 15 following: Aspirin, etc, do you see that page? Is
 16 that all still a part of the same record?
 17 A. That is -- I think -- I don't think so. I
 18 think it's a different -- I think it's a different part
 19 of that.
 20 Q. We'll have to ask him probably.
 21 A. I don't know
 22 Q. Okay But what is your best recollection as
 23 it relates to Exhibit F? When do you believe you would
 24 have filled out Exhibit F?
 25 A. This one?

1 A. Well, let's make another discussion here.
 2 This is actually January 10th, 2006 on the front of
 3 this one. It's January 10th, 2006
 4 Q. Okay. Are you sure that's '06 or is that an
 5 '05?
 6 A. I believe from what I see here, it looks like
 7 an '06.
 8 Q. Okay And if we start with that one, where
 9 does that first one -- because if you look at it, it
 10 says -- and let's -- we need to try to keep them in the
 11 order we received them from Dr. Bernard's office
 12 A. Well, this is how it is here.
 13 Q. Sure. The one you're saying '06 at the bottom
 14 says over Do you see that?
 15 A. Yes, sir.
 16 Q. So do you think the second page is a part of
 17 the first page?
 18 A. I believe that what we see as -- what we're
 19 identifying as the first and second page --
 20 Q. Yes, sir
 21 A. -- are actually front and back of the same
 22 page
 23 Q. Is the third page a part of that same record,
 24 or is that a different record do you think, the
 25 one with the bodies at the bottom?

1 Q. Yes, sir
 2 A. It very well could have been November 30th,
 3 2005 after seeing this I was looking at it from this
 4 point of view, so yes
 5 MR. NOCE. All right. Now I'm going to -- if
 6 you keep going after F, do you want to go ahead and
 7 mark G? Mark it on his if you would. And it's Page 2,
 8 and it's dated 9/3/05 -- wrong one. Sorry. Looks
 9 like -- there you go Would you mark that one as
 10 Exhibit G
 11 (Defendant's Exhibit G was marked for
 12 identification.)
 13 Q. (By Mr. Noce) Again, Exhibit G is a part of
 14 the records we received from Dr. Bernard's office which
 15 is -- the general exhibit is Exhibit E.
 16 And it's with regard to -- it's kind of
 17 confusing, because the date printed if you look at the
 18 top is 10/6/06 or 10/2/02, but I think the actual
 19 treatment date is 9/23/05?
 20 A. Yes, sir
 21 Q. All right And this was treatment for you
 22 with Dr. Bernard, and it says here he is married times
 23 6 years as of that date Is that accurate?
 24 A. Yes, sir.
 25 Q. Okay. Previously married for about 6 months

1 He has a 10 year old stepdaughter, etc., etc., and it
2 goes down, criminal investigator for immigration, and
3 then it says he has filed a workers' -- he has filed
4 for workers' comp. Is that accurate? Did you have a
5 comp claim going?

6 A On this, I think what he's referring to is
7 the --

8 Q. The back injury?

9 A. No, the EAP, going through EAP for counseling,
10 because it's right around that same time as when the
11 Brother Mueller stuff was made public

12 Now not to confuse that with back in '99, I
13 was injured on the job and did file a workmen's comp.

14 Q. What was -- what was that about?

15 A. That was for my back.

16 Q. Okay. Now it says -- and let me ask you, did
17 you relate this information to Dr. Bernard as is stated
18 in the record: Never has been victim of emotional or
19 physical abuse. Is that a true statement? I'm going
20 to read the next one, too, but --

21 A. Yes, but as far as the context that he would
22 have written that in, I can't --

23 Q. And it says he was a victim of sexual abuse
24 20 years ago?

25 A. Yes.

1 occurred?

2 A. Correct, but there was no answer on there
3 suspected, are you a victim of sexual abuse, yes, no
4 suspected, so I had to go with the more affirmative of
5 the two answers.

6 Q. Well, were you answering a series of
7 questions, or was he just simply asking you why are you
8 here for treatment?

9 A. I was answering these questions.

10 Q. Those questions?

11 A. Yes, sir. If you notice, I love my job; are
12 you presently disabled, no, emotional abuse, physical
13 abuse, no; sexual abuse

14 Q. What's the date on those questions?

15 A. This, again, it's something 30/05.

16 Q. It's not September 23rd, '05, though, is it?

17 A. Not that I can tell. I wouldn't believe it to
18 be, but again, this is not the original. I would need
19 to see the original.

20 Q. What you're telling us is what you believe is
21 found on Exhibit G is a series of answers you were
22 making to questions in Exhibit F?

23 A. F, yes, sir.

24 Q. Okay. I'm going to direct your attention to a
25 record. It's probably 10 pages along, and it's dated

1 Q. And when you told him that, were you referring
2 to what occurred with William Mueller?

3 A. Yes, sir.

4 Q. And did you tell him that September 23rd,
5 2005?

6 A. I can't speak for the date. I don't know if
7 that's the date that it was, you know, put into the
8 system or what. I can't speak for the date, but
9 those -- that last statement there is accurate.

10 Q. Okay. And let me just ask you this: Do you
11 have any reason to dispute the date?

12 A. I don't know.

13 Q. You don't know one way or the other?

14 A. No.

15 Q. If the doctor's office says that's the date of
16 the record for your visit, would you dispute it?

17 A. Probably not, no, because they'll be able to
18 check it out.

19 Q. So as of -- as of September 23rd, 2005, did
20 you have information and evidence that you had been
21 actually a victim of sexual abuse 20 years ago?

22 A. I used the information that I obtained from
23 the media and all the information that was available to
24 make the leap of faith that yes, I was

25 Q. In other words, you were suspecting that had

1 February 8, 2006.

2 A. What's the page number at the top, sir?

3 Q. It's 20. Good, that's good.

4 MR. CRAIG: I'm sorry. What did you say the
5 date was, Jerry?

6 MR. NOCE: I think it's February 8, 2006. Do
7 you see that one?

8 MR. CRAIG: Oh, here.

9 Q. (By Mr. Noce) And it says under S, which I
10 think are symptoms under the doctor's records, it says,
11 38 year old white male notes significant improvement in
12 his generalized anxiety. On current Effexor therapy
13 And can you recall -- Effexor therapy, you were taking
14 Effexor at his prescription?

15 A. Yes, at his direction, yes.

16 Q. At his direction, okay. And do you know how
17 long that therapy lasted?

18 A. It's ongoing.

19 Q. And this is in February of '06. Had you
20 noticed an improvement, significant improvement?

21 A. I noticed that -- well, yes, I did. I noticed
22 that I could get through the day without just being --
23 becoming overcome by the emotion of what had happened,
24 because at that particular time, I was thinking about
25 it almost every day.

1 Q. Was there ever an occasion where you left work
2 on account of anxiety from what happened?

3 A. No. If I got to the point where I felt that
4 that was happening, I would just close my door and let
5 it run its course for however long and then suck it up
6 and drive on.

7 Q. Why don't you look at Page 22, Mr. Visnaw
8 There's a reference in here that you were concerned --
9 there was a medical procedure you were contemplating,
10 and there's a reference under the HPI section of this
11 page of your records that you had been molested in high
12 school by a Catholic priest.

13 And I know this isn't your record, but I
14 assume if there's a reference here, it's a reference to
15 William Mueller?

16 A. Yes.

17 Q. There was no other incident involving any
18 other cleric?

19 A. That's correct.

20 Q. And the date of that reference I think is
21 January 10th, '06. Do you see that?

22 A. Yes, sir.

23 Q. Okay. I think if you turn to Page 46 of
24 Exhibit -- as numbered in his notes of this man
25 Exhibit E, I think I made a note on something here.

1 take it

2 I believe also it had to do with the blood
3 pressure as well. I don't know. I don't know exactly
4 what it's used for, but I do know that he gave it to me
5 as an as needed, if you need --

6 Q. And your explanation about he, you, having a
7 strong family history of depression, you think that
8 relates to your wife's family?

9 A. I believe it relates to my immediate family
10 meaning my wife, because at that time we were
11 talking -- I was talking about moving to Vermont, and
12 she just was not happy about it at all.

13 You know, I don't -- I don't know. I'm trying
14 to think if my mom was ever being treated for
15 depression since my dad died. She may have. I don't
16 get into her medical history with her. I don't know.

17 Q. Okay. As far as you know, your family -- your
18 family which is mom, dad, or sisters did not have a
19 history of depression?

20 A. Not to my knowledge. They may have been -- if
21 you asked them, they'd probably say, yeah, I've been
22 being treated for so long, but is Bob aware of that,
23 probably not.

24 Q. And if you go down to -- I'm trying to see if
25 there's a way to describe. This is pretty far down.

1 A. Are we looking at the same page that he's
2 looking at?

3 Q. There's reference to a February 14th, '03
4 visit. Do you see is that down at the bottom?

5 A. Yes, sir.

6 Q. And there's a reference in here that you were
7 considering moving to Vermont for a job move. Do you
8 recall that?

9 A. Uh-huh, yep.

10 Q. Okay. It says, also he does have a strong
11 family history of depression. That's -- I think it's
12 usually agreeable among counsel that HX stands for
13 history. Is that accurate?

14 A. I don't think so. It may -- may be in
15 reference to my wife who I know was being treated for
16 depression and anxiety at that time. I don't recall
17 saying that I had a history of depression.

18 Q. Did you get a trial of Diovan? If you go to
19 the next page, it's a continuation of medicine.
20 Diovan, do you recall taking that medicine?

21 A. I never took it.

22 Q. Do you recall what that was prescribed for?

23 A. He gave that to me in response to -- I took
24 the anxiety and depression test, and there was no signs
25 of that. He said if you -- you know, if you need to,

1 A. What's the date of the fax at the top?

2 Q. The date of the fax at the top is October 2,
3 2006, so I think that's not going to help us.

4 A. But what's the page number on that?

5 Q. Page No. 1, actually. It's way down here.

6 A. That particular one?

7 Q. Yeah, that's it. That's it. So it appears
8 that you were treating with Dr. Bernard's office even
9 back in -- and I think you've told us this -- July
10 of -- July 3, 2000?

11 A. Uh-huh, yes, sir.

12 Q. Again, this is one of these questionnaires
13 that they ask you to fill out, and you tried to do it
14 as accurately as you could?

15 A. Yes, sir.

16 Q. Okay. And you did not check anything other
17 than chickenpox history and migraine headaches on those
18 lists?

19 A. Yeah, that was all I could recall at that
20 time.

21 Q. Okay. And if you turn to the second page of
22 that document, the same questionnaire, there's a place
23 under head and neck with regard that if you felt this
24 way you could indicate you'd had problems with
25 depression and anxiety, and that was left blank, wasn't

1 it?
 2 A Yes, sir
 3 Q. You had mentioned earlier that there was a
 4 mini patient health survey that you'd filled out. I
 5 think if you go to Page 6 -- I wanted to ask you if
 6 this -- Pages 6 and 7, was that what you were talking
 7 about?
 8 A. Yes.
 9 Q. Okay. And the date of that document, was that
 10 February 14th, '03 if you look at Page 2?
 11 A. Yeah, yes, sir, but that's not my handwriting.
 12 Q. Okay. And it's three sections --
 13 four sections: A, B, C, and D?
 14 A. Yes, sir.
 15 Q. Okay. And under Section A, it says -- do you
 16 recall why you were filling this out?
 17 A. This is -- was at the request of my wife to go
 18 in. If I remember correctly, it will correlate with
 19 the previous notes that you had brought up on that
 20 particular day about the history of family depression,
 21 and that was when we were talking about going to
 22 Vermont and --
 23 Q. Okay. Let me see if I can get back to that.
 24 Let me see.
 25 A. It's Page 46, I believe it is

1 depression. I mean, I was depressed or down. I was
 2 down. I was just not happy because my wife and I were
 3 arguing.
 4 Q. And also down in Section B, it says, have you
 5 worried excessively or been anxious about several
 6 things over the past six months, and you answered yes
 7 there?
 8 A. Yes, sir, I sure did.
 9 Q. What was that all about?
 10 A. Again, I think it goes to, you know, answering
 11 the question, yes, I've been worrying obsessively about
 12 how my wife and I are getting along because of the job,
 13 the job issue, me wanting to go to Vermont and her not
 14 wanting to go to Vermont.
 15 Q. And was that a two week problem or six month
 16 problem?
 17 A. I mean, over the time, a lot of work stresses,
 18 a lot of that, but I have to answer the questions
 19 accordingly. So over the last two weeks, yes, over the
 20 last six months, yes.
 21 Q. And these are the same problems that were
 22 making you restless, tense, tired, concentration
 23 problems, irritable?
 24 A. At that time, yes.
 25 Q. And is this why you were prescribed some

1 Q. There it is, okay. So Page 46 is referencing
 2 the visit on February 14th, '03. And as we get down
 3 here on these pages -- this mini patient health survey,
 4 it says -- there's a question that asks you have you
 5 been consciously depressed or down most of the day
 6 nearly every day for the past two weeks, and you filled
 7 in what?
 8 A. You're going to have to point that one out to
 9 me.
 10 Q. Okay. That's back here.
 11 A. On B? A and B or what?
 12 Q. Section A.
 13 A. Section A?
 14 Q. Yes, sir.
 15 A. May I ask what question?
 16 Q. Question 1.
 17 A. Question 1? I put yes, because that was at
 18 the time that my wife and I were arguing about possibly
 19 moving to Vermont for the job.
 20 She didn't want to leave. I looked at it as a
 21 promotion, so yeah, at that time the family issues were
 22 getting to me.
 23 Q. And what you considered to be arguments, you
 24 considered that to be a depression?
 25 A. Well, I was down. I'm not going to say it was

1 medication do you think back then?
 2 A. I would believe so. But, again, if I may
 3 clarify, I don't know what Diovan is for. I don't know
 4 if it's an anti-depressant or a high blood pressure
 5 medicine.
 6 Reading his notes, it almost looks like it's
 7 a -- possibly a combination of both. Because he's
 8 prescribing issues -- avoid salt, caffeine, and
 9 decongestants. I mean, that would all affect my blood
 10 pressure.
 11 Q. I think I'm done with that one. I think I've
 12 asked this. I don't think I did ask it, actually. Did
 13 you receive a letter from the Society of Mary back in
 14 September, October, November last year regarding
 15 William Mueller as it related to Vianney -- or strike
 16 that.
 17 Did you receive a letter from Vianney
 18 regarding William Mueller?
 19 A. I -- I personally did not. If it was sent, it
 20 probably would have been sent to my mother's old
 21 address, and I don't know -- I don't remember getting
 22 it.
 23 I think, actually, what ended up happening is
 24 there was a copy of the letter. Bryan Bacon had
 25 scanned it and sent it to me, because I told him I

1 hadn't received a letter yet and he said that he had
 2 his, so --
 3 Q. And did you ever attempt to contact the order
 4 at all?
 5 A. Negative. No, sir
 6 Q. And you have not been on any kind of a mailing
 7 list for like reunions or anything like that with the
 8 school?
 9 A. They sent me something for my
 10 20th anniversary. Again, I think it went through to my
 11 mom, but if I remember correctly, I actually found out
 12 about the information from the website, because I go
 13 there periodically to see how the swim team is doing
 14 and whatnot, and I had saw the 20 year anniversary.
 15 And I had responded to the individual doing
 16 the website that, you know, please pass on my
 17 condolences. I'm not going to be able to make it for
 18 that.
 19 Q. When you were 17, you mentioned the fact that
 20 these experiments occurred, he made you unconscious,
 21 and you passed out. And you thought under the
 22 circumstances then, you didn't think it was necessarily
 23 wrong?
 24 A. Yes, sir
 25 Q. That's true?

1 platoon, how many guns are in a platoon, where are
 2 these anti-aircraft sites versus these particular
 3 anti-aircraft sites. It was all strategic and tactical
 4 intelligence requirements driven by a commander's need
 5 for intelligence
 6 Q. As a part of that training, did you receive
 7 any criminal training at all?
 8 A. No, sir, that was a whole different specialty
 9 Q. And when you were in college, did you take any
 10 constitutional law classes?
 11 A. No, sir
 12 Q. Or business law?
 13 A. No, sir
 14 Q. Did you take any criminal justice courses?
 15 A. No, sir
 16 Q. When did you become interested in getting
 17 involved in law enforcement? You're in law enforcement
 18 now?
 19 A. Yes, sir
 20 Q. On a federal basis?
 21 A. Yes
 22 Q. All right. When did you get involved in doing
 23 that, or when did you get interested in doing that?
 24 A. After coming back from the Army in '96, it was
 25 presented to me. I was in the Reserves here in

1 A. Yes, sir
 2 Q. And when you went into the service, were you a
 3 criminal investigator in the service also?
 4 A. In the military?
 5 Q. Yes, sir.
 6 A. No, I was an interrogator.
 7 Q. And what did that involve?
 8 A. I was in the human intelligence branch in the
 9 United States Army, and that was -- you know, you
 10 received training in how to interrogate, debrief
 11 intelligence sources, and what to do, how to get
 12 information out of an individual either through, you
 13 know, befriending them or various other techniques.
 14 And that training there, I graduated that and went on
 15 to Korea.
 16 Q. Okay. And did any of that give you a criminal
 17 investigative background at all --
 18 A. No, sir.
 19 Q. -- in order to be able to interrogate people?
 20 A. No, sir
 21 Q. When you would interrogate people in the
 22 military, were you questioning them as it related to
 23 military matters as opposed to investigating crimes?
 24 A. It was strictly military related, what we
 25 called order of battle, how many people are in a

1 St. Louis.
 2 My platoon leader or one of the lieutenants in
 3 the service in the Reserves wanted to know if I'd be
 4 interested, and I said I'm not sure. I mean, it's got
 5 to be -- it's got to be a good job. I mean, it's
 6 federal law enforcement.
 7 But my career orientation, and I'm going to go
 8 back to Vianney, was when I graduated from Vianney, I
 9 wanted to be a school teacher who taught Spanish.
 10 Instead, I ended up going into the military
 11 and then coming out and going back to Citicorp
 12 Mortgage, as I said, and then finding the position with
 13 the then Immigration & Naturalization Service.
 14 Q. And your work at Citicorp was collections?
 15 A. Initially it was customer service, and then I
 16 transitioned into collections, yes.
 17 Q. And did you work with lawyers helping you in
 18 that regard?
 19 A. No, sir
 20 Q. Or criminal investigations in that regard at
 21 all?
 22 A. No, sir
 23 Q. So your first training -- criminal work
 24 training would have been in 1996?
 25 A. Actually, I would have been exposed to it at

1 that point, but my official -- the first class I would
2 have attended would have been when I went through the
3 Federal Law Enforcement Training Center the following
4 year

5 Q. '97. Right?

6 A. Yes, sir.

7 Q. At that time, you were 31 or what?

8 A. In '97?

9 Q. Yeah

10 A. 30.

11 Q. 30, okay And when you started taking that
12 training, did you know then that these things had
13 occurred to you? Did you still remember that they had
14 occurred to you, what you've talked about today?

15 A. I remember being part of the master's program,
16 the tests, so to speak, but even at that time, there
17 was -- I didn't remember the abuses that had happened.

18 Q. All right. Well, you remembered the knife to
19 your throat always?

20 A. Yes, sir.

21 Q. Did you think that that -- after you received
22 your criminal training at the federal level, did you
23 believe that that was still okay, the knife to your
24 throat?

25 A. The training that I received dealt primarily

1 Q. And you didn't have any thoughts in your mind
2 that someone holding a knife to your throat when you
3 were 17 was wrong?

4 A. At that time, no, because I was still looking
5 at it from I was a part of the experiments. And I
6 really didn't discuss it with anybody

7 Q. No, and I'm not asking you that, but what I'm
8 asking you is did you think that that was something
9 that was wrong that was done to you?

10 A. Under -- as I've explained to you before,
11 under the belief that it was done in furtherance of
12 somebody's education and not recalling the sexual abuse
13 that was done, I thought it was still okay.

14 Q. You knew it happened, you knew that somebody
15 had put a knife to your throat, but you thought it was
16 okay still, even after going through a federal criminal
17 training program?

18 A. Yes.

19 Q. At age 30?

20 A. Yes.

21 Q. And you still thought it was still okay that
22 an adult would tell you not to tell anybody about what
23 you were doing? Did you still think that was okay,
24 too, at age 30 after going through this federal
25 criminal program?

1 with constitutional law, search and seizure, those
2 types of issues And then we went in to the criminal
3 violations and the administrative violations of
4 immigration law

5 So being able to say that what happened to me
6 at 17 years old, was that wrong after going through the
7 Federal Law Enforcement Training Center, I can't say
8 yes or no because I was not exposed to those -- that
9 type of criminal law at that point.

10 There was nothing for me to bounce anything
11 against. We dealt exclusively with illegal immigrants.

12 Q. How long was the training program that you
13 went through, that federal criminal law program?

14 A. It was all put together We did criminal law,
15 constitutional law, and what we call immigration and
16 naturalization law or NATS law NAT I want to say it
17 was 16 weeks.

18 Q. And by the time you completed it, you were
19 30 or 31 years old?

20 A. I was 30.

21 Q. And you were going -- 30 years old and you
22 were going to become a criminal -- a federal criminal
23 investigator?

24 A. For the Immigration & Naturalization Service,
25 yes.

1 A. That really didn't hit home with me until
2 after the merger between immigration and customs which,
3 you know, predated -- it was in 2003, I believe it was

4 But it wasn't until truly at the time of
5 September 2005 that all the pieces fell together, that
6 it was -- that I realized that it was wrong what had
7 happened to me because of everything that had come out.

8 Q. And let me just ask it this way: At age
9 30 after completing the federal criminal program, you
10 knew then, as you always knew, that William Mueller
11 told you do not tell anybody about these experiments?

12 A. Yes

13 Q. And you knew then, as you always knew, that he
14 stuck a knife to your throat?

15 A. Yes

16 Q. You always knew that?

17 A. Yes.

18 Q. Okay And you also knew that he made you
19 hyperventilate until you passed out?

20 A. Yes.

21 Q. And you -- that was something that's never
22 been repressed. You always knew that, too?

23 A. Yes.

24 Q. And you never thought that even after you
25 completed your federal criminal program in education,

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1 you never thought that was wrong?
 2 A. No, because what we were taught through the
 3 Federal Law Enforcement Training program is that in
 4 order to have a crime occur, there typically is mens
 5 rea and actus rea. You have to have a criminal mind in
 6 conjunction with a criminal act.
 7 And my belief at that time was even though he
 8 held a knife to my throat, was I in danger? And I
 9 thought no. So, therefore, in my opinion at 30 having
 10 just completed the Federal Law Enforcement Training
 11 Center that the mens rea was not there
 12 Q. You knew all about mens rea?
 13 A. That was part of the -- part of the
 14 criminal --
 15 Q. What was the other Latin term you used?
 16 A. Actus rea.
 17 Q. Actus rea. So you knew all about that from
 18 your training with the federal government?
 19 A. It's part of the instruction, yes, sir.
 20 Q. Okay. Did you have any training on
 21 pornography?
 22 A. Not then, no.
 23 Q. Have you had any since?
 24 A. I have not had any official training on child
 25 pornography.

1 Q. Okay. And when that was done in 1997, did you
 2 think anything that William Mueller did to you was
 3 wrong?
 4 A. As I've already stated, you know, it wasn't
 5 something that was on my mind every day, so it wasn't
 6 even given a second thought for the most part.
 7 You know, if I thought about it at the time,
 8 yes. But, I mean, you're asking me to speculate about
 9 it if it was on my mind every day. No, it wasn't on my
 10 mind, so therefore, I couldn't have made a judgment
 11 call on that.
 12 Knowing what I know today, yes, it was wrong.
 13 I'm not going to say that at the age of 30 after
 14 completing the federal training center that it was
 15 wrong, no, because I did not have the full information
 16 with which to make a judgment.
 17 Q. Did you ever participate in any pornography
 18 prosecutions or investigations?
 19 A. I have conducted one and only one computer
 20 forensics examination on a child pornographer.
 21 Q. When was that?
 22 A. About two years ago. I don't know the
 23 exact -- the exact time frame.
 24 Q. Was there a prosecution?
 25 A. I was -- I was the forensics examiner. There

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1 Q. How about unofficial training?
 2 A. When you go through a computer forensics
 3 course, you're taught the methods and techniques to
 4 identify files of interest.
 5 And there is no one course out there, official
 6 or unofficial, that can say this is child pornography,
 7 thus isn't.
 8 Q. When was the first time you had any training
 9 in that area?
 10 A. In computer forensics?
 11 Q. No, in child pornography.
 12 A. I've not had any official training in child
 13 pornography.
 14 Q. And the training then you're talking about,
 15 that covered and included pornography?
 16 A. The first time that I had that was -- I'm
 17 thinking how it was -- I want to say May of 2000 or May
 18 of 2001. I'm not -- it's been a long time.
 19 Q. After you finished and completed all this
 20 federal criminal background training that you took --
 21 and I think you said you took it in Georgia?
 22 A. Yes, sir.
 23 Q. In '97. And you completed it successfully,
 24 and you were tested on it?
 25 A. Yes.

1 was another agent that was actually the prosecuting
 2 agent.
 3 Q. And was there a prosecution?
 4 A. Yes, sir.
 5 Q. Were you involved in the prosecution?
 6 A. The only thing I was involved in was examining
 7 the computer and getting that information to the case
 8 agent.
 9 Q. And did you end up testifying?
 10 A. No, sir.
 11 Q. Have you ever testified in court?
 12 A. Yes, sir.
 13 Q. On -- is that part of your job?
 14 A. Yes, sir.
 15 Q. Have you been trained to testify?
 16 A. We have not been -- as far as formal training
 17 on how to testify?
 18 Q. Yes, sir.
 19 A. At the Federal Law Enforcement Training
 20 Center, you are given a simulated case. And at the
 21 culmination of that case, there is a mock trial, and
 22 that's really your only exposure at the Federal Law
 23 Enforcement Training Center for trial. Everything else
 24 is, you know, dealing with the prosecutor's office.
 25 Q. Do they videotape that mock trial?

1 A. I don't know if they do or don't
 2 Q. Well, did they in your case?
 3 A. I don't remember.
 4 Q. Okay Do you recall anybody going over how
 5 you testified to tell you that was good, that was bad?
 6 A. Afterwards?
 7 Q. Yes, sir.
 8 A. Yes, there was a critique.
 9 Q. Was it by an attorney?
 10 A. It was by the instructors, and if I remember,
 11 most of the instructors there did have a legal degree
 12 Q. How many times have you testified in court?
 13 A. Are you including grand jury on that as well?
 14 Q. Sure, sure
 15 A. More than 10
 16 Q. And do you generally work with the
 17 U.S. Attorney in doing that?
 18 A. Yes, sir.
 19 Q. Do they help you in preparing?
 20 A. No, sir. They -- what they give us is the
 21 information that we provide them They may give it to
 22 us in the form of the indictment, but it's all based
 23 off the information that's provided to them through the
 24 prosecution reports that we provide.
 25 Q. Aside from the forensic computer work you've

1 new I went to him and said I need to let you know
 2 about this litigation that's going on in case someone
 3 does contact you
 4 And we discussed my forensics status, and it
 5 would be best for not only me but for any prosecution
 6 that I would subsequently be involved in.
 7 Q. Did you ever discuss Wilham Mueller with your
 8 current wife at any time before September of 2005?
 9 A I don't think so, no.
 10 Q. How about your first wife?
 11 A No.
 12 Q. And we've already talked about what you talked
 13 about with your dad. How about your mom at all other
 14 than when she contacted you?
 15 A I don't recall, but I don't think so.
 16 Q. Would you have ever discussed it with your
 17 sisters at all?
 18 A Not until after September of 2005.
 19 Q. Have you talked to Eddy at all -- Matt Eddy at
 20 all about this?
 21 A In relation to this, no, not at all.
 22 Q. Have you ever talked to Matt Eddy about
 23 William Mueller?
 24 A. I may have when we were still in school
 25 together Again, I -- like I said, I may have. I

1 talked about as it relates to pornography, have you had
 2 any other specific training regarding pornography?
 3 A. No, sir.
 4 Q. In the work that you -- in your training as it
 5 relates to forensic pornography, did you see anything
 6 in that work that you relate to what happened to you in
 7 1984 and 5?
 8 A. No, sir. In fact, when this was brought to
 9 my -- what we call the assistant special agent in
 10 charge, Patrick Bard, he and I both agreed that I'm
 11 not to do any more child pornography investigations.
 12 Q. Why is that?
 13 A. It just -- as he stated --
 14 Q. I'm sorry. Who said that?
 15 A. My assistant special agent in charge, Patrick
 16 Bard.
 17 Q. And he said that because of this?
 18 A Because of this He just said, you know,
 19 there's no reason to create a headache with that
 20 We'll just -- when you do computer forensics, you'll do
 21 it for financial records and fraudulent documents. If
 22 there's child pornography on there, that's -- we'll
 23 deal with that if it shows up
 24 Q. When did he tell you that? Last year?
 25 A. Yes, it was when I went to him. He was fairly

1 can't say yes or no.
 2 Q. Did you discuss with him the experiments?
 3 A I can't -- I don't recall.
 4 Q. And would there have been anybody else that
 5 you would have talked to while at Vianney while a
 6 student in the school about these experiments?
 7 A No
 8 Q. Is there anybody up to September 5 -- or
 9 September of 2005 that you discussed these experiments
 10 with other than your father?
 11 A Not to my knowledge
 12 MR NOCE: Why don't we take about a 10 minute
 13 break. I'll look through my notes, because I think
 14 we're about done
 15 VIDEOGRAPHER. We're going off the record at
 16 4:33 p.m
 17 (A break was taken)
 18 VIDEOGRAPHER. We're back on the record at
 19 4:39 p.m
 20 Q. (By Mr Noce) If you look at Exhibit B,
 21 Mr Visnaw, I'm going to direct your attention to your
 22 Answer No 6
 23 A Okay I'll have to find Exhibit B. I've got
 24 A and C Did I attach it back here? It's attached
 25 back here

1 Q. Got it?
 2 A. I believe so
 3 Q. Okay. There you go
 4 A. Yes, sir.
 5 Q. All right. Look at Answer No 6. And I know
 6 who Brandi, Julee -- Ann Marie is your mom?
 7 A. Yes, sir.
 8 Q. And then there's a Katie Odenwald who is a
 9 cousin?
 10 A. Yes, sir.
 11 Q. What would be -- now what would be the
 12 occasion that you would talk to your cousin about this?
 13 A. Just to let her know.
 14 Q. Let her know what?
 15 A. That it had happened and that there would be
 16 some bad times and some good times, and you know, just
 17 family, letting her know
 18 She's the closest -- outside of my wife and my
 19 kids, she's the only family I have in Kansas City.
 20 Q. Okay. And is she your cousin on your mom's
 21 side?
 22 A. Yes.
 23 Q. Or dad's side? Okay And is she close to you
 24 in age?
 25 A. No, no. She's I think 11 years younger, maybe

1 that you know?
 2 A. Kurt Odenwald is not a relative of mine He
 3 is my aunt's brother-in-law
 4 Q. You know him to be a lawyer?
 5 A Yes
 6 Q. And county councilman in St Louis County?
 7 A. Yes
 8 Q. Have you ever discussed this with him at all?
 9 A. No, sir
 10 Q. So what you were doing was you were going to
 11 talk to your Aunt Barbara and discuss with her how to
 12 discuss this with mom?
 13 A. Yes, and also to let her know what was
 14 happening so that when I did eventually break it to my
 15 mother, if my mother came to her and said this is
 16 crazy, give me a shoulder to cry on, she knew what was
 17 going on.
 18 Q. And this would have been -- like you say, in
 19 the fall. It would have been sometime after your mom
 20 called you to talk about Mueller?
 21 A Yes
 22 Q. All right. And you talked about Mueller in
 23 general terms with your mom, but you certainly didn't
 24 tell her anything beyond that, did you?
 25 A. Correct What I spoke with my mom about was,

1 12 years younger than me
 2 Q. And then there's Barbara Odenwald, lives in I
 3 guess south St. Louis?
 4 A. Uh-huh, yes, sir.
 5 Q. That's your aunt?
 6 A. Yes.
 7 Q. What would be the occasion for discussing this
 8 with her?
 9 A. I let her know, because after my sister died
 10 in May of 2005, my mom was -- you know, just thinking
 11 that everything was -- the whole world was coming down
 12 on her
 13 And I didn't know how to bring it up to my mom
 14 not to totally crush her, so what I had done is I
 15 consulted my aunt and talked to her about it and sought
 16 her advice on how to go about, you know, breaking this
 17 to my mom
 18 Q. Were there any other -- does Katie have any
 19 other siblings?
 20 A. Yes She's got three brothers and another
 21 sister.
 22 Q. Okay. What the brothers' names?
 23 A. Karl, Jr., Daniel, and John, and the sister's
 24 name is Krista.
 25 Q. Kurt Odenwald, is that a relative of yours

1 you know, I believe that the reason he's in the news,
 2 excuse me, is that, you know, having seen everything,
 3 probably for child molestation.
 4 And she had asked again -- I'm reiterating
 5 again. Well, he didn't do any of that to you? No, he
 6 didn't. So just trying to keep her from freaking out
 7 Q. In short -- within a week do you think of that
 8 conversation, is that when you called your aunt?
 9 A. I can't give you a specific time frame. I
 10 know it was after that conversation It could have
 11 been in October I don't -- I can't even tell you when
 12 I told Katie.
 13 Q. Did you tell Katie before you told your aunt?
 14 A. Yes
 15 Q. Okay. And then was it a phone call with your
 16 aunt that you had before discussing it with your mom,
 17 or did you come back to St. Louis and talk to her, or
 18 how did that happen?
 19 A. I think it was originally a phone call And
 20 then on one of the visits back, I believe it was after
 21 my son was born on January 31st, sometime in there, I
 22 had come back and we had talked about it again
 23 I don't remember if I had told my mom in
 24 between that or not, so my aunt wanted to know how
 25 things were going, how I was doing

1 Q. Had your name been in the papers here in
2 St. Louis?
3 A. I -- I think my name has only shown up in
4 one -- one instance, but I don't know if it was even
5 published in the newspaper I think it was something
6 that maybe SNAP had put out
7 Q. Do you -- I think you told me you're not a
8 member of SNAP?
9 A. Correct
10 Q. All right. Do you frequent or review their
11 website from time to time?
12 A. No, sir.
13 Q. And what -- you talked -- and I'm just trying
14 to get this straight, Mr. Visnaw, so I understand So
15 in order to tell your mother what happened, you first
16 talked to your cousin and then you confided in your
17 aunt and then you eventually talked to your mom about
18 it?
19 A. All the individuals listed here besides my
20 mother were actually notified or told about the
21 incident prior to me telling my mom
22 Q. Okay And you asked their advice on how to --
23 A. Well, my sister Julie who -- our relationship
24 got much better after my sister's death You know, I
25 confided in her as the immediate family member, because

1 And he happened to walk in and saw me close
2 the door and said, okay, what's going on? You're never
3 like this You're always either upbeat or working on
4 something You just don't close your door and have,
5 you know, this kind of reaction to something What's
6 going on?
7 Q. And what I'm gathering here is what we have
8 for an address here is all the work addresses?
9 A. Yes
10 Q. And the work phone numbers?
11 A. Correct.
12 Q. All right. So on one occasion, and it would
13 have been September of '05 after you sort of heard
14 about all this, you went out and Googled or whatever
15 and gathered information about Mueller and what was
16 happening?
17 A. I had gone and -- because my mother said he
18 was in the news, I thought immediately *St. Louis*
19 *Post-Dispatch*, so I went right to the *St. Louis*
20 *Post-Dispatch* website, and there was a picture of him
21 with the article
22 And I didn't -- I didn't -- I don't think I
23 finished the entire article I think that I started
24 reading and I got down to the point where they said,
25 you know, he was blind-folded, asked to undress down to

1 it's just, hey, this is what happened
2 And then Katie was told because she is my
3 family in Kansas City And then my Aunt Barb was told
4 not only to let her know but to also, you know, seek
5 her counsel on what -- what do I do when I tell my mom
6 I mean, how do I keep her from --
7 Q. Is she your mom's older sister?
8 A. Younger
9 Q. Younger sister, okay And then the next page
10 has some people that you talked about regarding William
11 Mueller, again, approximately in the fall of 2005.
12 Ricky Volkmann from Kansas City, who is that?
13 A. All of these individuals -- the first
14 three are co-workers, and then the last individual is
15 my assistant special agent in charge.
16 Ricky Volkmann is -- Ricky and Vicky have both
17 been there the whole time that I've been there
18 They're actually getting close to retirement right now
19 Of all the people at work, Ricky's probably the closest
20 person I'm to.
21 And the manner in which I told him was the day
22 that I went on the internet to pull the information up
23 while I was at work, I went to close my door because I
24 had literally started to shake at my desk and felt like
25 my whole world was just caving in on me

1 his underwear, and a knife was held to his throat, and
2 that's where like a lightning bolt just struck me.
3 And I wanted -- I just wanted to be alone I
4 went to close my door. He came in right after, I mean,
5 the door was closed
6 I got back to my desk, and he was walking in
7 He was actually coming in on something totally
8 unrelated, obviously, and sat down and said let's talk.
9 Q. Okay. When you downloaded all that
10 information, did you like set up a file of your own and
11 keep it?
12 A. I know that I've kept some of the e-mails or
13 some of the files that I had originally, but I deleted
14 those because at that point it was like why do I even
15 want to keep this around, why do you want to have this
16 information for me to go back and reread.
17 I mean, it bugs me now just to think about. I
18 don't want to have it I don't want to have any access
19 to it
20 So I've stopped going on the internet to try
21 to find stuff, and I haven't done that many months.
22 And any kind of electronic stuff that I have, I've
23 purged, because I just don't want it on my computer I
24 don't want to have any access to it
25 Q. At the time when you did that, did you simply

1 put it on your screen, read it, or did you print it?
 2 A. No, I just read it right off the screen.
 3 Q. So then all you had to do was knock it off?
 4 A. Close it out.
 5 Q. Okay All right And so you didn't actually
 6 put together a paper file about these materials?
 7 A. No, sir, no, sir But I think my mom has. I
 8 think my mom has cut out the articles from the paper
 9 There's an envelope from my mom at my house in
 10 St. Louis It's just a 4x8, 4x6 envelope that's got
 11 some articles in it. I just leave it on the shelf I
 12 don't even touch it.
 13 Q. And as I understand it, the reason you never
 14 discussed this with anybody for the longest period of
 15 time, what happened, was because you were directed not
 16 to talk to anybody about it?
 17 A. No, no. I was directed not to talk to anybody
 18 at the school. I was directed not to tell anybody what
 19 was going on while I was at Vianney, because I was led
 20 to believe that if word got out and other individuals,
 21 say brothers at the residence or at the school found
 22 out, then it would undermine why he was put there at
 23 Vianney.
 24 And I was told that he was put there to try to
 25 find out why brothers were leaving the order. And so

1 shame for what happened?
 2 A. Based upon what I knew to be at that time, no.
 3 Q. All the way up until September of 2005 And
 4 even when your mom called you, you did not relate to
 5 her the fact that you'd been involved in these
 6 experiments?
 7 A. No, because at that point I had seen -- I had
 8 gone on very quickly and saw the allegations And at
 9 that point, that's when -- I at least at that point in
 10 the very brief reading that I had knew that there was a
 11 problem and knew that I potentially could be a victim
 12 in this overall event.
 13 Q. And that's why you didn't talk to your mom
 14 about it?
 15 A. Yes, exactly
 16 Q. Because you thought there may have been
 17 something wrong that occurred?
 18 A. Yes
 19 Q. But up to that point, you never did?
 20 A. I never spoke with her about it I never
 21 thought that there was something that was wrong with
 22 it.
 23 Q. You never thought anything wrong had occurred
 24 to you up until September 2005?
 25 A. That's correct.

1 that is why I never told anybody while I was at
 2 Vianney
 3 The reason I never told anybody since
 4 graduating from Vianney is I had no reason to I
 5 didn't believe there was anything that was done that
 6 was wrong.
 7 Q. Okay. Why did you discuss it with your dad
 8 then?
 9 A. Because there was the letter from
 10 Brother Mueller. And what I discussed with him was
 11 that, hey, here's a letter from Brother Mueller. What
 12 do you want me to do with it? Go ahead and throw it
 13 away. I don't write him back.
 14 Why is he still writing you? Because we
 15 assisted in his master's degree. There was a group of
 16 us from what we were told, and he liked to keep in
 17 touch.
 18 I mean, it didn't seem odd to me that he would
 19 want to keep in touch with former students You know,
 20 I know a lot of people that either college instructors
 21 or high school people, hey, I know him He's my -- he
 22 was my coach in swimming or diving or football or
 23 whatever, so it didn't strike me as odd that he would
 24 want to keep in contact with me.
 25 Q. All right So you were -- you didn't have any

1 MR. CRAIG And obviously we've been over
 2 this
 3 Q. (By Mr. Noce) By William Mueller at Vianney?
 4 MR. CRAIG: I mean, are we having issues with
 5 closure on this deposition, Jerry?
 6 MR. NOCE. No, no, no. I'm getting there
 7 MR. CRAIG. It's repetitive here
 8 MR. NOCE. That's true.
 9 Q. (By Mr. Noce) Up to September 2005, to the
 10 extent that you remember what occurred, and you've
 11 already talked about that, you never thought any of
 12 that was wrong?
 13 A. That's correct.
 14 Q. You didn't give any statement to Ken Chackes
 15 about this at all?
 16 A. We talked about it briefly I don't -- I
 17 never gave him a formal statement. We just talked on
 18 the telephone.
 19 Q. Who are Mark and Cindy Sanderson?
 20 A. Friends of the family
 21 Q. Friends of your family in Kansas City?
 22 A. Yes
 23 Q. You and your wife?
 24 A. Yes
 25 Q. And what would be the occasion that you would

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1 discuss this with them?
 2 A It actually came out accidentally. We were --
 3 my distrust of clergy and priests. We were having
 4 lunch They had gone to church, and it was a weekly
 5 thing where we'd go to their house after church, after
 6 they had come back, and we'd have lunch at their house.
 7 And we were talking about -- my wife was
 8 bringing up the fact, well, you were pretty rude to,
 9 you know, Pastor Tim or whatever his name is.
 10 Q. You were?
 11 A. I was.
 12 Q. Okay.
 13 A. And Brandi had already known. This is
 14 after -- this is after September of 2005, so Brandi
 15 knew the circumstances.
 16 And it just came out. I said, well, if you
 17 had been molested by a clergy, and I stopped. And both
 18 Mark and Cindy were like, excuse me, so I related some
 19 generalities to them as a husband and wife
 20 And then Mark who is probably, you know, the
 21 most religious person that I even talk to, as I
 22 categorize that, pulled me aside and said, hey, you
 23 know, we need to talk, because I want you to know that
 24 I'm here to support you and I'm here if you need
 25 someone to talk to I'm here.

1 Q. We have mentioned the fact that you have
 2 incurred expenses, some expenses for medication as a
 3 result of the treatment you're undergoing for the
 4 damages you're claiming in this lawsuit. That's
 5 one thing?
 6 A. Yes, sir
 7 Q. And can you give me a ballpark figure on that?
 8 A. Well, because Dr. Bernard has been giving me
 9 samples as far as that medication is concerned, it was
 10 initially -- I mean, there has been no charge
 11 Q. Is that the --
 12 A. He's given me samples of the Effexor. I think
 13 there was maybe \$30 or \$40 for the Paxil back then
 14 Q. And as it relates to the other medical
 15 expenses, that would be limited to the treatment from
 16 Dr. Harris, the psychologist, and some of the treatment
 17 from Dr. Bernard?
 18 A. Yes, sir
 19 Q. Because some of the treatment is for other
 20 things?
 21 A. Exactly, sir
 22 Q. Are there any other physicians or health care
 23 providers of any kind who have treated you on account
 24 of the basis of the matters that are brought up in your
 25 lawsuit?

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1 Q. Would that have been last fall, 2005?
 2 A. Around that time. It may have even been early
 3 January, but it was before the interrogatories were
 4 written.
 5 Q. You also mention in here you were involved in
 6 some sort of a civil action involving Providian
 7 BancCorp? What was that about? Were you plaintiff or
 8 defendant?
 9 A. I was the defendant, but what happened was
 10 because I was moving from Korea to Fort Lewis to -- and
 11 getting out of the Army, their paper trail didn't catch
 12 up to show that the debt with them had been paid off
 13 So they sent me to collections, collections to
 14 litigation, and once everything caught back up, it was
 15 dismissed.
 16 Q. Who is Jim Stuka?
 17 A. That is another client with my attorney.
 18 Q. Okay Is that somebody you know?
 19 A. No I know of him through my attorney
 20 Q. How about Ed Naeger?
 21 A. Again, somebody I know of through my attorney
 22 Q. Do you know, is he a cop, Naeger?
 23 MR. CRAIG: (Nods head)
 24 Q. (By Mr. Noce) And Timothy Turner?
 25 A. Somebody I know through my attorney.

1 A. I believe the only two are Dr. Harris and
 2 Dr. Bernard
 3 Q. And do you believe that the expenses incurred,
 4 whether it's covered by your health insurance through
 5 work or copay, do you think any of that would exceed
 6 \$2,000?
 7 A. Eventually it would over the period of time.
 8 Q. Has it today?
 9 A. As of today, I don't know exactly. I know
 10 that I've paid out at least \$90 so far. I don't know.
 11 I haven't received a bill from Dr. Harris for the
 12 subsequent sessions I've had with him, but I know that
 13 it's \$30 per session for me for my copay portion.
 14 Q. And is it -- the person who's treating you for
 15 this -- the damages you're claiming here is really
 16 Dr. Harris, and then Dr. Bernard's filling your
 17 prescriptions?
 18 A. Correct
 19 Q. And do you see Harris on a regular basis?
 20 A. I saw him last week. What we do is we have a
 21 session, and if I feel, you know, something that may
 22 need to be discussed or I have what I call an episode
 23 where I just -- all of a sudden just feel like burning
 24 down, downtrodden, I'll call him and make one.
 25 So it's not every week. It's more or less

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1 when I feel that there's a need to actually go in and
 2 talk to him at the beginning, yes, it was as often as
 3 I could, as possible as I could.
 4 And it has tailed off. And he's even stated
 5 that, that you don't need to come see me weekly
 6 Q. And so has he left it as an as needed, contact
 7 the office if you need to see me?
 8 A. Contact the office if I need to see him or if
 9 through that day's session he feels that I should
 10 follow up in another week, he'll make that known.
 11 Q. Do you have an appointment as you sit here
 12 today to see him?
 13 A. Tomorrow
 14 Q. Tomorrow. Back in Kansas City, I assume?
 15 A. Yes, sir.
 16 Q. All right. And has he had you get involved in
 17 any other type of treatment other than counseling with
 18 him?
 19 A. No, sir
 20 Q. You're not in any group therapy or anything
 21 like that?
 22 A. No, sir
 23 Q. Has any physician indicated to you that you're
 24 going to be hospitalized?
 25 A. No, sir

1 Q. Has any physician, Harris or Bernard, placed
 2 any restrictions on your activities such as -- I don't
 3 know. What hobbies do you have other than taking care
 4 of your kids?
 5 A. Softball. That's it. I work too much to have
 6 any other hobbies.
 7 Q. Okay. Have any of these health care providers
 8 placed any restrictions on your hobbies at all?
 9 A. No.
 10 Q. Okay. Are any of the activities of daily
 11 life, have they been -- have you had any restrictions
 12 placed on you by any health care provider as a result
 13 of what you're claiming in this lawsuit?
 14 A. In my daily life, I think -- and I don't know
 15 if I would call this a restriction or not, but to me it
 16 was guidance from Dr. Harris.
 17 Because, as I stated earlier, with my children
 18 when they were smaller and even to some degree now as
 19 they're getting older, I become very anxious or very
 20 edgy if they're running around the house naked, if they
 21 want to get in the shower with either myself or my
 22 wife. My son will just come in and take his diaper off
 23 and climb into the shower.
 24 You know, what Dr. Harris has said, you know
 25 what, that's a kid. The only thing I want you to do is

1 enjoy your child. Enjoy their youth now, because
 2 later, you know, those are going to be the things that
 3 you remember. I don't know if that's a restriction or
 4 not, but that was --
 5 Q. Well, I think my question was unclear. What
 6 I'm asking is have you gotten directions from any
 7 physician who's treating you for what's claimed in this
 8 lawsuit of things that you are not to do?
 9 A. No
 10 Q. Or restricted your activities in any regard?
 11 A. No
 12 Q. Has any physician kept -- or any health care
 13 provider to make sure I use it in the broadest sense --
 14 directed you to stay off work as a result of anything?
 15 A. No
 16 Q. Or restricted your activities at work as a
 17 result of anything claimed here?
 18 A. The only thing I would say in that regard
 19 would be to -- as it relates to the forensics side, the
 20 computer forensics side when it was discussed with
 21 Dr. Harris that I do do that
 22 He agreed that it would be best to try to stay
 23 away from my type of child pornography investigation,
 24 one, because we just don't want to -- we don't want to
 25 feed my anxiety of having to see these people viewing

1 child pornography all the time, and two, it's just not
 2 a need because there's somebody else there that can do
 3 it.
 4 Q. And I think that was something that the
 5 special agent recommended anyway?
 6 A. Correct, Patrick Baird, right.
 7 Q. Aside from that, any other restrictions placed
 8 on any activities for you by any of these health care
 9 providers?
 10 A. No, sir
 11 Q. Is there any -- has this, what you're claiming
 12 in this lawsuit -- well, strike that. Let me start
 13 over
 14 Do you think that the care provided to you by
 15 Dr. Bernard has helped you?
 16 A. I believe with the medicines provided, it's
 17 helped me get through the days when I have my down
 18 moments, and it's also kept me a little bit more upbeat
 19 knowing that I can think through it.
 20 I don't get the fog of the doldrums, so to
 21 speak, because I'm going back. And it really helps me
 22 because I don't concentrate on the events from 1984 and
 23 '85 like I did shortly after September 2005.
 24 Q. And so that's accurate, his treatment's
 25 helping you?

1 A Yes.
 2 Q. And you're doing better now than you were a
 3 year earlier?
 4 A Yes, sir
 5 Q. And would the same be true of Dr. Harris? Do
 6 you believe his treatment is helping you?
 7 A Yes.
 8 Q. And you're doing better now as a result of his
 9 treatment and care than you were a year ago?
 10 A. Yes, sir
 11 Q. Has your wife noted an improvement?
 12 A. I would hope so. I -- you'd have to talk to
 13 her. I mean, she --
 14 Q. Well, most wives I know -- present company
 15 excluded, of course -- are more than happy to discuss
 16 how we're doing on a regular basis, but has your wife
 17 noted to you that she thinks you're doing better?
 18 A. What she has said to me is she can tell if I
 19 miss a couple days of my medicine -- because I get up
 20 early and I just forget to take it -- I become more
 21 aggressive, I become -- I'm easier to anger And
 22 usually it's because I have -- I've been thinking about
 23 the events.
 24 When I'm on my medication, she notices a stark
 25 improvement. I don't get as angry with my children

1 until I talked to Dr. Harris
 2 Q. But you've had that feeling since '86?
 3 A. I've had the feeling, but I don't know why. I
 4 look at every -- every adult male as someone who either
 5 wants to hurt me or my children, so I become
 6 overprotective. I'm afraid to let my kids have fun as
 7 children To me, that's an important thing
 8 But I'm always watching out. If they get too
 9 far out of my sight, I'm always grabbing them. If
 10 they're at the playland in the local mall, I'm never
 11 more than five feet away from them or they're never out
 12 of eyeshot
 13 If they run up to somebody, it's immediately
 14 what's he going to do, why are you talking to my kid.
 15 It's become restrictive for them. So in that regard,
 16 this, according to Dr. Harris, has been a direct result
 17 of that
 18 I view pretty much a lot of older males -- I
 19 don't get along with them If you're older than me and
 20 you're just -- I don't -- for some reason, I don't deal
 21 with you very well.
 22 Q. Even your own lawyer?
 23 A Well, he's not older than me
 24 MR. CRAIG: We're the exact same age
 25 MR. NOCE. Oh, okay

1 In fact, I very seldom get angry with my children when
 2 I'm on my medication because I look at things
 3 differently, you know, at that point. So I would say
 4 yes. I think she has noticed an improvement
 5 Q. Do you think your marriage is better now than
 6 it was a year ago?
 7 A Yes
 8 Q. And in what way as we sit here today is your
 9 life affected, and tell me now so I can evaluate your
 10 case, if you would, by what you're claiming in the
 11 lawsuit?
 12 A. How is it affected now?
 13 Q. Yes, sir
 14 A. Again, I -- the church was a big part of my
 15 life before, and it went away And it went away in a
 16 way of distrusting people, distrusting every clergyman
 17 that I had ever come across, anybody who I viewed to be
 18 hyper-religious. You know, there's several in my
 19 wife's church that I just feel very uncomfortable
 20 around.
 21 So I miss out on the relationship that the
 22 church brings, any church brings to someone of faith,
 23 that interaction there, because I just don't trust
 24 anybody that is affiliated with what I see or what I
 25 perceive now as an adult. And that I wasn't aware of

1 THE WITNESS: April 1st. Right?
 2 MR. CRAIG. 9th
 3 THE WITNESS: April 9th, so he's the exact
 4 same age
 5 MR. NOCE: He's older than you the record will
 6 reflect
 7 THE WITNESS: Few days isn't that big of a
 8 deal
 9 MR NOCE. Okay
 10 THE WITNESS: So it's something that has even
 11 affected my job, because I get along much better with
 12 females I relate to them much more.
 13 And one of the reasons Dr Harris said is that
 14 after this happened, you went to the only other group
 15 that you could have at that time, and you began to
 16 associate -- you became comfortable with women saying,
 17 you know, I confide in you, I feel more comfortable
 18 around them because there was no injury that was
 19 sustained by them
 20 So, you know, my dad -- I lost five years with
 21 my dad I think my -- at the time my grades suffered a
 22 little bit because of it. I dropped to the other honor
 23 roll, to the silver honor roll But losing the five
 24 years with my father, not re-establishing that until
 25 1991 right before he died.

1 Spiritually, I've lost out on 20 years' worth
2 of faith. I believe that my child does need to be
3 baptized, but I don't trust anybody to baptize my
4 children because I believe that once -- I see it as,
5 okay, you're going to baptize them, and now what you're
6 going to do is say, hey, can you be an altar boy or how
7 about an altar girl. Or can you help me? Can you stay
8 late and help me clean up?

9 I don't look at religious people in that
10 light. I've lost out on a lot of spiritual things in
11 my life, which I still hold dear my faith

12 My time with my father during the time that he
13 was in the hospital awaiting a heart transplant where I
14 should have been with him as often as possible, I chose
15 not to be around him

16 Q. (By Mr. Noce) Where were you living then?

17 A. Here in St. Louis

18 Q. Had you ever heard of any other instances
19 unrelated to William Mueller of clergy sexual abuse
20 prior to September 2005?

21 A. It was in the news everywhere in Boston and --
22 was it Cardinal Law? I don't think there was a day
23 that you couldn't pick up a newspaper from somewhere
24 and find that there was an allegation or an accusation
25 Q. Any other way in which this has affected you

1 direction of Dr. Harris. Get used to your children,
2 work with them first, and now I have a blast with my
3 children

4 Q. Anything else?

5 A. And I was getting ready to say something
6 before you asked where was I living. I lost my train
7 of thought when I was -- right then

8 Q. I think Archbishop Law or Cardinal Law was
9 probably 10 or 12 years ago, so this is not news to
10 you?

11 A. No, no.

12 Q. I mean, it's been something that's been going
13 on for quite awhile

14 A. No.

15 Q. I know in the lawsuit, there's money damages
16 sought. Okay? Is there anything that you want aside
17 from money damages from either Vianney or the Society
18 of Mary in this case?

19 A. I would like an acknowledgment that it
20 happened. You know, reading the -- reading the initial
21 release that came out and having seen some of the
22 statements by Brother Glodich or another --

23 Q. Do you know him?

24 A. No, I've never met the man. You know, there
25 were statements in one of the periodicals. I don't

1 other than what you've already told me?

2 A. You know, with my own family, there was -- as
3 far as my married family with Brandi, you know, not
4 feeling comfortable around my own kids, not feeling
5 comfortable around the kids of my friends

6 You know, I think there was -- was that, and
7 you know, I just feel extremely -- I get very anxious
8 or -- I don't know. I can't think of the word to
9 describe it, but my anxiety level goes up a lot if I'm
10 like left alone with a child.

11 I always try to -- instead of, hey, do you
12 want to come outside and throw a ball with me, it's
13 like, no, not right now. I'm always afraid to put
14 myself in the position where there could be the
15 allegation made of impropriety

16 I'm afraid to interact with children without
17 their parents there. I feel that I'm going to be
18 labeled a pedophile

19 Q. How long have you felt that way?

20 A. That has been something that has been going on
21 for a while, and it wasn't made known to me that this
22 all has stemmed from what happened to me back in high
23 school

24 And I love children. I mean, I play with my
25 children every day, and that's literally at the

1 know if it was the *Pueblo Chreston* or which one it was
2 where he stated, hey, in 1986 we had a father come
3 forward and say that there was some kinky behavior.

4 Well, to me, you should have made it known to
5 everybody from that point forward, or that point from
6 1986 backwards who had contact with Brother Mueller so
7 it could have been resolved then.

8 And, to me, the school and the order covered
9 it up by sending him to counseling not only once but a
10 second time instead of making it known then.

11 And an apology and a public acknowledgment
12 that, hey, we screwed up is one thing that I do ask
13 from the order.

14 Even though the people aren't there when I was
15 there, they still represent to me the evilness and the
16 demonic nature of what Brother Mueller represents to me
17 today

18 Q. Anything else?

19 A. No, sir

20 MR. NOCE: Okay. Let me check. I think I'm
21 done. That's it.

22 VIDEOGRAPHER: Signature?

23 MR. NOCE: I don't know. It's up to you

24 MR. CRAIG: She's going to forward the depo,
25 and I'll forward it to him to read

November 6 2006

1 MR NOCE Okay.
 2 VIDEOGRAPHER: This is the end of the
 3 deposition The time the 5 13 p m. We're going off
 4 the record.
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Sanders, Simpson & Fletcher
 Attn: Daniel Craig
 1125 Grand Boulevard, Suite 1400
 Kansas City, Missouri 64106

IN RE ROBERT WILLIAM VISNAW
 vs
 MARIANIST PROVINCE OF THE UNITED STATES, ST JOHN
 VIANNY HIGH SCHOOL, INC., and BROTHER WILLIAM MUELLER
 (Signature Page of ROBERT WILLIAM VISNAW)

Dear Mr Craig

This letter is incorporated as Page 303 of ROBERT WILLIAM VISNAW's deposition that he gave in the above-styled cause of action. As per request, he is to read over the deposition Please have him read over your copy of the transcript which is enclosed. If he has any corrections, please have him make them on the CORRECTION SHEET(S) that I have also enclosed. For each CORRECTION SHEET that he marks on, please have him sign his name down at the bottom where it says Deponent. If he has no corrections, then have him mark NO CORRECTIONS diagonally across one of the CORRECTION SHEETS and also sign down at the bottom of the CORRECTION SHEET where it says Deponent.

After he is through reading over the deposition, have him sign the ORIGINAL SIGNATURE PAGE, Page 302 His signature MUST BE NOTARIZED before the ORIGINAL SIGNATURE PAGE is returned.

I would appreciate it if you could send back the ORIGINAL SIGNATURE PAGE and CORRECTION SHEET(S) to me by no later than December 6, 2006, as per statute he has thirty days to review My return address is on the front cover of the deposition If you have any questions, please feel free to call me at (314)621-4408 and I'll be glad to help in any way I can

Sincerely,

Jennifer L Brodenck, CSR

cc Gerard T Noce

SIGNATURE PAGE

302

ROBERT WILLIAM VISNAW

Subscribed and sworn before me on this _____ day
 of _____, 2006

My commission expires _____

Notary Public

NOTARIAL CERTIFICATE

304

STATE OF ILLINOIS)
)
 COUNTY OF MACOUPIN)

I, JENNIFER L. BRODERICK, a Certified Shorthand Reporter and duly commissioned Notary Public within and for the State of Illinois, do hereby certify that there came before me at the offices of Burroughs, Hepler, Broom, MacDonald, Hebrank & Truc, LLP, 800 Market Street, Suite 2300, St Louis, Missouri 63101,

ROBERT WILLIAM VISNAW,

who was by me first duly sworn to testify to the truth and nothing but the truth of all knowledge touching and concerning the matters in controversy in this cause, that the witness was thereupon carefully examined under oath and said examination was reduced to writing by me, and that this deposition is a true and correct record of the testimony given by the witness

I further certify that I am neither attorney nor counsel for nor employed by any of the parties to the action in which this deposition is taken, further, that I am not a relative or employee of an attorney or counsel employed by the parties hereto or financially interested in this action

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of November, 2006

My commission expires December 9, 2009

Notary Public

D

In the
CIRCUIT COURT
of St. Louis County, Missouri



[For File Stamp Only]

Robert Visnow
Plaintiff(s)

7-30-07
Date

FILED

vs.
William Mueller, et al
Defendant(s)

~~06-00-8~~
Case Number
15
Division

JUL 30 2007

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

Defendant's Motion for Summary Judgment argued, heard and denied.

SO ORDERED

Frank J. Ross, Civ 15
Judge

ENTERED: 7/30/07
(Date)

12 - 5 - 1 - 7 - 7
Attorney Bar No.
111 West 63rd
Address
Hepler Broom by
Phone No. Fax No.
1272 No 27636
Attorney Bar No.
800 Market - Suite 2300
Address
480-4160 241-6116
Phone No. Fax No.

E

MISSOURI CIRCUIT COURT
TWENTY-SECOND CIRCUIT
(City of St. Louis)

FILED
AUG 02 2007

MARIANO V FAVAZZA
CLERK, CIRCUIT COURT
BY _____

TIMOTHY KLUEMPERS, et al ,)	
)	
Plaintiffs,)	
)	
v.	)	No 22052-11454
	)	Div. 18
)	
ARCHDIOCESE OF ST. LOUIS, etc ,)	
et al ,)	
)	
Defendants)	

MEMORANDUM, ORDER AND JUDGMENT

Defendants Marianist Province of the United States and William Mueller move for summary judgment on plaintiffs' claims for damages. The parties have filed copious materials in support of and opposition to the motions for summary judgment. The Court's statement of the facts is derived from this record.

Plaintiff Timothy Kluempers was born January 10, 1968 in Affton, Missouri. He currently resides with his wife and three children in Lenexa, Kansas. He attended St. Mary's High School from the fall of 1982 through the spring of 1986. By his own account, he was an above average student, and performed well in football and ice hockey. Upon graduating high school he was awarded a football scholarship to Benedictine College, where he studied business administration. After he received his degree, Kluempers held a variety of jobs, ultimately settling in a career in industrial sales. He describes his career as successful and satisfying, and reports a salary in the six-figure range. He denies ever having behavioral or substance abuse problems.

Plaintiff Matthew Giegling (pronounced, apparently, as "giggling") was born October 19, 1967 in St. Louis. He currently resides with his wife and four children in suburban Chicago. He

attended St. Mary's High School from the fall of 1982 through the spring of 1986. By his own account, he was an exceptional student and athlete, earning all A's except one B, and was named the *St. Louis Post-Dispatch's* Scholar-Athlete. He studied accounting at Southern Illinois University-Carbondale, which he attended on a baseball scholarship. After graduating, Giegling played minor league baseball for a Cincinnati Reds farm club for a few years. He gave up on a career in baseball when he learned it would be unlikely he would ever move up to the majors. He thereupon pursued a career as a certified public accountant. In 1998, he joined the Federal Bureau of Investigation, where he has worked as a special agent ever since.

The Marianists are an international association of Roman Catholic religious brothers and sisters. The Marianist Province of the United States includes its eponymous country, as well as eastern Africa, India, Ireland, Mexico, and Puerto Rico. Its headquarters is located in the City of St. Louis. Education is its principal ministry, and it operates or is affiliated with several universities and high schools. The Marianists have conceded that they directly supervised defendant Mueller. The Marianists are a Missouri non-profit corporation in good standing.

William Mueller is believed by the Plaintiffs to be a citizen of Texas, and a resident of San Antonio. At the time of incidents at the heart of this suit, Mueller was a Marianist brother, but left the Marianists in the late 1980s. He has been accused of sexually abusing students of various schools throughout the country.

The Plaintiffs' amended petition consists of six counts: (I) intentional failure to supervise clergy; (II) intentional infliction of emotional distress, (III) assault, (IV) battery; (V) negligence; and (VI) negligent supervision, retention, and failure to warn. The counts directed against the Marianists are I, II, V, and VI. Counts II, III, IV, and V are directed against Mueller.

The Marianists advance two alternative arguments in support of summary judgment. First, because the counts against the Marianists are predicated on the success of the counts against Mueller, and because the plaintiffs will not be able to establish their claims against Mueller, the plaintiffs do not therefore have a cause of action against the Marianists. In the alternative, the Marianists allege that the statute of limitations bars the plaintiffs' claims, since they reasonably should have been aware of any harm done to them more than five years ago. Mueller likewise asserts failure to state a claim and the bar of the statute

In their reply memorandum, the plaintiffs vigorously objected to the alternative theories on why summary judgment is proper. In terms of the statute of limitations issue, the plaintiffs argue that the limitations period did not begin to run until 2005, when they read newspaper accounts of defendant Mueller's sexual misconduct against other students. They furthermore argue that because Catholic religious leaders commanded tremendous respect and prestige, a reasonable person in the position of the plaintiffs would not have questioned Mueller's conduct at any time before his exposure as a pedophile.

In terms of the "derivative claim" theory propounded by the defendants, the plaintiffs argue that they do not have to establish an underlying tort claim against Mueller to establish their claims against the Marianists, only that they have to show that they were harmed and damaged.¹

According to plaintiff Kluempers, the incident that is the heart of this litigation occurred in the fall of 1983, when he was a sophomore. Kluempers depo 104. Kluempers stated that he remembers, and has always remembered, the following events (*id.* 129). Mueller approached Kluempers sometime after the end of a school day, and asked him to participate in an experiment

¹ The Marianists have filed a motion to strike Plaintiffs' Statement of "Additional Uncontroverted Material Facts," which they argue was in contravention of Rule 74.04, Mo R Civ P, "and/or" *ITT Commercial Finance Corp v Mid-America Marine Supply*, 854 S.W.2d 371 (Mo banc 1993). Specifically, they allege that the plaintiffs

Mueller was conducting for a master's thesis, and that he must keep the "experiment" a secret *Id* 105, 110. Mueller led Kluempers into the nurse's office, where he again stated that he was conducting an experiment. *Id* 111 He blindfolded Kluempers, placed something cold and "kind of sharp" to his neck, asked him to breathe heavily, all the while frequently asking "do you trust me?" *Id*. 111-112 Kluempers then recalls a "cloth or something coming over my face, and then the next thing I remember, I'm sitting down and he said, 'We got to go, we got to go ' And then we left." *Id* This is the only such incident that ever occurred between him and Mueller *Id* Kluempers stated that he never feared for his safety, that to the best of his recollection both he and Mueller were always fully clothed, and that he can recall no sexual act *Id* 117, 119, 139. Other than a dry mouth, he suffered no physical injury as a result of the incident *Id* 137 At the time, and up until 2005, Kluempers did not consider the event offensive *Id* 144-145. He never reported the incident to anyone for that very reason. *Id* 169-170.

Late in the summer of 2004, Kluempers spoke with his wife about his incident with Mueller, when news of sex abuse in the Catholic Church was pervasive, although nothing came of their discussion *Id*. 23-24 He was also aware in 2002 of the scandal in Boston. *Id* In September of 2005, Kluempers was in Colorado, where he read a newspaper article describing instances of alleged child sexual abuse perpetrated by Mueller that bore some similarities to the incident Kluempers experienced. *Id* 216-217 It was not until that point that he questioned the incident, and thought that it may have been inappropriate or unlawful. In any event, Kluempers makes no claim that he has suffered physically, financially, mentally, or emotionally other than general feelings of betrayal, frustration, confusion, and disappointment, learning that he had been duped or lied to twenty-plus years after the fact simply angered him *Id* 180 He has seen a

asserted as facts statements that are actually legal conclusions, and that some facts offered involved assertions that may not be admissible at trial The Court will deny the motion to strike

therapist, but it appears that, in addition to his solicitude over the Mueller incident, he had been suffering from stress due to work, family life, pending surgeries, and the Christmas holidays *Id.* 178-181 He had five sessions with his therapist, but reported feeling better after the second *Id.* 174, 186 The record discloses no substantial medically diagnosable psychological or physical injury caused by Mueller's conduct

Giegling experienced virtually identical incidents with Mueller as did Kluempers. Although he cannot remember a precise number, he alleges that there were between two and seven such incidents. Giegling depo. 101. In addition to the blindfolding, the metal object placed against his neck, and the hyperventilating, Mueller also sometimes bound Giegling's hands with a soft rope, and requested him to fall backwards and Mueller would then catch him *Id.* 87, 92-93. He also reports that Mueller would place a gel-like substance in his hair *Id.* 96 Like Kluempers, Giegling never saw a knife, was never unclothed in any way nor did he see Mueller unclothed, does not recall any kind of sexual impropriety, does not recall being unconscious, and never feared for his physical well-being. *Id. passim* He never reported this incident to any authority, but he spoke to his friend, Timothy Turner, about it *Id.* 108, 127 While Giegling was still a student at St. Mary's, Mueller had been transferred to St. John Vianney High School, and he heard rumors that Mueller had sexually abused a student there *Id.* 230-231. Giegling recalls defending Mueller, stating that it was probably just an experiment like he had been a part of *Id.*

Like Kluempers, he never attributed any malevolence or deviance to these incidents until 2005 when he read newspaper articles *Id.* 130-131 And again like Kluempers, he is making no claim for lost wages, hospital stays, physical injury, sexual abuse, or any serious emotional or psychological problem other than vague feelings of betrayal and uncertainty about the past

Both plaintiffs stated that they feel a loss of faith in the Catholic Church as an institution, and each wants the Church to be “held accountable,” presumably for the incidents that occurred to them personally, but there is a hint that it is more general than that See Giegling depo 240-241, Kluempers depo 199-200

The statutes of limitations that govern this case are §§ 516 100, 516 140 and 516 120, RSMo 2000 & Supp Section 537 046 does not apply because that statute relates to “childhood sexual abuse,” defined as an act committed against a person under the age of eighteen which would be considered a violation of parts of Missouri’s Criminal Code.² There is no evidence in the record of any criminal sexual act committed by Mueller against plaintiffs. Consequently, the general tort statute of limitations is applicable Under § 516 120(4), the plaintiffs have five years to bring their suit for their alleged injuries as set out in counts I, II, V and VI The assault and battery claims (counts III and IV) are governed by the two year limitation of § 516 140 Under § 516 170, the running of the statutes of limitations is tolled by minority Under § 516 100, the limitations period begins to run when the “damage resulting [from defendant’s conduct] is sustained and capable of ascertainment.”

Whether damages are “capable of ascertainment” is one ordinarily decided as a matter of law *Ferrellgas, Inc v Edward A Smith, P C*, 190 S.W.3d. 615 (Mo App W D. 2006). The Missouri Supreme Court recently gave a lengthy exposition of the meaning of “capable of ascertainment” in *Powel v Chaminade College Prep, Inc*, 197 S.W 3d 576 (Mo banc 2006). In *Powel*, the plaintiff had repressed memories of sexual abuse perpetrated by priests, and did not regain his memory until roughly twenty years later The defendant moved for summary judgment on the grounds that the statute of limitations had run, arguing that the damages were “capable of

²See §§ 556 030- 120 & 568 020, RSMo 2000 & Supp

ascertainment” at the time of the abuse. The trial court agreed, and plaintiff appealed. The Supreme Court reversed, holding that the “capable of ascertainment” test is an objective one:

not when the injury occurred, or when plaintiff subjectively learned of the wrongful conduct and that it caused his or her injury, but when a reasonable person would have been put on notice that an injury and substantial damages may have occurred and would have undertaken to ascertain the extent of the damages

Powel at 584. The court reiterated that this is a “reasonable person” standard. *Id.* at 586. In a holding consistent with *Powel*, the Eastern District Court of Appeals articulated that “capable of ascertainment” means “capable of being ascertained by a reasonable person using reasonable diligence.” *Cook v. DeSoto Fuels, Inc.*, 169 S.W.3d 94, 103 (Mo. App. E.D. 2005). As construed by *Powel*, § 516.100 means that the cause of action does not accrue when the wrong is actually done, nor, as *Powel* further states, does it necessarily accrue when a plaintiff becomes subjectively aware of the injury. Rather, the cause of action accrues at some intermediate point where a “reasonable person” would have been put on notice that a harm and subsequent damages may have occurred.

Applying the *Powel* gloss on § 516.100 to Giegling’s case, it is pellucid that a reasonable person would have been put on notice a harm may have occurred while Giegling was still in high school. He felt sufficiently disquieted by the incidents with Mueller that he felt the need to confer with a peer, and he furthermore heard rumors that Mueller had sexually abused another student. Giegling’s reaction to that rumor was to connect it to his own experience, assume that the alleged sexual abuse was merely another “harmless” experiment, and even went so far as to defend Mueller. However, Giegling’s subjective reaction is not determinative. Given the facts known to Giegling as early as 1986, a reasonable person in Giegling’s position would have been placed on “inquiry notice” that a harm may have occurred, and the limitations period would have

begun to run at that time. Because he was a minor, the limitations period was tolled until his twenty-first year, 1988. The very latest his suit could have been filed was October of 1993.

Kluempers's case differs slightly, but not materially. Unlike Giegling, he was not aware of the rumors that Mueller allegedly sexually abused a student at another school, neither did he confer with anyone about his incident. Nevertheless, Kluempers testified that when he was twenty-five or thirty years of age, he would have considered the exact same incident that occurred to him to be offensive, and given the fact that he never forgot the incident, a reasonable person in his position surely would have been placed on inquiry notice that a harm may have occurred at the very latest by the time Kluempers was thirty, or 1997. Giving him the benefit of his assertion and using the age thirty as the point at which the limitations period began to run, Kluempers would have had to file his suit no later than 2002.

The Court observes, however, that Kluempers's evolving opinion of the propriety of Mueller's conduct is not necessarily dispositive. In the Court's view, a reasonable person would have been on "inquiry notice" as soon as Mueller's conduct occurred. The standard is an objective one. Notwithstanding the respect accorded members of the clergy--especially the teaching clergy--by youths in their charge, would a reasonable person be put on inquiry concerning bizarre conduct labeled as an "experiment," accompanied by an injunction to secrecy? Reasonable people do not blithely accept the propriety of "secret experiments" involving physical contact between a teacher and a pupil behind closed doors. The conduct described by Kluempers, though not overtly sexual, is not the sort of thing that a reasonable person would become involved in without subsequent inquiry as to its legitimacy. Indeed, by his own admission, Kluempers found Mueller's conduct sufficiently strange that he never forgot it and could relate it in detail some thirty years later. "The issue is not when the injury occurred, or

when plaintiff subjectively learned of the wrongful conduct and that it caused his or her injury, but *when a reasonable person would have been put on notice* that an injury and substantial damages *may have occurred* and would have undertaken to ascertain the extent of the damages " *Powel*, 197 S W.3d at 584

Plaintiffs correctly state *Powel's* holding as a general matter, but they misconstrue it. They argue that since they did not *actually ascertain* their damages until 2005, when they read newspaper accounts of similar incidents involving Mueller, the limitations period did not begin to run until that time. The plaintiffs' position on the statute of limitations was explicitly rejected by the Supreme Court in *Powel*. The question is not "when the plaintiff *subjectively* learned of the wrongful conduct and that it caused his .injury" *Powel* at 584 (emphasis added). Moreover, if the plaintiffs' position were to be the law, one might wonder, as did Chief Justice Wolff in his concurring opinion in *Powel*, "Why have a statute of limitations?" *Id* at 591

A final consideration is the slipperiness of the "reasonable person" standard. The Supreme Court in *Powel* remanded the case to the trial court, opining that "[a]dditional discovery may clarify whether a reasonable person in [the plaintiff's] situation would have been capable of ascertaining the substantial nature of the damages he suffered" *Powel* at 586. The Plaintiffs articulate a variation on this theme, asserting that because they were raised to be reverential towards their religious leaders, a reasonable person in their position would not have been capable of ascertaining damages until he actually learned of them. In *Powel*, however, the Court's reversal for further proceedings was dictated by evidence that plaintiff had repressed memories for over twenty years, not that his upbringing disinclined him from attributing evil motives to religious authorities. In our case, both plaintiffs always remembered these incidents, were above-average academically, and had experiences or impressions that would have caused a reasonable

person to rethink their incidents and to “have undertaken to ascertain the extent of the damages.”

Powel turned on the issue of repressed memory. This is not such a case

Plaintiffs argue that their claim against the Marianists is not derivative of their claims against Mueller. Plaintiffs misconceive the nature of a claim of intentional failure to supervise clergy. That cause of action is a variation of the recognized tort of liability for hiring or retention of a servant or employee who is manifestly dangerous to the public or the employer's customers. See *Gibson v Brewer*, 952 S.W.2d 239 (Mo. banc 1997). For constitutional reasons, the tort is limited to intentional conduct when the servant or employee is a member of the clergy and the employer is a church or religious organization. Without misconduct by the employee, however, there can be no claim against the religious employer or supervisor. As *Gibson* notes, the elements of a claim of intentional failure to supervise clergy include the elements of claim of negligent supervision as delineated by *Restatement (Second) of Torts*, § 317 (1965). 952 S.W.2d 247-48. Under the *Restatement*, a master is under the duty to control his servant “while acting outside the scope of his employment as to prevent him from intentionally harming others.” See quotation at 952 S.W.2d 247. Thus, unless the servant harms a third person, the master cannot be liable for failure to supervise.

Although a claim against the Marianists must derive from misconduct of a Marianist clergyman, the fact that the statute of limitations bars an action against the clergyman does not necessarily bar the action against the Marianists. Plaintiffs are correct to the extent that they argue that the claim of intentional failure to supervise is not purely derivative: it is not a *respondeat superior* claim.

The limitations period for assault or battery is two years. The limitations period for a claim of intentional failure to supervise clergy is five years. If plaintiffs' claims against the

Marianists were timely filed, it would not matter that the claims against Mueller are time-barred. However, as discussed above, that is not the case.

The quintessence of plaintiffs' argument to avoid the statute of limitations in this case is that they were never put on notice that any injury had occurred or damages had been suffered until years later, when they learned of Mueller's perverted conduct involving other persons. Plaintiffs in effect insist on a subjective standard. However, the record is clear that Giegling felt sufficient uncertainty about the incidents with Mueller that he consulted another student about them, even though he promised Mueller he would not. Moreover, he heard rumors that Mueller had been accused of sexually abusing another student only a year or two after his own incidents, and thought that there was a connection. Giegling has always remembered the incidents. Applying the "objective" standard as stated in *Powel*, a reasonable person in Giegling's position would have been put on notice that an injury may have occurred while he was still a minor, and the limitations would have begun to accrue when he turned twenty-one. In his case, the statute of limitations barred this suit after 1994.

Kluempers stated that when he was both twenty-five and thirty years of age, he would have considered the incidents that occurred to him as an offensive touching. Under the most generous construction of § 516.100, even if we allow for the limitations clock to start ticking at age thirty, Kluempers still would have been barred by the statute after 2002.

Finally, the Court observes that count II of the first amended petition, styled "intentional infliction of emotional distress," count V, styled "negligence," and count VI, styled "negligent supervision, retention and failure to warn," all fail to state a claim against the Marianists. *Gibson v. Brewer*, 952 S.W.2d at 248-249. The Court is doubtful that count II is sufficient to state a claim against Mueller, as, regardless of Mueller's subjectively deviant motives in conducting his

"experiments," the conduct described does not, in and of itself, appear "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" *Id* Similarly, the petition is vague as to distress suffered, and the summary judgment record makes clear that plaintiffs have not suffered "medically significant" emotional distress, but only "garden variety" emotional distress (Indeed, the record suggests that plaintiffs suffered distress as a result, not of Mueller's conduct, but as a result of learning of publicity of Mueller's misconduct directed against others Proximate cause is perhaps lacking)

The moving parties are the only remaining defendants herein The Archdiocese of St. Louis and St Mary's High School (not a suable entity) have been dismissed previously

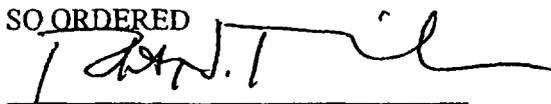
ORDER AND JUDGMENT

For the foregoing reasons, it is

ORDERED that defendants' motions for summary judgment be and the same are hereby granted, there being no genuine issue of material fact and defendants being entitled to judgment as a matter of law, and it is

FURTHER ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of defendants Marianst Province of the United States and William Mueller on all claims alleged in the first amended petition, which is dismissed with prejudice; all claims having been decided, final judgment is entered in favor of all defendants, costs taxed against plaintiffs

SO ORDERED



Robert H Dierker
Circuit Judge

Dated _____
cc Counsel

8/2, 2007

F

RECEIVED & FILED
CIRCUIT COURT OF
ST. LOUIS COUNTY

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

2007 JUL -2 PM 3:55

ROBERT WILLIAM VISNAW,)
)
 Plaintiff,)

JOAQUIN GILMER
CIRCUIT CLERK

Cause No 06CC-000008

v

Div No 15

MARIANIST PROVINCE OF THE)
 UNITED STATES, ST JOHN VIANNEY)
 HIGH SCHOOL, INC and BROTHER)
 WILLIAM MUELLER,)
)
 Defendants)

DEFENDANTS ST. JOHN VIANNEY HIGH SCHOOL, INC. AND MARIANIST PROVINCE OF THE UNITED STATES' JOINT REPLY IN SUPPORT OF THEIR JOINT MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

As set forth in Defendants' motion for summary judgment, Plaintiff's claims are time-barred by even the lengthiest statute of limitations because he was put on notice of a potentially actionable injury in the 1984-1985 time frame during his senior year of high school. In his Suggestions in Opposition, Plaintiff asks this Court to apply, in effect, a subjective "discovery" standard to the "capable of ascertainment" test, which the *Powel* Court rejected. Plaintiff's arguments bring no fact or issue to bear that creates a dispute that can preclude summary judgment in Vianney and Marianist Province's favor.

The case arises from Plaintiff's claim that he was the victim of four alleged incidents that took place between he and Mr. Mueller approximately twenty-two (22) years ago. Plaintiff was an intelligent, successful senior in high school at the time. Mr. Mueller was Vianney's assistant principal. Plaintiff has admitted to most of the material facts set forth in Vianney and Marianist Province's Statement of Uncontroverted Material Facts, but now inexplicably states in his

“Opposition” that under the standard provided by the Missouri Supreme Court in *Powel v Chamnade*, 197 S W 3d 576 (Mo banc 2006), Plaintiff ascertained his injuries in 2005 and therefore his claims are timely

Essentially, Plaintiff claims that he always remembered the non-sexual aspects of his alleged abuse incidents with Mr Mueller, but selectively “repressed” just the sexual aspects of those incidents (See Plaintiff’s Suggestions in Opposition, p 18)¹ Despite always remembering the critical “non-sexual” aspects of the alleged abuse incidents, Plaintiff claims that he somehow did not “ascertain” the damage from the non-sexual aspects of the abuse incidents until 2005. *Id*

This argument, however, wholly misconstrues the damages component of the “capable of ascertainment” test As reiterated by the Missouri Supreme Court in *Powel*. “all possible damages do not have to be known, or even knowable, before the statute accrues” *Powel*, 197 S W 3d at 584 (quoting *Klemme v Best*, 941 S W 2d 493, 497 (Mo banc 1997) While it is true that “the mere existence of the wrong and some *nominal* damage is not enough,” a plaintiff may be put on notice to inquire further when “the fact of damage could have been discovered or made known” *Id* (quoting *Klemme v Best*, 941 S W 2d 493, 497 (Mo banc 1997) Here, all evidence shows that the Plaintiff—a smart, successful, and older student—was fully aware of the critical aspects of the alleged conduct and always remembered as much Therefore, the statute of limitations began to run during Plaintiff’s senior year

¹ Considering the fact that Mr Visnaw always remembered being asked to strip down to his underwear in one alleged incident, the “sexual/non-sexual” distinction is arguably quite nebulous in this context

II. LAW AND ARGUMENT

A. **Under the Objective *Powel* Test, Plaintiff's Admission that He Always Remembered Critical Aspects of the Alleged Abuse Incidents Negates Any Tolling of the Statute of Limitations.**

Under the objective test set forth in *Powel*, Plaintiff clearly had sufficient information to place a reasonably prudent person on notice back in 1984-1985 of a potentially actionable injury based on the fact that he always remembered critical aspects of the alleged abuse incidents. Mr. Visnaw's attempt to parse "sexual" or "non-sexual" components of the alleged abuse incidents carries no legal significance under *Powel* as long as Mr. Visnaw had sufficient facts to be put on notice of the need to inquire further back in 1984-1985, when these alleged incidents occurred.

Mr. Visnaw points to the following language in *Powel* to support his claim that his alleged "repressed memory" of the "sexual aspects" of the Mueller incidents tolls the statute of limitations:

If the memory of the wrong was repressed before the victim had notice both that a wrong had occurred and that substantial damage had resulted, or before the victim knew sufficient facts to be put on notice of the need to inquire further as to these matters, then the claim would not yet have accrued at the time that the victim repressed his or her memory of the events. From that point forward, until the memories were regained, while the victim might have suffered damage, the victim would not have sufficient notice to have a duty to inquire further. Only when he or she regained the repressed memories would the victim for the first time have "reason to question" defendant's conduct and have information sufficient "to place a reasonably prudent person on notice of a potentially actionable injury."

Powel, 197 S.W.3d at 585 (emphasis added)

What is notably missing from Mr. Visnaw's analysis of *Powel* is any type of cogent explanation for his failure to "inquire further" after Mr. Visnaw knew "sufficient facts" beginning in 1984-1985. It is telling that Mr. Visnaw glosses over the key disjunctive "or" in the

test set forth above *Id* (emphasis added) Applying the language of *Powel*, if Mr Visnaw knew sufficient facts to be put on notice of the need to inquire further at the time these alleged incidents occurred in 1984-1985, then the alleged repression of certain “sexual” aspects of the alleged abuse are irrelevant for statute of limitations persons In other words, *Powel* does not make the distinction between one aspect of a plaintiff’s damages claim compared to another, i e , sexual or non-sexual Indeed, as *Powel* re-affirmed, “all possible damages do not have to be known or even knowable, before the statute accrues” *Powel*, 197 S W 3d at 584 (quoting *Klemme v Best*, 941 S W 2d 493, 497 (Mo banc 1997) As such, *Powel* simply stands for the proposition that when a plaintiff has sufficient information to “place a reasonably prudent person on notice of a potentially actionable injury,” the statute of limitations begins to run See *Powel*, 197 S W 3d at 585 Hence, whether Mr Visnaw knew of the “sexual aspects” of his alleged abuse incidents is not determinative as to whether or not he knew and remembered sufficient information to place a reasonably prudent person on notice of a potentially actionable injury As aptly put by Chief Justice Wolff, “the fact that [Plaintiff’s] damages may not have become ‘complete’ until after a period of memory repression is irrelevant The fact that he suffered damages was known The alleged memory repression, as an excuse for not filing his claim on time, does not create an issue to be tried ” *Id* at 589

Here, the undisputed facts clearly establish that Mr Visnaw knew and remembered sufficient information regarding his abuse allegations to put a reasonably prudent person on notice Whether his alleged damages were “complete” through recollection of certain “sexual” aspects of the alleged abuse incidents is irrelevant because Mr Visnaw always remembered sufficient information to be put on notice of a “potentially actionable injury ” Below, Defendants take the Court through the evidence of that knowledge

1) It is Undisputed that Visnaw Has Always Remembered Critical Facts From the Alleged Abuse Incidents

Based on Plaintiff's Response to Defendants' Statement of Uncontroverted Material Facts, it remains undisputed that Plaintiff *always* remembered the following alleged incidents

- having a knife pressed to Plaintiff's throat,
- meeting in secrecy,
- being told to repeatedly hyperventilate and pass out, and
- taking off his clothes down to his underwear while alone with a teacher

(See Plaintiff's Suggestions in Opposition, pp 7, 10, 11, 17 at ¶¶ 34, 42, 44, 55) Hence, the salient issue for this Court is not whether Mr Visnaw repressed other aspects of his alleged contact with Mueller, but rather whether the foregoing undisputed facts would be sufficient to put a reasonably prudent person on notice of a potentially actionable injury

2) The Court Can Decide the Statute of Limitations Issue as a Matter of Law Because the Key Facts (as Alleged by Plaintiff) are Not in Dispute

Since the key relevant facts discussed above are uncontested, the issue of whether Mr Visnaw's claim is barred by the statute of limitations can be decided by this court as a matter of law *Powel*, 197 S W 3d at 585 The sole issue for this Court to decide is whether a highly intelligent, high school senior (nearly 18 when the last incident occurred) would have been put on notice of a potentially actionable injury when a man (i) presses a knife to plaintiff's throat, (ii) asks Plaintiff to meet in secrecy, (iii) tells Plaintiff to repeatedly hyperventilate and pass out, and (iv) asks Plaintiff to take his off his clothes down to his underwear while alone with the man Assuming as true these allegations, only one reasonable, logical conclusion can be reached Mr. Visnaw was put on notice of a potentially actionable injury during his senior year of high school (1984-1985)

Moreover, there is no dispute that Mr. Visnaw always remembered the foregoing aspects of his alleged experiments with Mueller. If Mr. Visnaw wishes to argue that an intelligent high school senior is too naive to have been put on notice of the need to investigate further when an adult male puts a knife to the student's throat and asks the student to strip down to his underwear, there is no dispute whatsoever that a reasonable man *in his twenties* would have been put on notice that such conduct as alleged was objectively harmful or injurious. Mr. Visnaw simply cannot claim that the alleged conduct he always remembered, such as Mueller putting a knife to his throat, stripping down to his underwear, and so on, was insufficient to put a reasonable person on notice until as late as 2006 (when plaintiff was nearly 40 years old). If the Court were to accept as true this proposition, the statute of limitations would be nullified in abuse cases no matter what critical aspects of the alleged abuse incident plaintiff recalls. The *Powel* court does not stand for this type of overly broad extension of the statute of limitations.

By buttressing the foregoing undisputed facts with the fact that Visnaw was at all relevant times a highly intelligent, sophisticated senior (nearly eighteen at the time of the fourth alleged incident), only one conclusion can be reached: that a reasonably prudent person would have clearly known that he had suffered an injury and/or a wrong potentially entitling him to relief. Therefore, under the objective framework provided by the Supreme Court of Missouri in *Powel*, the statute of limitations for tort claims has barred the action Plaintiff might have had against the Defendants at one time. Plaintiff's attempt to distinguish the damages component of the alleged wrongful conduct between "sexual" and "non-sexual" components simply finds no support in the text of the *Powel* opinion and should therefore be rejected.

B. None of the Witness Testimony Offered by Plaintiff Creates a Genuine Issue of Material Fact that Can Defeat Summary Judgment.

There were no witnesses to the alleged abuse incidents that Visnaw is claiming in this lawsuit. Only the testimony of the Plaintiff himself is available to the Court to assess whether the allegations raised by Plaintiff are sufficient to create an issue of fact to be tried. None of the “witness” testimony offered by Plaintiff can be used to defeat the clear statute of limitations bar.

1 The Testimony of Dr. Peterson Cannot Be Used to Defeat Summary Judgment under *Powel* Because Peterson is not a Repressed Memory Expert and Does Not Address the “Objective Person” Standard Set Forth in *Powel*

The testimony of plaintiff’s treating psychologist, Dr. George Harris, has no bearing on the statute of limitations issue here because he offers no opinion that addresses the objective standard set forth in *Powel*. In addition, Dr. Harris admits that he would not be “a good person to serve as an expert witness if someone was making the argument for a repressed memory.” (See Exhibit 2 to Plaintiff’s Suggestions in Opposition, Deposition of Harris, pp. 36-37). He reaffirmed his lack of expertise on this subject matter later in his deposition when asked “when [Plaintiff] first obtained conscious recollection of that overt sexual abuse?” (See Exhibit 2 to Plaintiff’s Suggestions in Opposition, Deposition of Harris, p. 55). Dr. Harris responded “It is one of those questions that probably is best answered by an expert witness.” *Id.*

Dr. Harris admitted that the entire subject of repressed memory is “hotly debated” in his field, and Dr. Harris simply does not have an understanding of how it may work physiologically. *Id.* at 36-37. In short, Dr. Harris adds nothing to the issue of whether Mr. Visnaw in fact repressed the Mueller incidents.

Mr. Visnaw also offers the conclusory testimony of Dr. George Harris for the proposition that Mr. Visnaw did not appreciate the fact that he was allegedly sexually abused in 1984-1985.

Of course, whether Mr. Visnaw subjectively appreciated the fact of damage has no bearing under the objective test set forth in *Powel*. In *Powel*, the plaintiff tried to show an issue of material fact existed by presenting to the Court his own testimony stating that he had always remembered the events that supposedly injured him, in addition to his own affidavit and an affidavit of an expert stating that he had not remembered the events until he regained his repressed memories. *Powel v. Chamnade*, 197 S.W.3d 576, 579 (Mo. 2006). Chief Justice Wolff, however, saw through the plaintiff's conflicting testimony and the testimony of his expert, noting that "[t]he affidavit of [plaintiff's] expert, a psychologist, is based on [plaintiff's] contradictory and unsubstantiated statement, it adds nothing to determine whether there is a factual issue." *Id.* at 587. Furthermore, Chief Justice Wolff went on to demonstrate how the expert's affidavit failed to meet the standards for admissibility under R.S.Mo. § 490.065, as required by Rule 74.04, in two ways: the affidavit both failed to assist a trier of fact and was not the type of data an expert in the field would reasonably rely upon. *Id.* at 589-90. Justice Wolff stated it was difficult to find that an affidavit would assist a trier of fact when its factual basis was contradicted by the plaintiff's own sworn testimony, and further noted that a statement that had been contradicted by the plaintiff himself could also not be considered a reasonably reliable fact upon which experts in the field would rely. *Id.* at 590.

Ultimately, in *Powel*, Chief Justice Wolff concluded that:

The fundamental difficulty that I find in this case is that *Powel's* wholly subjective account—that his memory was repressed for 24 years—can be used to defeat a statute of limitations that should have barred this claim nearly 25 years ago. That his account is repeated by an expert, with no further substantiation or documentation, does not make his account any less subjective.

Id. at 591

These issues from *Powel* are directly applicable to what Visnaw is trying to do here. In the present case, Mr. Visnaw stated in his sworn deposition testimony that he always remembered the key aspects of the alleged abuse incidents, including stripping down to his underwear and having a knife held to his throat. For Mr. Visnaw to state that he was not “on notice” of any injury from the alleged incident and did not appreciate the effect of the alleged abuse, whether offered through his “expert” or otherwise, is insufficient to defeat summary judgment under Justice Wolff’s analysis in *Powel*. *Id.* Nothing in Dr. Harris’ testimony changes the fact that a reasonable person would have been put on notice of a potentially actionable injury when a man (i) presses a knife to Plaintiff’s throat, (ii) asks Plaintiff to meet in secrecy, (iii) tells Plaintiff to repeatedly hyperventilate and pass out, and (iv) asks Plaintiff to take his clothes off his clothes down to his underwear while alone with the man. Visnaw, having had notice back in the mid 80’s that he had a potentially actionable injury, is therefore barred by even the lengthiest statute of limitations from maintaining any kind of claim in the present day.

2 The Testimony of Laura Margel and Other Friends and Family Members Does not Create an Issue of Fact that Would Defeat Summary Judgment

Incredibly, Visnaw spins the testimony of a former girlfriend/fiancée (who testified that she and Visnaw—at Visnaw’s invitation—had dinner with Mr. Mueller in their home in 1994) to support his claim that Visnaw must have repressed the memory of the alleged Mueller abuse. (See Suggestions in Opposition, p. 51) This argument is implausible on its face considering the undisputed testimony shows that Visnaw (who was twenty-seven (27) years old in 1994), invited for dinner a man whom he always knew had i) previously held a knife to his throat, ii) previously asked him to keep secret the alleged experiments, iii) previously asked him to strip down to his underwear while they were alone in a room together, and iv) previously asked him to hyperventilate and pass out. As a matter of law and logic, no reasonably prudent twenty-seven

(27) year old with the foregoing memories and information in mind can be said *not* to be put on notice of a “potentially actionable injury ”

Likewise, the testimony of other family members adds nothing to the issue of whether a reasonably prudent person would have been put on notice of a potentially actionable injury in light of the critical aspects of the alleged abuse incidents recalled by Mr Visnaw His attempts to use this as evidence of some kind of “repression” is an effort to distract attention from the salient points of *Powel* that directly eliminate his ability to maintain this suit and should be disregarded

3 Fr Doyle’ Testimony Does not Create an Issue of Fact Because He Admits that he Cannot Testify as to the Level of Esteem Roman Catholics on the St Louis Area May Hold for Brothers

Fr Doyle’s testimony offers nothing to the issue of whether a reasonably prudent person in Visnaw’s position would have been put on notice of a potentially actionable injury Mr Visnaw, in another effort to distract attention from *Powel’s* clear mandate on notice issues, points to some overly broad, vague and unsubstantiated statement from Doyle that Catholic priests and brothers are held in high esteem Notably, however, Fr Doyle admits that he cannot testify as to the level of esteem and respect Roman Catholics in the St Louis area hold for brothers and/or priests (See Ex 7, Plaintiff’s Suggestions in Opposition, Deposition of Fr Doyle, p. 118) Moreover, it is the province of this Court to decide whether, under the objective test set forth in *Powel*, a reasonably prudent person in Mr Visnaw’s shoes would have been put on notice of a potential cause of action Plaintiff would have his expert supplant the role of this Court in applying the reasonably prudent person standard In short, Doyle’s opinions have no bearing on the statute of limitations issue

4 Whether Other Individuals Have a Claim Against Mueller Has no Bearing on the Objective Test Set Forth in *Powel*

Mr. Visnaw points to the testimony of three individuals who claim that they too had participated in the so-called experiments with Mr. Mueller and did not appreciate the significance of the experiments until years later. The testimony of the three witnesses, however, has no bearing on the statute of limitations issue when one considers that (i) none of the three individuals claims that they “repressed” the memory of the incidents, (ii) none of the three individuals testified that they were sexually abused by Mueller, and (iii) two of the three individuals (Giegling and Kluempers) are Plaintiffs in civil lawsuits brought by the same Plaintiff’s counsel. Like the testimony of the family and friends above, none of the witness’ testimony addresses the objective, reasonably prudent person standard set forth in *Powel*. Because the capable of ascertainment standard set forth in *Powel* is an objective one, the statute of limitations issue can be decided by this Court as a matter of law and the stories of external witnesses has no bearing on the merit of Mr. Visnaw’s claim in that regard. *Powel*, 197 S.W.3d at 585.

C. Under *Powel*’s Analysis, Plaintiff’s Action Accrued in 1984-1985 and is Barred by the Statute of Limitations.

Since Mr. Visnaw has not disputed the fact that he always remembered critical aspects of the alleged abuse incidents, which he describes in his Amended Petition as “offensive and causing him damage,” his cause of action accrued at the time of alleged abuse incidents or in the days or moments shortly after the alleged incident occurred.

As noted in *Powel*, the objective test set forth comes in to play particularly for plaintiffs who are very young or mentally incompetent. *Powel*, 197 S.W.3d at 585. However, it is possible

for a victim, particularly a teenaged victim, to ascertain the damage at the time of the abuse or very soon after See *Id* at 588-89 (C J Wolff, concurring)(emphasis added)

Here, Plaintiff had notice of his alleged injuries at the same time or within days after the alleged incidents occurred Mr Visnaw specifically testified that he always remembered critical aspects of the alleged abuse episodes (knife to throat, stripping down to his underwear, etc) Under the *Powel* standard stated above, as an intelligent, older, teenager, Mr Visnaw was put on notice during his senior year when the alleged incidents took place and he is time-barred from bringing his claims against Vianney and the Marianist Province

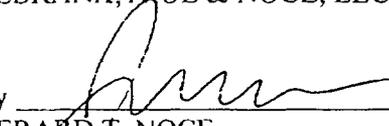
In further support of this fact, another review of *Powel* is instructive In *Powel*, the Court rejected the plaintiff's argument that under the "capable of ascertainment" test the statute of limitations should not begin to run until he subjectively became aware that he suffered damages and that they were caused by the actions of the individuals in question and were connected to his psychological injuries *Powel*, 197 S W 3d at 581 In rejecting that approach, the Court stated that to apply such a standard would be to apply a subjective "discovery" rule in clear violation of the legislative intent. *Id*. Instead, the Court adopted the following test " *the statute of limitations begins to run when the 'evidence was such to place a reasonably prudent person on notice of a potentially actionable injury'* " *Id* at 582 (emphasis in original) The Court noted that such a test was an **objective** one and that the issue is " *not when the injury occurred, or when plaintiffs subjectively learned of the wrongful conduct and that it caused his or her injury, but when a reasonable person would have been put on notice that an injury and substantial damages may have occurred and would have undertaken to ascertain the extent of the damages* *Id* (emphasis added)

In his Opposition, Mr Visnaw is asking this Court to apply the same subjective test clearly rejected by the Court in *Powel*. Mr Visnaw essentially argues that the statute should not begin to run until he discovered his alleged injuries or as he puts it, “appreciated” or “ascertained” the harm from the alleged sexual abuse. (See Plaintiff’s Suggestions in Opposition, p 42). Essentially, he is arguing for either the date of injury or the date that he learned of the alleged wrongful conduct. Clearly, the *Powel* Court rejected both such dates as the triggering date. Under the objective test set forth in *Powel*, therefore, Plaintiff’s claim, if any, was capable of ascertainment in 1984-1985 when the alleged incidents took place and he gained knowledge of the aspects of his claim that put him on notice that he had potentially been injured. His claim, therefore, is time barred.

CONCLUSION

Plaintiff Robert Visnaw maintains that his injuries were not ascertainable until 2005, over twenty (20) years after the alleged incidents with Mr Mueller occurred. Visnaw cannot and does not, however, deny the fact that he has always remembered critical aspects of the alleged abuse incidents that would have put a reasonably prudent person on notice of a potentially actionable injury. Visnaw was not a small child when the alleged incident occurred, and nor is there any indication that he was mentally incompetent (quite the contrary). He was a highly intelligent, successful seventeen year-old high school senior (nearly 18 during the last incident). Under the objective test set forth in *Powel*, and a review of the aspects of the claim he admits he has always known and remembered, Mr Visnaw’s claims are time barred and Defendants’ Joint Motion for Summary Judgment should be granted.

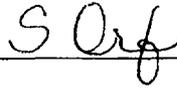
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CERTIFICATE OF SERVICE

A copy of the foregoing has been sent this 29 day of June, 2007 via first class U S Mail, postage prepaid, to Mr Daniel W Craig, Attorneys for Plaintiff, 1125 Grand Blvd , Suite 900, Kansas City, MO 64106 and to Mr J Martin Hadican, Attorney for Defendant Mueller, 225 South Meramec, Suite 832, St Louis, MO 63105



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IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS
STATE OF MISSOURI

ROBERT WILLIAM VISNAW,)
)
 Plaintiff,)
) Cause No 06CC-000008
 v)
) Div No. 15
 MARIANIST PROVINCE OF THE)
 UNITED STATES, et al ,)
)
 Defendants)

PLAINTIFF'S SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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Introduction

Defendant seeks the extreme and drastic remedy of summary judgment from the Court entirely on statute of limitations grounds. Yet, defendant does not deny nor even attempt to dispute plaintiff's proof of having, until 2005, repressed memory of his *sexual* abuse by Brother Mueller, whom defendant was charged with supervising. Rather, defendant's entire argument is that plaintiff's *non-sexual* interaction with Mueller, which plaintiff has always remembered since the date of the incidents in 1984-1985, would put any reasonably prudent young man in the same circumstances on notice of an actionable injury at the time the incidents occurred.

Defendant's motion should be denied because, as the party bearing the burden of proof, defendant has failed to provide any *factual evidence* to the court to support its motion. In other words, defendant *only alleges* that such *non-sexual* conduct would put any reasonably prudent young man in the same circumstances on notice of an injury, but fails to provide any medical, professional, or factual evidence or testimony to substantiate the allegation. As will be seen below, plaintiff on the other hand provides a substantial amount of factual evidence supporting his allegation that (1) plaintiff did not regain conscious recollection of the *sexual* abuse until 2005, and (2) plaintiff's *non-sexual* interaction with Mueller would not place a reasonably prudent young man in the same circumstances on notice of an actionable injury.

Because defendant makes only unsubstantiated allegations, and because plaintiff's evidence is undisputed and viewed in the light most favorable to plaintiff, defendant's motion for summary judgment should be denied.

Plaintiff's Response to Defendant's

Statement of Uncontroverted Material Facts

1. Uncontroverted that plaintiff filed his initial Petition for Damages on January 3, 2006

2. Uncontroverted that plaintiff filed his Amended Petition on December 18, 2006

3. Uncontroverted that in both his Petition and Amended Petition, plaintiff alleges to have been sexually assaulted by Brother William Mueller and that defendant Marianist Order failed to properly supervise Mueller

4. Uncontroverted that plaintiff was born on April 9, 1967

5. Uncontroverted that plaintiff attended Vianney High School from 1981-1985

6. Uncontroverted that plaintiff had four separate incidents with Brother Mueller during his senior year in high school at Vianney

7. Uncontroverted that Brother Mueller was employed by defendant Marianist Order as an Assistant Principal at Vianney when he abused plaintiff

8. Uncontroverted that defendant Marianist Order placed Brother Mueller at Vianney High School as Assistant Principal beginning the school year of 1984-1985, which would have been plaintiff's senior year

9 Uncontroverted that in the first incident, Brother Mueller instructed plaintiff to come to his office, had him hyperventilate to unconsciousness, and then asked him questions about the experience

As additional context, during that first incident Brother Mueller explained to plaintiff that he had been brought to Vianney by the Marianist Order specifically to find out why Brothers were leaving the Order, and that he had been given the Order's permission to use the students to conduct experiments for his master's degree. Brother Mueller further explained that his thesis dealt with issues of fear and that the experiments would involve such emotions. See, Visnaw depo pp 109 5 to 110 6, attached as Defendant's Exhibit D

10 Uncontroverted that prior to ever touching plaintiff, Brother Mueller deceived plaintiff with the explanation that he had been granted permission by the Order to use students for experiments with respect to his master's degree. *Id.*

11 Uncontroverted that plaintiff does not know whether he was sexually assaulted while rendered unconscious, nor uncontroverted that plaintiff did not suffer any physical injuries during the first incident

12 Uncontroverted that plaintiff has always recalled the *non-sexual* details of the incidents with Brother Mueller and that he has always believed until 2005 that the incidents were conducted as part of a legitimate experiment for Mueller's master's thesis. *Id.* at 115 5 to 117 14

13 Uncontroverted that plaintiff did not in any way find the *non-sexual* interaction with Mueller that he has always remembered to be offensive, harmful, or injurious until 2005

14 Uncontroverted that the second incident with Brother Mueller occurred approximately three weeks to one month after the first incident and that the incident began by Mueller and plaintiff meeting at the gym entrance

15. Uncontroverted that the second incident took place in the varsity locker room

16 Uncontroverted that prior to touching plaintiff, Brother Mueller asked plaintiff if he was comfortable and instructed him that he would be conducting more testing of him, which included the hyperventilation and unconsciousness *Id* at 140-4-22

17 Uncontroverted that plaintiff was lying down and beginning to regain consciousness when he felt Brother Mueller massaging plaintiff's penis Also uncontroverted that plaintiff did not recollect this memory until 2005 *Id.* at 144 23 to 145 9

18. Uncontroverted that as Brother Mueller was massaging plaintiff's penis with one hand and masturbating himself with his other hand, plaintiff heard Mueller make moaning sounds

19 Uncontroverted that Brother Mueller immediately stopped massaging plaintiff's penis and stopped massaging his own penis when he realized that plaintiff had regained consciousness

20 Uncontroverted that as plaintiff left the high school immediately following the second incident, he was “freaked out” by it, stating “ . but again, here -- I looked at it as here’s this guy that is telling me to trust him, and I’m trying to trust him, believing that he’s not going to cause me any harm, so I took him at his word that this was all part of his tests ” *Id.* at 144 5-10 Equally uncontroverted is the fact that plaintiff completely repressed any memory of this sexual assault until 2005 *Id.* at 144.23 to 145 9

21 Uncontroverted that the third incident with Brother Mueller occurred sometime prior to Christmas break, 1984

22 Uncontroverted that the third incident began by plaintiff meeting Brother Mueller at the school’s main entrance and then walking together back to the locker room

23 Uncontroverted that Brother Mueller again had plaintiff hyperventilate and become unconscious during the third incident

24 Uncontroverted that when plaintiff regained consciousness, he was sitting on the floor with his knees brought up to his chest Uncontroverted that after he regained consciousness, Brother Mueller asked him how long he believed he was unconscious, and asked plaintiff how he was doing *Id.* at 158 1 to 160 8

25 Uncontroverted that after plaintiff had regained consciousness, Brother Mueller asked plaintiff to put VO5 hair gel in his hair, which he did Uncontroverted that after a few minutes, Mueller instructed plaintiff to wash the gel out *Id.* at 141 17 to 142 4

26 Uncontroverted that plaintiff has no recollections of sexual abuse arising from the third incident with Brother Mueller

27 Uncontroverted that the fourth and final incident with Brother Mueller occurred in approximately March 1985, while plaintiff was still seventeen years old

28 Uncontroverted that plaintiff met Brother Mueller after dark at the front entrance of the high school

29 Uncontroverted that the fourth and final incident with Brother Mueller occurred in a small teacher's room at the high school

30 Uncontroverted that prior to touching plaintiff, Brother Mueller asked plaintiff if he was comfortable Uncontroverted that Mueller then stated that "as part of the experiment, would you have any problem with taking your clothes off down to your underwear?" Uncontroverted that when plaintiff inquired as to why, Mueller responded by stating that "well, it's part of the test if you're comfortable If you are afraid to do so, that would be fine, because that would be one of the responses that we would elicit " Uncontroverted that plaintiff responded by saying that if " nothing's going to happen, you know, no big deal", and plaintiff undressed to his underwear while Mueller stepped outside the office *Id* at 167.10 to 168 11

31 Uncontroverted that Brother Mueller stepped out of the office while plaintiff undressed Uncontroverted that when Mueller reentered the room, he instructed plaintiff to face away from him

32 Uncontroverted that after turning away from Brother Mueller as instructed, Mueller blindfolded plaintiff, put his hand on plaintiff's shoulder and asked plaintiff if he was afraid. Uncontroverted that Mueller repeatedly squeezed plaintiff's shoulder and asked plaintiff if he was afraid.

33 Uncontroverted that Brother Mueller then placed a knife to plaintiff's neck, pulled plaintiff closer to him, and plaintiff then placed his hands on a table in front of him.

34 Uncontroverted that plaintiff has always remembered the *non-sexual* details of the incidents with Brother Mueller, including the knife being placed to his throat. However, putting this knowledge in its proper context, plaintiff testified that **“I found it strange, but when I questioned him, again, he covered it up under this is all part of the test. This is everything that we -- your fear is understandable. That's what I'm testing for. That's what I'm working on with my thesis.”** *Id.* at 169 21-25. Plaintiff further testified that “[a]nd my belief at that time was even though he held a knife to my throat, was I in danger? And I thought no. So, therefore, in my opinion at [age] 30 having just completed the Federal Law Enforcement Training Center that the mens rea was not there.” *Id.* at 265 7-10.

35 Uncontroverted that as plaintiff continued to state that he was not afraid, Brother Mueller would press the knife harder against plaintiff's neck. Again, so as to be understood in its proper context, plaintiff testified that "[a]s the knife was pressed harder, it was more of, okay, what's going on? Again, he'd ask me are you afraid. A little. That's fine. That's what we're hoping to get. How do you feel?" *Id.* at 170-20-24.

36 Uncontroverted that plaintiff eventually felt skin-to-skin contact and felt "very afraid." However, defendant fails to note that this memory was not recollected until 2006. Plaintiff testified in detail as to this fact as follows:

A And this -- **this came out just recently in my counseling session** is that as I was -- as I was being pulled in to Brother Mueller or as he was stepping into me, I feel skin on skin on my back, not his hand on my back, not you know, an arm.

This was skin on skin which is what I would assume to have been his stomach at that time. And I remember becoming very -- at that point very afraid. Why is this happening? And then --

Q Is that something you always remembered, too?

A **No, it's not.**

Q When did you remember being very afraid?

A When -- **this was about three months ago**. I went in to my counselor because I thought I was doing really well, and he said, you know, come back as needed.

And I started having just these feelings of just over -- you know, I was being overcome with emotion, and it would always be -- the times would always be when I would start to think about the case, about Brother Mueller. Everything was triggered on that

And then, again, it was a little piece here, a little piece there. And everything kind of fell in one day, and I lost it. I mean, I sat at home and cried. I went in to my counselor as soon as I could get in to see him, and I lost it

And to be more exact, I was on detail. **I can tell you exactly. It was in April of 2006**. I was on detail for training class in Denver, Colorado, and I was watching TV

And I just remember very vividly what happened at that fourth session, and I remember turning the TV off and just starting to bawl my eyes out about how could this have happened and I don't -- I just didn't do anything to stop it.

And as he was pulling me in closer or as I say closing the gap, he pushed the knife even harder to me. to my throat, and he said are you afraid? And I'm like, yes, I am because what's going on?

And he stuck his hand down my pants and started massaging, and I just remember the very -- from the tips of my fingers to the tips of my toes just being totally, totally, totally scared to death about what was happening

Id at 171 9 to 173 3

37 Uncontroverted that plaintiff first recollected in 2006 that he had become very afraid at one point during the fourth incident and told Brother Mueller so *Id*

38 Uncontroverted that plaintiff first recollected in 2006 that during the fourth incident, Brother Mueller stuck his hand down plaintiff's underwear and began massaging plaintiff's penis *Id*

39 Uncontroverted that plaintiff first recollected in 2006 that at some point during the fourth incident with Brother Mueller he became "totally scared to death about what was happening" *Id*

40 Uncontroverted that after the sexual abuse occurred that plaintiff first recollected in 2006, Brother Mueller escorted plaintiff, still blindfolded, out to the track and had him walk around the track while guessing the distances he had traveled

41 Uncontroverted that plaintiff does not recall ever having a semen discharge during the fourth incident with Mueller, and uncontroverted that plaintiff first recollected in 2006 that he had an erection after regaining consciousness during the fourth incident *Id* at 189 7-15

42 Uncontroverted that plaintiff has always remembered the *non-sexual* details of the fourth incident with Brother Mueller including having been asked to take his clothes off down to his underwear and having been told that taking off his clothes was part of the legitimate experiment *Id* at 167 10 to 168 11

43 Controverted in that plaintiff clearly testified that during the fourth incident he was rendered unconscious and recalls waking up and being led out to the track by Brother Mueller while blindfolded *Id* at 173 7-11 Uncontroverted in that plaintiff was conscious while being sexually assaulted by Brother Mueller during the fourth incident, yet not recovering memory of that sexual assault until 2006 *Id* at 171 9 to 173 3

44 Uncontroverted that plaintiff has always remembered the *non-sexual* details of the incidents with Brother Mueller, including having been asked to hyperventilate, and having been told that such conduct was part of a legitimate experiment. *Id* at 109.5-25, 115 5-12; 116-13-22, 169-21-25

45 Uncontroverted that plaintiff voluntarily maintained contact with Brother Mueller for a period of time following graduation from Vianney, and further uncontroverted that plaintiff did not ascertain he had been harmed until 2005 In fact, plaintiff testified as follows

Q Did you consider him [Mueller] to be a friend of yours during that time period [following graduation] that you were writing him?

A I wouldn't say a friend I looked at it as somebody that I had developed a relationship with because of, you know, thinking that I was part of his master's degree and he wanted to continue with the communication

I wouldn't call him a mentor or a friend It was casual acquaintance I guess using -- as I say in adult terminology, he was a casual acquaintance type of relationship

Q. So it would have been up until about when you were 23 years old, something like that?

A I believe so, yes

Q And up to that age, you considered that what he was doing was a bona fide master's study, and you considered that he was an acquaintance to whom you'd write?

A I -- until --like I said, **until September 2005, I thought it was a legitimate study**

Id at 121-16 to 122 10

46 Uncontroverted that plaintiff performed very well academically in high school. However, as plaintiff has reflected upon the sexual abuse he suffered at the hands of Brother Mueller, which he first ascertained in 2005, he believes he suffered in his academic pursuits as well, as he testified

A I think my damages are the fact that as an adult now, those things that have happened to me back in 1984 and 1985 have, one, made me walk away from a faith that I thought I was -- you know, pretty sound in

It made me afraid to look at my own children as they were naked in the bathtub or when I was changing them

It made me literally walk away from any clergyman, any man of the cloth that ever came near me. I could not be around them. I still can not be around them, because I'm afraid that they are going to do something to me or my children

It made me look at every -- once everything was brought up, it made me look at every adult male that was around my kids as somebody who was going to take them and commit nasty crimes to them

It has cost me five years of relationship with my father who died months after we reconciled, so there was five years that wasn't there

It cost me -- looking back now, **it cost me a chance to get a higher GPA**, to graduate at a higher class ranking at Vianney, because around the time that I went from gold honor roll to the silver honor roll, it would be right around that time that all that started

You know, there's just a whole myriad of things that, I mean, I can try to talk about. It will get to me. It will have me break down. I don't want to get to that point. but that's where my damages is, not in the fact that he made me pass out

Id. at 218-21 to 219.25

47 Uncontroverted that plaintiff has a bachelor's degree in Spanish from UMSL, and is currently employed as a Special Agent with the Department of Homeland Security

48 Uncontroverted that plaintiff ceased attending mass on a regular basis around 1986 or 1987.

49 Uncontroverted that while serving in the United States Army, plaintiff worked as an interrogator in the human intelligence branch

50 Uncontroverted that plaintiff speaks English and Spanish, and understands and speaks some Portuguese, Italian, and Korean

51 Uncontroverted that plaintiff attended Federal Law Enforcement Training in Georgia, which included subjects of criminal justice Controverted however that this training provided plaintiff any "criminal investigative background" *Id.* at 258 2-18 Further controverted that any such training caused plaintiff at that time to ascertain he had been damaged by Mueller in 1984-1985 Specifically, plaintiff testified as follows.

Q Did you think that -- after you received your criminal training at the federal level, did you believe that that was still okay, the knife to your throat?

A The training that I received dealt primarily with constitutional law, search and seizure, those types of issues And then we went in to the criminal violations and the administrative violations of immigration law

So being able to say that what happened to me at 17 years old, was that wrong after going through the Federal Law Enforcement Training Center, I can't say yes or no because I was not exposed to those -- that type of criminal law at that point.

There was nothing for me to bounce anything against We dealt exclusively with illegal immigrants

Id. at 261 21 to 262 11

Q And you were going -- 30 years old and you were going to become a criminal -- a federal criminal investigator?

A For the Immigration & Naturalization Service, yes

Q And you didn't have any thoughts in your mind that someone holding a knife to your throat when you were 17 was wrong?

A. At that time, no, because I was still looking at it all from I was part of the experiments And I really didn't discuss it with anybody

Q No, and I'm not asking you that, but what I'm asking you is did you think that that was something that was wrong that was done to you?

A Under -- as I've explained to you before, **under the belief that it was done in furtherance of somebody's education and not recalling the sexual abuse that was done, I thought it was still okay**

Id at 262 21 to 263 13.

52 Uncontroverted that in September 2005, plaintiff's mother called plaintiff and left him a message that Brother Mueller was in the news and that plaintiff then conducted an internet search and discovered a *St Louis Post-Dispatch* article referencing the allegations of *sexual* abuse that had been made against Mueller, which would have been the very first time plaintiff became aware of such allegations *Id* at 42 12 to 44 4.

53. Uncontroverted that plaintiff testified regarding contact between him and Bryan Bacon as follows. "And when I was reading the complete news article from the *Post* [in September 2005], the statement that Bryan Bacon had made was very similar to my experiences, and I sought him out to say, you know, what do I do Here's what I have What do I do?" *Id* at 43 2-6

54 Controverted in that plaintiff never discussed with his father any details (and certainly no mention of the *sexual* abuse) of the incidents with Brother Mueller Plaintiff's actual testimony, thus providing proper context, is as follows

Q Did you discuss William Mueller and these incidents with your father at some point in time?

A We were -- after I got out of basic training, I had gone home for a short period of time, and then I went out to the Presidio of Monterey

And that July, I flew home to get my car so I'd have a mode of transportation out in California And on that trip, he said, oh, I forgot to give you this. It was a letter from Brother Mueller

I said, oh, you know what, just go ahead and throw those away I mean, if you get any more, I quit writing him back a long time ago

He's like, well, you know, why is he writing to you? I said he -- he writes to everybody He still keeps in contact with a lot of students that I understand that he had at Vianney

Q When would this be?

A July '91 shortly before his death

Id at 117 15 to 118 7

A And I had said, you know, he was -- while he was at Vianney, he was working on a master's degree And he had been given permission by the order to -- if he wanted to enlist students to help him in conducting whatever he needed to, it was okay.

And that's exactly how I presented it to my dad. And he was like, okay, well, if anything else comes in the mail, we'll just go ahead and toss it.

Q So you discussed what these experiments were with your dad?

A No, no. I just told him that he had a group of students that were assisting him in -- as part of his master's degree, and I was one of those students.

Id. at 118 11-23

55 Uncontroverted that plaintiff has always remembered the *non-sexual* details of the incidents with Brother Mueller, including having been told by Mueller not to tell others about the incidents. As plaintiff explained:

Q Did you think that was odd at all [that Mueller told you not to tell anyone about the incidents]?

A No, I didn't, because here's a man that I -- because of his position and what he did, he was religious. You know, we're taught from knee high catechism classes that you should be able to trust somebody.

Q Did anybody ever tell you at any time during your upbringing that when an adult tells you don't tell anybody else what's going on that you should follow that direction?

A I was always taught to respect authority.

Q And my question is were you ever told one way or the other that when anyone tells you not to tell anybody else what's going on that you should alert people to that?

A No

Q Okay.

A But then again, that goes to my upbringing in a military family that you respect the authority presented to you

Id at 135 5-24

56. Uncontroverted that plaintiff ceased assisting Brother Mueller following the fourth incident, however plaintiff never consciously or purposely avoided Mueller, as he testified

Q Did you ever have any other incidents with William Mueller on any occasion after that?

A No, sir

Q Did you avoid him?

A Consciously, no I did not.

Q Did you avoid him?

A I did not go out of my way to avoid him

Id at 174 24 to 175-5

57 Uncontroverted that plaintiff has always remembered the *non-sexual* details of the incidents with Brother Mueller, however, totally controverted that plaintiff ascertained he had been damaged from such *non-sexual* conduct before 2005, when he recollected the *sexual* details of the incidents with Mueller *Id* at 144 23 to 145 9; 171 9 to 173 3, 189 7-15

Standard of Review for Summary Judgment

“Missouri courts regard summary judgment as an extreme and drastic remedy that must be applied with the exercise of great care ” *Robinson v Ahmad Cardiology, Inc* , 33 S W 3d 194, 198 (Mo App E D 2000) In fact, summary judgment is considered so drastic that it ‘ borders on a denial of due process and effectively denies the party against whom it is entered a day in court ’ *Hart v Kupper Parker Comm , Inc* , 114 S W 3d 342, 345 (Mo App E D. 2003)

Defendant has the burden of establishing that summary judgment is proper in this matter, and **“summary judgment is not proper if the trial court must overlook material in the record that raises a genuine dispute as to the facts underlying the movant’s right to judgment.”** *Id* (emphasis added) Moreover, when reviewing defendant’s motion for summary judgment, the trial court shall review the record in the light most favorable to the plaintiff and shall accord plaintiff the benefit of all reasonable inferences from the record *Powel v Chaminade*, 197 S W 3d 576, 580 (Mo. banc 2006)

Defendant’s Motion is predicated entirely upon statute of limitations grounds “The statute of limitations is an affirmative defense, Rule 55 08, and respondents who move for summary judgment on that basis bear the burden of showing that it bars plaintiff’s claims ” *Id* Moreover, **“when contradictory or different conclusions can be drawn from the evidence as to whether the statute of limitations has run, it becomes a question for the jury, and thus summary judgment is inappropriate ”** *Id* at 586 (emphasis added)

Because at a bare minimum, contradictory or different conclusions can be reasonably drawn from the evidence presented as to the statute of limitations issue in this matter, summary judgment is inappropriate *Id*

Repressed Memory Cases and the Statute of Limitations:

Powel v. Chaminade, 197 S.W.3d 576 (Mo. banc 2006)

In 2006, the Missouri Supreme Court exhaustively examined the application of the statute of limitations to repressed memory cases, such as that presented by plaintiff Visnaw, in the case of *Powel v Chaminade, 197 S W 3d 576 (Mo banc 2006)* In *Powel*, the plaintiff alleged to have been sexually abused by the defendants between the ages of 15 and 17. However, he claimed that he had repressed memory of the abuse until the age of 41, after which he filed suit *Id* at 577 The trial court granted summary judgment in favor of the defendants on the grounds that plaintiff's damages became "capable of ascertainment", and thus the statute of limitations began to run, when the sexual abuse had occurred some twenty years earlier *Id*

Upon transfer of the plaintiff's appeal to the Supreme Court of Missouri, the Supreme Court *reversed* the trial court's granting of summary judgment in favor of the defendants *Id* In examining the issue, the Supreme Court summed up the argument put forth by the defendants, an argument that is again being made by the defendant here in plaintiff Visnaw's case, as follows

Respondents [Chaminade/Marianist Order] argue that the proper interpretation of “capable of ascertainment” is that the statute of limitations begins to run when the sexual abuse allegedly occurred—here from 1973 to 1975—because that is when the injury objectively could have been discovered or made known if the victim had not repressed memory of it. They argue that if the alleged events occurred, they must have been traumatic and so must have caused immediate damage so that plaintiff could have maintained suit immediately. **Chaminade’s argument also misses the mark**

Id. at 581-582 (emphasis added)

The Supreme Court rejected the defendant’s argument for the simple reason that **“in cases of involuntary repressed memory, the date the injury occurs may be later in time than the battery.”** *Id.* at 582, citing, *KG v RTR*, 918 S.W.2d 795, 798 (Mo. banc 1996), and, *Sheehan v Sheehan*, 901 S.W.2d 57, 59-60 (Mo. banc 1995) (emphasis added)

Having rejected the very same argument that defendant now makes in plaintiff Visnaw’s case, the Supreme Court framed the ultimate issue as follows: “what is the test for when damages are capable of ascertainment?” *Id.* The Supreme Court answered that question by stating: *“the statute of limitations begins to run when the evidence was such to place a reasonably prudent person on notice of a potentially actionable injury.”* *Id.* (emphasis in original)

The Supreme Court then cited with approval to several prior examples of where the technical breach or wrong occurred many years (sometimes decades) before ascertainment of the resultant damage, thus necessitating denial of summary judgment on statute of limitations grounds. For example:

In *Dixon v Shafston*, 649 S.W.2d 435 (Mo. banc 1983), four partners signed a contract without being informed by their fifth partner, an attorney, about a clause in the contract that ultimately caused them damage. Although the wrong had existed and had been at least theoretically ascertainable since the inception of the contract, the statute of limitations did not begin to run until the lawyer-partner advised the remaining partners that they should get independent counsel because he had made a mistake. *Id.* at 438; *Powel*, 197 S.W.3d at 583.

In *Martin v Crowley, Wade & Milstead, Inc.*, 702 S.W.2d 57 (Mo. banc 1985), in 1983 plaintiffs sued defendants for negligence relating to a survey done of plaintiff's residential lot in 1973 which had caused them to build their house in the wrong place and resulted in diminished market value. The Missouri Supreme Court reversed summary judgment in favor of defendants as to the statute of limitations issue stating that "[n]othing indicated that plaintiffs knew or should have known of any reason, until May 1981, to question defendant's work. It was only when they learned in 1981 that the house had been built too close to the property line that the statute began to run, for the mere occurrence of an injury itself does not necessarily coincide with the accrual of a cause of action." *Id.* at 58. *Powel*, 197 S.W.3d at 583.

In *BMA v Graham*, 984 S W 2d 501 (Mo banc 1999), marble panels were installed on the outside of an office building when it was built in the 1960's. The defect existed from the start, so at least theoretically some damage had been sustained at that time, which the owners could have ascertained if they had looked behind the marble slabs covering the building. The Missouri Supreme Court rejected defendant's claim that the statute of limitations began to run as soon as the building was built, or even when other problems with the panels became known over the ensuing decade. Rather, "[the Supreme Court] took a more *practical* approach and held that the damages were sustained and capable of ascertainment only when the damage sued for was *substantially complete*, which is when the evidence was such to place a reasonably prudent person on notice of a potentially actionable injury. This occurred in 1985 [over 20 years after the construction of the building] when the first panels began to fall." *Id.* at 507, *Powel*, 197 S W 3d at 583-84 (emphasis added). The *Powel* Court further opined that "[i]n other words, *BMA* took the approach that it is not the existence of a nominal claim for damage, but the occurrence and capability of ascertaining actual and substantial damage, that begins the running of the statute." *Id.* Finally, the *Powel* Court cited to *Klemme v Best*, 941 S W 2d 493, 497 (Mo banc 1997) noting that, "*Klemme* also reaffirms that the mere existence of the wrong and some nominal damage is not enough. Plaintiff must also have notice of these facts or of something that puts plaintiff on notice to inquire further." *Id.*¹

¹ See also, *Husch & Eppenberger, LLC v Eisenberg*, 213 S W 3d 124, 129-130 (Mo App E D 2006) (Citing *Powel* and finding statute of limitations did not begin to run until seven years after the technical breach when meaning of certain terms in a release were placed into issue)

After this survey of decisions where summary judgment was properly denied as to statute of limitations grounds, the Supreme Court in *Powel* ultimately applied the test specifically to repressed memory cases, such as that which is presented here in plaintiff Visnaw's case. In this regard, The Supreme Court held

The standard to be gleaned from these prior cases has special application to cases of repressed memory. **If the memory of the wrong was repressed before the victim had notice both that a wrong had occurred and that substantial damage had resulted, or before the victim knew sufficient facts to be put on notice of the need to inquire further as to these matters, then the claim would not yet have accrued at the time that the victim repressed his or her memory of the events.** From that point forward, until the memories were regained, while the victim might have suffered damage, the victim would not have sufficient notice to have a duty to inquire further. **Only when he or she regained the repressed memories would the victim for the first time have 'reason to question' defendant's conduct and have information sufficient 'to place a reasonably prudent person on notice of a potentially actionable injury.'**

Powel, 197 S W 3d at 584 (emphasis added)

In articulating this test, the Supreme Court stated that “[t]his is consistent with the approach taken by this court in prior cases involving sexual abuse.” *Id* The Supreme Court also cautioned lower courts that in considering a motion for summary judgment as to the statute of limitations in a repressed memory case. **“when contradictory or different conclusions may be drawn from the evidence as to whether the statute of limitations has run, it is a question of fact for the jury to decide.”** *Id* at 585 (emphasis added)

In applying the articulated test to the facts in *Powel*, the Supreme Court again noted that the approach advocated by the defendants, an approach repeated by defendant here in plaintiff Visnaw’s case², “effectively makes the date of the wrongful conduct the date when the statute of limitations begins to run **For all the reasons discussed earlier, this approach is incorrect.**” *Id* (emphasis added)

Because the trial court applied an incorrect standard, a standard that defendant in this matter advocates application of, the Supreme Court reversed the entry of summary judgment and remanded the matter back to the trial court for further adjudication *Id* at 586

² Plaintiff would additionally note that counsel for the defendants in *Powel* is the same as counsel for defendant in this matter. It is also noteworthy to point out that in its analysis of the *Powel* opinion in its Summary Judgment motion, defendant focuses only on the concurring opinion of Judge Wolff and totally ignores the actual majority opinion which obviously provides no support for defendant’s motion. See Defendant’s Memorandum, pp 9-10

Application of the *Powel* Standard Mandates Denial

Of Defendant's Motion for Summary Judgment

As the Supreme Court in *Powel* directed, “when contradictory or different conclusions may be drawn from the evidence as to whether the statute of limitations has run, it is a question of fact for the jury to decide.” *Id* at 585 (emphasis added) In this case, when the evidence is viewed in a light most favorable to plaintiff, there really is only one reasonable conclusion that can be drawn: plaintiff Visnaw did not regain memory of the *sexual* abuse that occurred to him by Brother Mueller in 1984-1985 until 2005, and further, knowledge of the *non-sexual* interaction with Mueller would not put a reasonably prudent person, in plaintiff's situation and context, on notice of an injury

The evidence presented by plaintiff below may not be overlooked in considering defendant's motion *Hart*, 114 S W 3d at 345 In considering all of the evidence, defendant's motion has at best only created a dispute of material fact, in other words a contradictory or different conclusion as to when plaintiff Visnaw did or should have ascertained his injury, thus mandating denial of summary judgment as to statute of limitations grounds *Id*

A comparison of the *factual evidence* put forth by both plaintiff and defendant as to this issue establishes that plaintiff Visnaw did not regain memory of the *sexual* abuse until 2005, and that his knowledge of the *non-sexual* interaction would not put a reasonably prudent person, in his situation and context, on notice of an injury until 2005

**Plaintiff's Evidence that Memory of the Sexual Abuse
Was Not Regained Until 2005 and Knowledge of the
Non-Sexual Interaction Would Not Put a Reasonably
Prudent Person on Notice of Injury Until 2005**

1 **Plaintiff Robert Visnaw** Plaintiff's sworn testimony absolutely supports his contention that the memories of his *sexual* abuse by Brother Mueller were not regained nor ascertained until 2005, and that his memories of the *non-sexual* details of the interaction would not objectively cause him to believe he had been injured until 2005

 a Plaintiff has always remembered the *non-sexual* details of the "experiments" with Brother Mueller such as being blindfolded, being asked to hyperventilate, being asked once to place gel in his hair, and being asked once to strip down to his underwear. However, until 2005 plaintiff never recalled the *sexual* details of the incidents. Until such time, plaintiff objectively believed that the *non-sexual* interaction had always been legitimate and not harmful to him. In that regard, plaintiff testified as follows:

Q What happened at that first incident?

A We went into his [Brother Mueller's] office, and he asked me -- he'd gone through the same thing he had said before is that the reason he was actually brought to Vianney was to try to find out why brothers were leaving the order, that he was put there by the order itself to talk to them as -- find out why are these people leaving the order when they shouldn't be, when everything seemed to be happy-go-lucky then

So he then said he had the permission of the order to use students to complete his master's degree, and he explained that it was a thesis on fear and the, you know, various types of fear, what was being done.

Id at 109 5-17

Q This first situation or first incident, have you explained it completely?

A To the best of my recollection, yes

Q Have you always recalled what happened at that -- on that instance?

A I've always recalled the passing out and waking up with the questions, but I've always recalled it as part of the quote/unquote test or experiments

Id at 115 5-12

Q Did you consider or after you left that night, did you consider the incident to be -- I mean, did you believe it was a test or experiment?

A. I believe -- pardon me I believed it right up until September of 2005 that that's what it was I had no reason to believe otherwise

Q. You mean every incident was?

A. I thought every incident of -- out of the four sessions that I partook of was done as part of his master's degree

Q As far as you could tell, did it seem to be a bona fide type of series of tests to you?

A At 17 years old, I took him at his word I mean, he was the assistant vice-principal. He was part of the order that was instructing me, giving me a great education I had no reason to believe otherwise

Q Did you find any of the -- anything that occurred on that first instance to be or first incident to be physically offensive to you?

A No

Q Harmful to you?

A No

Q Injurious to you?

A No

Id at 116 13 to 117 11

Q Did you -- did you mention to your dad during that three day trip [together in 1991] that William Mueller had held a knife to your throat?

A No

Q Did you mention to your dad during the three day trip that he asked you take your clothes off?

A No.

Q Did you mention to your dad during that three day trip that he had blindfolded you with [sic]?

A No

Q You knew that at that time though?

A I knew that as part of the master's degree program that he was working on,
yes

Id at 200 5-20

Q I'm talking about, you know, as a result of any of these incidents which
you've described as assaults and batteries that took place in 1984, did you receive any
medical treatment or counseling or care at that time?

A In 1984 or 1985?

Q Right

A No

Q Did you -- did you notice anything about your body in the form of an injury
after any of these incidents?

A No.

Id at 201 19 to 202 5

Q You knew that -- you've always known that he [Brother Mueller] took you
through these experiments and made you pass out?

A That's been established.

Q And you knew that was wrong when he did that?

A No, I didn't

Id at 220 1-6

Q You thought it was okay for an adult to make you pass out at age 17 ½?
That's your testimony?

A **At the age of 17, 17 ½, an individual who's in a position of authority in my school who's also a man of the cloth comes to me and says I need your help conducting my master's program and I have the okay of my superiors to do so, yes, I thought it was okay**

Id at 220 17-24

Q You never thought anything wrong had occurred to you up until September 2005?

A That's correct

Id at 283 23-25

Q Up to September 2005, to the extent that you remember what occurred, and you've already talked about that, you never thought any of that [the *non-sexual* interaction with Mueller] was wrong?

A That's correct

Id at 284 9-13

Q Okay So what happened [during the fourth and final incident]?

A [Previous inapplicable testimony omitted] And we went in -- we went into the hallway there and he said, you comfortable? I'm like, yeah He says, well, as part of the experiment would you have any problem with taking your clothes off down to your underwear?

Well, why do you want that to happen? He said, well, its part of the test if you're comfortable. If you are afraid to do so, that would be fine, because that would be one of the responses that we would elicit.

And I said, no, if it's -- nothing's going to happen, you know, no big deal. So I did.

Id. at 167-9 to 168-9.

Q Did you find that [Brother Mueller placing a knife to your neck] to be an offensive action by him?

A I found it to be strange, but when I questioned him, again, he covered it up under this is all part of the test. This is everything that we -- your fear is understandable. **That's what I'm testing for. That's what I'm working on with my thesis.**

Id. at 169-19-25.

b However, it was not until at least September 2005 that plaintiff learned the true purpose of Mueller's intentions and only then did he begin to realize there was cause to believe that he may have been *sexually* abused. Plaintiff testified as follows:

Q Okay. And you didn't recall it until those newspaper articles in September of 2005, did you?

A I had always known about the sessions, and I had always looked at those as part of his testing process for his master's degree.

It wasn't until September of 2005 that I realized what was really going on as part of those

Q So in September 2005 is when you realized that you'd been sexually abused?

A That's when I realized at least there was cause to believe that I was.

Id. at 149 16 to 150 1.

Q Now my question is you found out about Brother Mueller in September of 2005?

A Correct

Q Okay And just from what you read in the paper, did that make you believe you were sexually abused?

A It made me aware that there was reason for me to believe that I was and that I needed to seek the answers to either confirm or deny that

Id. at 195 25 to 196 8

c In the second of the four "experiments" that he assisted Brother Mueller with, plaintiff now recalls waking up from unconsciousness as Brother Mueller was massaging plaintiff's genitals with one hand while Mueller was masturbating himself with the other hand and making moaning sounds *Id.* at 142 17 to 143 23, 153 18-22 Plaintiff did not regain memory of this *sexual* abuse until at least September 2005 and after undergoing counseling with Dr. Harris Specifically, plaintiff testified as follows

Q And is this [the sexual abuse] something that you recalled at the time [it occurred]?

A No I mean as far as what had happened?

Q Yes, sir.

A No I didn't -- **this didn't come to light until I was going through my counseling in September of 2005**

Q This didn't -- you didn't remember it?

A No, I did not

Q So you think, what, you repressed it?

A. Based upon the definition of repressed memory that I've been told since I started counseling, yes

Id at 144 23 to 145 13.

Q Well, let me ask you about that On the date of the second incident, you recalled that he was fondling you now? I mean, you've testified to that?

A Yes, sir

Q And did you recall on the day it occurred that it happened?

A In the fact that it happened then, I would have to say I know that it happened But, again, as far as did I consider myself molested or along those lines? Is that what you're trying to get at?

Q No What I'm asking you is on this date -- I think the second incident took place in November?

A Early November, yes

Q And that's the first incident where you can testify that there was sexual contact?

A. Correct

Q. All right And what you told me was that when you came to, you realized that he was massaging your genitals?

A Uh-huh

Q That's true?

A Yes, sir

Q That's what you recollect?

A Yes, sir

Q And you heard him moaning also, and he actually had his hand on his penis?

A Yes, sir.

Q Was he touching you above or below your underwear?

A His hand was actually underneath my pants I had a sweat suit on with gym shorts on because I had come straight from practice

My actual school clothes were still in the car because I didn't feel like getting them all wet from practice

Q Okay So what you recall now is him actually physically touching your penis and his own penis, his right hand on himself, his left hand on you?

A Yes, sir.

Q Did you remember that as you drove home that night?

A No

Q. Okay Did you remember it as you walked out to your car that night?

A. That -- after that episode and the fourth episode [of sexual abuse], a lot of things that happened were kind of a blur for me

Q What do you mean a blur?

A As if it was surreal I'm looking at it from an adult standpoint now trying to articulate it as a 17 year old It was almost as if it didn't -- I can't -- here I am walking out I'm afraid Did it really happen?

I'm starting to tell myself, okay, that just didn't happen, that just didn't happen So I convinced myself that it didn't

And it wasn't until I went through counseling [in 2005 and 2006] that it came out that yes, it did happen and you buried it so you didn't have to relive it again

Q Well, let me just make sure I understand what you're telling me here In other words, after it occurred, you recognized what occurred? You knew it happened, and you appreciated it happening?

A No What I'm saying is that from the time that I went into the locker room until the time that I -- the next recollection I have after being made to pass out is him saying how long were you out, are you afraid, and the answers that I gave at that point then leaving

Until I went through counseling and really started examining everything in my own mind why things were happening did I realize that there was a part that was missing that I couldn't account for in my own mind from the time that I was waking up until the time that I was fully cognizant of what was going on around me That was missing, and that came though counseling

Id at 189 25 to 193 3.

Q Okay And what you did after that is in your mind you said -- you convinced yourself what just happened did not happen?

A That's what I said And what I mean by that is from the time that it happened for 20 years, if you were to ask me, tell me about the sessions that you had with Brother Mueller, that was something that would never even come to my mind to relate to anybody

Q So it happened, and then you consciously suppressed it is what you did?

A I don't know if it was consciously or subconsciously, but I can tell you that until I sat down with my counselor and started going through -- you know, not reliving everything but just openly discussing it and having time to reflect on what happened, there was a time period that was lost, and it was found

Id at 193 7-23

Q Was it only as a result of counseling then that you have come to a conclusion that you were sexually abused?

A I have come to the realization that I was sexually abused There's no conclusion involved

Id. at 195 9-15

d In the fourth and final "experiment" with Brother Mueller, plaintiff now recalls that Mueller put his hand down plaintiff's underwear and massaged plaintiff's genitals, plaintiff also recalls now that after being rendered unconscious he awoke with an erection *Id.* at 163:15 to 174 9 Plaintiff did not regain memory of this sexual abuse until at least September 2005 and after undergoing counseling with Dr. Harris *Id.* at 171 3 to 173 3. Plaintiff testified further as follows

Q And did you also always remember waking up on one occasion [the fourth occasion] with an erection? Did you always remember that?

A No, sir

Q That's something you forgot?

A Yes

Q Did you --

A I think the word forgot in that particular instance is a bad word to use It was just something that I either suppressed or chose not to recall through some state

Knowing -- having it surface since all this has come about, I believe that it wasn't forgotten It was definitely buried deep enough to where I didn't have to relive it

Id. at 189 7-24

e Plaintiff did not find it odd that Brother Mueller told him not to tell anyone about the “experiment” sessions because plaintiff trusted Mueller as a religious authority, testifying as follows

Q Did you think that was odd at all?

A. No, I didn't, because here's a man that I -- because of his position and what he did, he was religious. You know, we're taught from knee high catechism classes that you should be able to trust somebody

Id at 135-5-15

Q Did you think that was odd at age 17 ½ that somebody would give you that direction?

A At age 17 ½ presented with -- the way it was presented to me?

Q. Yes, sir

A No

Id at 135-25 to 136 5

f Following the “experiments” Brother Mueller would always reassure plaintiff that everything had been done in furtherance of his master's degree, that it was a study in fear, and that he had intended on provoking such emotions from plaintiff. Plaintiff testified as follows

Q Do you remember that, talking to him [to Brother Mueller following the incidents]?

A Talking to him?

Q. Sure.

A. Yeah, I do. I mean, talking to him after this happened, I remember it now. I didn't remember it in conjunction with what happened [sexually]

Talking to him and just, you know, him being the person to try to calm me down from what just happened, **reassuring me that this was part of the process for him to get his master's degree, that this -- you know, Bob, I told you this is a study in fear, and that's the feeling that I wanted to provoke**

Id at 145 19 to 146 5

g. After the last "experiment" session with Brother Mueller ended, plaintiff never consciously or purposely attempted to avoid Mueller. Plaintiff testified as follows.

Q. Whose decision was it that that [the fourth session] was the final session?

A. That was mine.

Q. Why?

A. Because we were getting close to graduation. I had other things -- this would have been in -- it was after the state diving competition, so I want to say late February, early March.

There was lesser and lesser contact with him at school. and I was trying to get into colleges. I was making applications and whatnot.

Q. Were you trying to avoid him?

A No, not intentionally, but maybe subconsciously yes, but I wasn't trying to avoid him, you know, see him in the hallway and turn around and walk the other way I just went about my business at school

Id at 148 6-22

Q Did you ever have any other incidents with William Mueller on any occasion after that [fourth incident]?

A No sir.

Q Did you avoid him?

A Consciously, no. I did not

Q Did you avoid him?

A I did not go out of my way to avoid him

Id at 174 24 to 175 5.

h Following his graduation from Vianney, plaintiff even maintained communication with Mueller for a period of time, testifying as follows

Q Did you consider him [Brother Mueller] to be a friend of yours during that time period that you were writing him?

A I wouldn't say a friend I looked at it as somebody that I had developed a relationship with because of, you know, thinking that I was part of his master's degree and he wanted to continue with the communication

Id at 121 16-22

2. **George Harris, Ph.D.** Dr Harris is plaintiff Visnaw's treating psychologist. Dr Harris is the only health care professional who will testify in this matter relating to the issues of plaintiff's regained memories of *sexual* abuse, and to the issues of plaintiff having always remembered the *non-sexual* details of the interaction with Mueller.³ Dr Harris' deposition was taken by defendant on May 15, 2007. Interestingly, defendant avoided asking Dr Harris the questions that needed to be asked concerning the statute of limitations issue, namely (1) when did plaintiff Visnaw ascertain he had been *sexually* abused?, (2) when did plaintiff first regain memories of the *sexual* abuse?; and (3) is it reasonable that plaintiff never ascertained injury until 2005 although he always remembered the *non-sexual* details of the interaction with Mueller in 1984-1985?".

When it became apparent that defendant would not ask these pertinent questions, counsel for plaintiff offered to do, an offer that was accepted. See, Harris deposition, pp 52-11 to 54-20. Harris deposition provided as Exhibit 1. The answers to these questions definitively establish that (1) from the time of the sexual abuse in 1984-1985, until 2005, plaintiff did not have any conscious memory or recollection of the sexual abuse, (2) plaintiff did not regain memory of this sexual abuse until 2005, and (3) the non-sexual details that plaintiff has always remembered would not put a reasonably prudent person, in the same situation and context, on notice of an injury.

³ Defendant did not identify any retained or non-retained experts by the Court-imposed deadline of February 28, 2007. Additionally, the deadline for the close of all discovery passed May 1, 2007 without any expert disclosures by defendant.

Specifically, Dr Harris testified as follows

Q Doctor, let's see if we can maybe bring this to a head here and get you taken care of Mr Visnaw is your patient obviously?

A That is correct

Q And you understand that he has reported to you having been subjected to overt genital sexual abuse by William Mueller while a student in high school in the 1980's, correct?

A That is correct

Q And he has reported that to you since the time you started treating him, which would have begun in November of 2005 is that correct?

A That is correct

Q Have you formed an opinion as to when Robert first obtained conscious recollection of that overt sexual abuse?

A It is one of those questions that probably is best answered by an expert witness I will be happy to respond to it

Q Please

A When Robert came in he told me that he had read these newspaper articles about Brother Mueller. And I don't recall the exact date of the newspaper articles, but it was just relatively briefly before he came to see his primary care doctor and then to see me **And I believe it was those newspaper articles that stimulated him to suspect that he had been sexually abused** And then after he began seeing me, he believed that

he remembered additional things about the abuse. As he thought about it, and as he attempted to recall, he believed that he remembered things that he had never previously remembered. **And so my operating assumption has been that his realization of being sexually abused occurred after reading the newspaper articles [in 2005]**

Id. at 54 22 to 56 9

Q So this is sort of a related question. Have you formed an opinion as to the moment, then, that Robert would have -- I want you to use a term you are comfortable with. But appreciated or ascertained that he had been sexually abused by William Mueller?

A **Yes, about the same time [2005]**. I think that it was the information and the newspaper articles that sent a shockwave of anxiety through him. **And that's really when this whole thing started for him**

Id. at 56 24 to 57 10

Q Now as I understand it, correct me if I am wrong, there were certain of the non-overt sexual details that he has always remembered, or always recalled, is that correct?

A Yes. He reported to me that he was always aware of the experiments where he was rendered unconscious. So yes.

Q And in your opinion, should that have caused him to understand at that time since he remembered all those details, of the non-sexual details, should he have appreciated the fact that he was sexually abused at that time?

A **The short answer to that is no**

Id at 57 11 to 58:2

Q You understand the context in which these experiments took place between Bob and Brother Mueller. What I mean by that is, you understand that this was at his high school?

A That's what he told me

Q And you understand that this was a religious authority over Bob?

A That is my understanding

Q And did he explain to you that this gentleman Mueller, this Brother Mueller approached him that this was going to be a psychological experiment and he needed his assistance and that it was legitimate, and that sort of background that he provided to Robert before the experimentation?

A That's how Robert explained it to me

Q Have you formed any opinions relative to the fact that if it was done in that context, that would cause a young man like Robert to accept at face value what he had been told by a religious authority?

A **Yes. I think that that is how this sort of thing happens all the time** I think that young people from childhood up through teen years, and really even into adulthood, trust authority figures

Id at 58 18 to 59 18

Q, If I were to point out that Robert has always been consciously, has always consciously recalled the non-sexual parts of the experiments, okay Such as being tied-up, such as being told he is going to be part of a psychological experiment, things like that, he has always remembered that

A Right

Q, Always recalled that. If I were to suggest that that alone should have been enough for this young man to appreciate that he was being sexually abused or exploited, would you agree with that?

A. No.

Q Why?

A **He would just accept that Brother Mueller was doing a psychological experiment and he would trust him**

Q And is that something that would be subjective to Robert Visnaw or something in your experience would be an objective response of young men in his position?

A **I don't know what percentage I would put on it, but I would say a large percentage of young people would just accept the authority's explanation**

Id at 60 19 to 61 16

Q Let's talk on the logical objective basis

A Looking at it from the perspective of a 56-year-old man, me, when I see high school kids whose teachers are taking them in and doing strange experiments with them or taking them on long fishing trips or camping excursions, the suspicious part of me says, "What's up with that?" **Would I expect that kind of cautiousness from a 17-year-old? No, I wouldn't**

Id at 64.17 to 65 1.⁴

3 **Brandi Visnaw** Ms Visnaw is plaintiff Visnaw's wife. Her deposition was taken by defendant on May 15, 2007 Her testimony leaves no doubt that plaintiff Visnaw did not regain memory of the sexual abuse, nor ascertain any damage from the non-sexual interaction with Mueller until 2005 Specifically, Ms Visnaw testified as follows

Q When did you first meet Mr Visnaw?

A July 10th of '98

See, Brandi Visnaw deposition, p 5 23-25 Brandi Visnaw deposition provided as Exhibit 3

Q. Then about how long after that were the two of you married?

A The following year of October

Q So it would have been October 1999?

A Yes

⁴ Dr Harris' CV establishing his credentials to render his expert opinions is provided as Exhibit 2

Q What is your anniversary date?

A 10/9/99.

Id at 6 9-15.

Q Did he [plaintiff Robert Visnaw] ever discuss with you anything about his high school years at all?

A No.

Q I am talking about before 2005 Before all this came to light in September, October, August?

A All he talked about high school was his diving

Q Did he talk about anything else, teachers, anything else other than diving?

A No

Id at 9 21 to 10.4

Q When you went back to St Louis, did you ever have occasion to go by Vianney High School?

A Just driving by on the highway

Q When you did that, what, did Mr Visnaw just point it out?

A There's my high school All excited

Q Did you stop or anything like that?

A Never

Q Did he make any other comments other than to say "there's my high school"?

A. No

Id at 10-14-24.

Q Have you discussed with your husband the claims that he is making in this lawsuit?

A I don't understand exactly

Q What he says happened and what he says resulted --

A Yes

Q -- to him, what is the result then to him from what he says happened?

A Yes

Q When was the first time you and your husband discussed this?

A **The first time we discussed this was, I don't know the exact day, but it was in September of 2005**

Id at 14 17 to 15 4

Q I know it is hard to think of all of them, but can you think of the important discussions that you have had with him about this?

A One of the most important ones was -- the first one that I can recall that would be very important was the fact that he went through -- walked me through what he remembered of his sessions that he had with Brother Mueller

Q When did that discussion take place?

A A couple months -- It had been a couple -- like two to three months after he had gotten -- we got the first phone call from his mother [in September 2005]

Q Would that be before or after he started seeing Dr Harris [in November 2005]?

A **I believe after**
Id at 30 21 to 31 10

4 **Tracy Dry Schofield** Ms Schofield is a former girlfriend of plaintiff Visnaw Ms Schofield's deposition was taken by defendant on May 15, 2007. According to Ms Schofield she and plaintiff dated in or around 1988 or 1989 *See*, Schofield deposition, pp 8 17 to 9 1, 12 12-14 Schofield deposition provided as Exhibit 4 Her testimony establishes that plaintiff Visnaw never expressed to her that he had been sexually abused or harmed in any way by Brother Mueller Specifically. Ms. Schofield testified as follows

Q Did he [plaintiff Visnaw] ever say anything to you about his high school days at all?

A No

Q Did he ever mention a Brother William Mueller at all or Mueller?

A If he did, I don't remember

Id at 16 6-11

5 **Laura Margel.** Ms Margel is another former girlfriend of plaintiff Visnaw. Defendant took her deposition on May 19, 2007. All that this deposition yielded was Ms Margel's testimony that she, plaintiff Visnaw, and Brother Mueller had dinner together in or around 1994.

However, this testimony does not support defendant's argument (i.e. that plaintiff was aware before 2005 that he had been injured by Brother Mueller), but rather is further evidence that plaintiff Visnaw did not regain memory of the *sexual* abuse, nor ascertain injury from the *non-sexual* interaction with Mueller, until 2005. Specifically, Ms Margel testified as follows:

Q So you know Mr. Visnaw, correct?

A Yes, I do.

See, Margel deposition pp. 10:25 to 11:1. Margel deposition provided as Exhibit 5.

Q About how old were you? You said you were 22?

A I was 22. I had just turned 22 when I met him.

Q So what was this, about 1995? Does that sound about right?

A I turned -- yeah.

Q Okay.

A '93.

Q I'm sorry. Go ahead.

A I believe -- let's see. I turned 20 in '92, so '93, '94.

Id. at 11:20 to 12:4.

Q So at that point, I mean, did you start dating? What happened next?

A We -- we ended up dating -- going out on a date and ended up spending a lot of time together. We went out on -- with friends, some of his friends from Fort Lewis, and we spent a lot of time together basically fairly quickly after that.

Id at 13 18-24

Q Did he ever mention any specific teachers from his high school?

A He did.

Q Who did he mention?

A Brother Mueller was the only teacher that he's ever mentioned. This was probably -- I'm actually not sure when he mentioned him for the first time. Bob was very proud of, you know, his accomplishments in high school. He was a very good swimmer. Obviously very good at foreign languages. **And he did mention Brother Mueller, that he was one of the teachers that he *enjoyed* while he was in -- while he attended Vianney.**

Id at 18 15 to 19.2

Q Okay. Did you ever -- I think you mentioned that he talked about Brother Mueller or "Mueller"?

A Uh-huh.

Q Was it your understanding, was he still in contact with Brother Mueller at all?

A It was actually surprising to me I came home Once we had had our apartment out in Chesterfield, I understood that he had gotten in contact with Brother Mueller. I'm not sure if he contacted -- if Brother Mueller had contacted him or if he contacted Brother Mueller. I think that he had contacted Brother Mueller, and he was coming over for dinner to our apartment, so I had to cook, which was surprising that he ever offered for me to cook for anybody, but I had known who he was just through previous conversations and conversations with his mother about -- **his mother said some nice things about Brother Mueller**

Q What was the impression of the relationship between the two of them?

A **They were friends** Most like, you know, in high school every once in a while you meet a great teacher that you know, you see sometimes afterwards and they're -- it seemed like they were friends

Id at 29 3 to 30 1

Q After that evening, did Mr Visnaw ever talk about Mr. Mueller any more?

A He made a conversation from time to time, but he never came back over for dinner We didn't stay together much longer after that

Q Was it your impression that Mr Visnaw enjoyed that evening

A **Yeah, I think he did.** Yes, yes.

Id at 32 4-11

6. **Ann Marie Visnaw.** Mrs Visnaw is plaintiff's mother Her deposition was taken by defendant on May 22, 2007 As has become a reoccurring theme with all of the witnesses in this matter, Mrs Visnaw's testimony only bolsters plaintiff's position that he did not regain memory of the sexual abuse nor ascertain damage from the non-sexual interaction with Mueller until 2005 Specifically, Mrs Visnaw testified as follows

Q Can you recall any conversations that Bob had with you about Brother Mueller, Mr Mueller, back in the early '80's when he was attending Vianney?

A Not really

Q In other words, do you remember Bob ever commenting about Mr Mueller at all when he was going to Vianney?

A All I know is that he was his science teacher and that's all about --

Q. But you don't remember Bob saying, oh, I really like this teacher or really dislike this teacher, etcetera, etcetera? You don't remember any comments like that?

A No

See, Ann Visnaw deposition, p 14 4-22 Ann Visnaw deposition provided as Exhibit 6

Q Tell me when you first found out about your son Bob's allegations against Mr Mueller It must've been the alumni letter [in 2005]?

A Oh, yes When he went to a psychologist or something and he said, Mom, he told me once, Mom, I think I'm involved in this And I said how do you know? And he says I've been seeking help And to be truthful sir, that's all I know about it My children are very, very, very protective of me because of my heart condition

Q. And you probably don't remember the exact day or week Can you give just your best estimate? Are we talking 2006 at least you think you had this discussion with him where he said, Mom, I think I'm involved in this

A Yeah, I'm sure

Id at 15 4-20

Q After Bob graduated from Vianney and up until the time the letter came to your house, the letter that was sent out to all the alumni [in 2005], do you remember Bob ever mentioning Mueller's name?

A. Nothing other than to say, Mom, here's the reason Brother Mueller left Vianney [allegedly to care for his ailing mother] And he showed me the letters [Mueller wrote plaintiff]

Q When the letter came?

A, Other than that, he never mentioned him

Id at 27 19 to 28 3

7 **Father Thomas Doyle** Father Doyle is plaintiff's retained expert in this matter. He is an ordained Catholic priest and has extensive experience in dealing with both victims and perpetrators of clergy sexual abuse⁵. While the undisputed evidence in this case establishes that plaintiff Visnaw did not regain memory of the *sexual* abuse until 2005, the evidence equally establishes that he has always remembered the *non-sexual* details of his participation in Brother Mueller's "psychological experiments." Defendant has clutched to this fact as irrefutable proof that plaintiff must therefore have been, or should have been put on notice that he had been injured, thus starting the statute of limitations from the date of the incidents in 1984-1985. See, Defendant's Memorandum, pp. 11-12.

As is the case with Dr. Harris' testimony, Father Doyle's non-rebutted testimony exposes the fallacy of defendant's argument. As the evidence has established, Brother Mueller was not a stranger lurking in the dark and who leapt upon plaintiff and assaulted him. Rather, he was a greatly admired and greatly trusted religious authority who requested plaintiff's assistance for a psychological study and specifically told him he would be subjecting him, under the guise of legitimacy, to various unusual conditions. The fact that plaintiff accepted these representations is totally reasonable given the circumstances and context of the situation, as confirmed by Father Doyle in his deposition. Specifically, Father Doyle testified as follows:

⁵ Father Doyle's qualifications, training, and experience are discussed at length in his deposition at pp. 17-44. Referenced deposition pages are provided as Exhibit 7. Father Doyle's CV is provided as Exhibit 8.

They [defendant Marianist Order] should have been aware of the fact that in Catholic culture, it's commonly known that members of religious orders, be they priests or brothers, are held in a position of very high esteem. **They're held in a position of great respect and a tremendous amount of trust is requested and required of lay people and students in the brothers or the priests.** .but basically as a religious. as a consecrated person, as one set apart, in general, lay people oftentimes intermingle the two and have the -- **they see them as, you know, special emissaries of God, as representatives of the Lord, as men set apart because they take vows, they dress differently, they live in community, and they are to be accorded a very high degree of respect**

See, Doyle deposition, pp 114 9-15; 117 4-9

8 **Harry Suda** Mr Suda is not a party to this litigation, nor a party to any litigation involving clergy sexual abuse. Mr Suda was subjected to abuse by Brother Mueller similarly to plaintiff while he attended Vianney High School in 1965 and 1966, including being recruited to participate in psychological experiments for Mueller's advanced degree, being rendered unconscious through the use of ether, and having his trousers opened by Mueller. Mr Suda's testimony supports and confirms that knowledge of this *non-sexual* interaction with Mueller simply would not put a reasonably prudent young man in plaintiff's position and context on notice of having been injured. Mr Suda testified as follows

Q And when he [Mueller] told you that [he needed help on a psychology doctoral thesis] and requested your assistance what was your impression at that time?

A I didn't really think anything of it. You know, I mean, I was very trusting of him I guess and all of the [Catholic] Brothers. Unfortunately, a lot of us were in those days.

Q That's what I was going to say, was it your impression that he was being sincere?

A Oh, of course

Q Was it your impression that you were, in fact, going to be assisting him with some legitimate experiment?

A Correct

Q And I think you did say that you trusted him?

A Yes.

Q And as a Catholic you were raised to trust religious authority figures, weren't you?

A Yes.

See, Suda deposition, pp 23.13 to 24.5 Suda deposition provided as Exhibit 9

Q And after that first encounter with Brother Mueller [where you had been rendered unconscious while alone with him] and before the second encounter did you tell anyone about that first encounter?

A No, I did not

Q Was there a reason why you didn't?

A I think -- I know he asked me not to say anything. Plus, I don't know. Just thought it was strange. Didn't, you know, didn't mention it anything to anyone, no.

Q He had asked you not to tell anyone?

A Yes. He said -- kept insisting it was a secret, had to be on the QT, had to be a secret type study. It was a secret study. Didn't want anybody, you know, to know.

Q And you believe you had assisted him in a legitimate experiment?

A Correct.

Id. at 26 6-22

Q Okay. And, again, can you explain how that, the second encounter, was initiated from your observations?

A Similar type situation. He just said we needed, you know -- we done it once, we needed to do it at least another time to try to get some type of basis, you know, for the study. He had to do it more than once. So I agreed to it.

Q And I take it -- well, what was your -- was it your impression he was being sincere at that time?

A Oh, yes, very much so.

Q And did you still trust him at that time?

A Yes.

Id. at 27 3-16

Q Okay And then after the second encounter with Brother Mueller [where you had again been given ether while alone with him] and before the third encounter did you happen to mention to anyone about the first or the second encounter?

A No, I did not

Q Okay At that time did you still believe you were assisting him in a legitimate experiment?

A Oh, sure

Id. at 28 22 to 29 4

Q Okay And again, can you explain how this third encounter was initiated from your observations?

A It was initiated similar to the first two in that he wanted to -- try another time to work on the -- the study and needed to try to, I guess, put me out to see what, you know whatever he was doing.

Q Was it your impression that he was being sincere?

A Correct

Q Did you still trust him at that time?

A Yes

Id. at 29 23 to 30 9

9 **Mathew Giegling** Mr Giegling is represented by undersigned counsel and is himself a plaintiff in litigation against defendant Marianist Order Mr Giegling attended St Mary's High School in St Louis from 1982 to 1986. Mr Giegling was subjected to the same "psychological experiments" by Mueller as plaintiff Visnaw, Mr Suda and scores of other young men Mr Giegling has no conscious recollection of actual sexual abuse by Mueller, but does and has always recalled the *non-sexual* details of the interaction, such as being recruited for the "master's degree testing", the knife against the neck, the gel in the hair, being blindfolded, and the constant inquiries about being "afraid" See, Giegling deposition, pp 13 14-25, 82 10-20, 84 1-14, 85 8-22, 99:14-20, 111 2 to 112 20 Referenced Giegling deposition pages provided as Exhibit 10

Mr Giegling had a successful academic career at St Mary's and in college, played professional baseball for the Cincinnati Reds organization, and is now a special agent with the Federal Bureau of Investigations *Id* at 15 1-6, 25 5-22, 30:12-17, 34:9-25, 55:14-19; 58 24 to 59 6 Despite having always remembered the *non-sexual* details of his interaction with Brother Mueller, Mr Giegling's testimony supports that of plaintiff Visnaw and Harry Suda, in that such memories of the *non-sexual* interaction simply would not put a reasonably prudent young man in their situation and context on notice of having been injured at the time the interaction occurred Specifically, Mr Giegling testified as follows

Q Tell me about the first encounter

A He explained to me that he had this project for his -- I want to say it was his Master's Degree -- and that part of the research meant that I could not tell anyone that this was happening, that would -- that would ruin the project, basically is what he told me That would ruin the project and ruin the research And that there were things that he would do that would require my trust

Id. at 85 8-17

Q Reading these articles or these reports that you found that came to light in September 2005, did that rekindle memories for you?

A Yes

Q Did that make your memories clearer or did it confuse memories?

A. It opened up my memories to a whole new light

Id at 130 16-22

Q Whether you knew it was wrongful or not, you remembered what happened to you It was only in 2005 that you put a wrongful motive to it, is that a fair statement?

A. It was in 2005 that I learned what the allegations were of what he was really doing that, yes, at that point I realized that there was no research project and that there was no Master's Degree and this was some kind of fraud.

Id at 131 5-13

Q I mean, what happened to you wasn't anything that seemed to embarrass or shame you at the time, did it?

A I can't say it would have been anything that would have -- at that time that I thought would embarrass or make me shameful of. Did I think maybe something -- that it was weird sometimes, yes.

Q Okay. And even at the time did you think it was unusual and weird, these experiments?

A Yeah, I may have thought they were odd, but --

Q Okay.

A -- you know, again, **I had no reason not to trust him. And you went to a Catholic school, too. You know what the Brothers and the Priests -- you looked up to them**

Id at 211 5-19

Q After the incidents involving Mueller took place, and after they stopped but, before he left the school, did you ever take any steps to avoid him for any reason?

A **No, because I completely trusted the man**

Id at 208.24 to 209 3

10 **Timothy Kluempers.** Mr Kluempers is represented by undersigned counsel and is himself a plaintiff in litigation against defendant Marianist Order. Mr. Kluempers attended St. Mary's High School in St. Louis from 1982 to 1986. Mr. Kluempers was subjected to one of the "psychological experiments" by Brother Mueller. Mr. Kluempers has no conscious recollection of actual sexual abuse by Mueller, but does and has always recalled the *non-sexual* details of the interaction, such as being recruited for the "master's degree testing", the knife against the neck, being blindfolded, and the constant inquiries to "trust." See, Kluempers deposition, pp. 28-8 to 30-3, 103-24 to 104-9, 105-20 to 106-2; 116-12-24; 128-13 to 129-8. Referenced Kluempers deposition pages provided as Exhibit 11.

Mr. Kluempers had a successful academic career at St. Mary's, received a scholarship to play football at Benedictine College, has never been arrested or run afoul of the law, and is now a successful salesman. *Id.* at 45-10-25, 47-22 to 48-8, 50-3 to 52-21, 72-18 to 73-25, 86-5-19, 88-14-15, 90-18 to 91-6. Despite having always remembered the *non-sexual* details of his interaction with Brother Mueller, Mr. Kluempers' testimony confirms that such memories of the *non-sexual* interaction simply would not put a reasonably prudent young man in their situation and context on notice of having been injured at the time the interaction occurred. Specifically, Mr. Kluempers testified as follows.

Q Okay And the -- you had -- How did Mr Mueller ask you to become involved in whatever you became involved in? You knew he was principal, you saw him in the hallways Take me through the scenario on how you and he had conversations which led up to the incident, okay?

A I don't recall exactly when, but he approached me and asked me to help him out He was getting his Master's in psychology and he had some experiments that he needed to do for his Master's, and he was wondering if I could help him

Id at 103 24 to 104 9

Q And while you were in there and he was conducting this alleged experiment that he claimed, were you ever really afraid for your physical safety that he would harm you?

A No

Q You never feared that he would do anything that would be malicious towards you during this time frame, correct?

A Absolutely not I trusted him --

Q Sure

A -- and never felt or thought that he would ever do anything inappropriate

Id at 124 4-15

Q When you left the school that day after the incident in 1983, did you report the incident to Eleanor [Marfisi, the then-assistant principal]?

A I didn't report the incident to anyone, because I did not think it was something that was inappropriate. My reason for going there was to help him out for an experiment.

Q Okay. And I take it that up until the time you filed this lawsuit, you never placed the Archdiocese [of St. Louis] on notice that he had conducted this incident with you, correct?

A Correct.

Q Okay.

A As we stated earlier, when I was 25, when I was 35, if somebody, a principal, pulled a child into a room and put a knife or made them inhale or things like that as we discussed earlier, it's an inappropriate act. I believe that whether I'm 25, 30, 35

When I was 25, 30, 35, my particular incident, I thought I was helping him out for an experiment, plain and simple.

Id. at 167-7 to 168-2

Q. Did you try to avoid Mr. Mueller after this incident happened in November of '83?

A. **Not at all.**

Id. at 205-16-18

—

Summary of Plaintiff's Evidence Establishing Memory of the *Sexual Abuse*
Was Not Regained Until 2005 And Knowledge of the *Non-Sexual Interaction*
Would Not Put a Reasonably Prudent Person on Notice of Injury Until 2005

Plaintiff's evidence is viewed in the light most favorable to plaintiff, including making all reasonable inferences from the evidence in plaintiff's favor *Powel*, 197 S W at 580. Even without the benefit of this favorable standard, the evidence provided by plaintiff abundantly demonstrates that his memory of the *sexual* abuse inflicted upon him by Brother Mueller in 1984 and 1985 was simply not consciously regained until 2005. This is established by the *factual evidence* provided by plaintiff, such as the testimony of plaintiff, the testimony of his psychologist Dr. Harris, and the testimony of his family and former girlfriends, all of whom state consistently that plaintiff did not recall or make any mention of sexual abuse or injury until 2005.

The evidence further establishes that the *non-sexual* details that plaintiff Visnaw has always remembered from the "experiments" with Brother Mueller would not put a reasonably prudent young man in his situation and context on notice of an actionable injury. This too is established by the *factual evidence* provided by plaintiff, such as plaintiff's testimony, the testimony of Dr. Harris, the testimony of clergy abuse expert Father Doyle, the testimony of plaintiff's family and former girlfriends, and critically, the testimony of other individuals who were subjected to and have always recalled the same *non-sexual* interaction with Mueller and were not themselves put on notice of any injury until 2005.

Defendant's "Evidence" that Plaintiff Consciously Recalled
Sexual Abuse and/or the Non-Sexual Interaction Would Put
A Reasonably Prudent Person on Notice of Injury Prior to 2005

To begin with, the nature and scope of defendant's argument must be clearly understood. Tellingly, defendant does not address nor even attempt to dispute plaintiff's claim of having repressed memory of the *sexual* abuse until 2005. Literally, defendant does not in any way even cursorily attempt to establish that at the time of the *sexual* abuse in 1984-1985 plaintiff immediately and consciously ascertained his injury.

Rather, defendant's motion for summary judgment is predicated entirely upon the allegation that plaintiff's knowledge of the *non-sexual* interaction with Mueller, which he has always remembered since 1984-1985, would put a reasonably prudent young man, in plaintiff's situation and context on notice of an injury. The specific *non-sexual* memories of the interaction that defendant relies upon are provided in pages 11-12 of defendant's Memorandum. Defendant's argument in this regard culminates with the following bold crescendo:

"It defies any objective or reasonable logic for the Court to draw any conclusion other than a normal, reasonably prudent person in Plaintiff's position would have known that

- having a knife pressed to this throat,
- meeting in secrecy,
- being told to repeatedly hyperventilate and pass out, and
- taking off his clothes down to his underwear while alone with a teacher

were not acceptable or normal activities to be engaging in under Plaintiff's circumstances or position."

The point critical for proper consideration of the issue presented here is that there is a significant difference between an *allegation* and *factual evidence*. Specifically, an example of an allegation would be defendant's statement provided above and in its Memorandum. In other words, it is merely an unsubstantiated string of words made by defendant that memory of the non-sexual details of the interaction with Mueller would put any reasonably prudent young man in the same circumstances on notice of an actionable injury. On the other hand, an example of factual evidence would be the testimony of witnesses, as provided by plaintiff above that provides a meaningful basis of support to prove such an allegation.

Defendant's motion and memorandum are replete with *allegations* that memory of the *non-sexual* details of plaintiff's interaction with Mueller would put any reasonably prudent young man in the same circumstances on notice of an actionable injury. However, conspicuously lacking in defendant's motion is any *factual evidence* supporting such allegations. Specifically, defendant

- Does not provide any professional, medical or factual evidence or testimony that plaintiff's claims of repressed memory of *sexual* abuse until 2005 are false or bogus (or to dispute the testimony of Dr. Harris or plaintiff Visnaw),
- Does not provide any professional, medical or factual evidence or testimony that plaintiff was consciously aware of the *sexual* abuse prior to 2005 (or to dispute the testimony of Dr. Harris, plaintiff Visnaw, Brandi Visnaw, Ann Visnaw, Tracy Scholfield and Laura Margel)

- Does not provide any professional, medical or factual evidence or testimony that memory of the *non-sexual* interaction with Mueller would put any reasonably prudent young man in the same circumstances on notice of an actionable injury at the time of the occurrence (or to dispute the testimony of Dr. Harris, Father Doyle, plaintiff Visnaw, Harry Suda, Matthew Giegling and Timothy Kluempers),
- Does not provide any evidence or testimony from other individuals who were subjected to the same *non-sexual* conduct by Mueller that such conduct put them on notice of an actionable injury at the time of the occurrence (or to dispute the testimony of Harry Suda, Matthew Giegling and Timothy Kluempers) ^{6, 7}
- Does not provide any evidence or testimony that because plaintiff Visnaw was a “highly intelligent seventeen (17) year old”, that this made him more inclined to be put on notice of injury by the *non-sexual* interaction with Mueller (or to dispute the testimony of Dr Harris and Father Doyle)

⁶ Lest defendant claim that Giegling and Kluempers lack credibility because they have sued defendant, plaintiff would note that their testimony is totally consistent with that of Mr Suda, who is not a litigant against defendant. and in fact is currently an active member of the Vianney community and has a brother who is a member of defendant Marianist Order See, Suda depo at 12:18 to 13:11 See also, *Schottel v State*, 159 S W 3d 836, 844 (Mo banc 2005) (“In determining a summary judgment motion, the judge is not to decide what the facts are or to make credibility determinations, but simply to determine whether there is a triable issue of fact”)

⁷ Defendant has had ample opportunity to present the testimony of other individuals subjected to this type of non-sexual interaction with Mueller in order to establish that any reasonably prudent young man in the same circumstances would be put on notice of an actionable injury Defendant’s own current Provincial, Brother Stephen Glodeck admits that since 2005 over 50 former students have come forward to report such conduct to defendant Marianist Order See, Glodeck depo, pp 10:17-21, 44:5 to 47:4 Referenced deposition pages provided as Exhibit 12

Summary of Defendant's "Evidence" that Plaintiff Consciously Recalled

Sexual Abuse and/or the Non-Sexual Interaction Would Put

A Reasonably Prudent Person on Notice of Injury Prior to 2005

Defendant is not entitled to have its evidence viewed in a light most favorable to it, nor is defendant entitled to any reasonable inferences from its evidence *Powel*, 197 S W 3d at 580. Defendant is not entitled to have plaintiff's evidence overlooked in considering defendant's motion. *Hart*, 114 S W 3d at 345. As has been demonstrated above however, defendant has totally failed to provide any factual evidence whatsoever to support its naked allegation that any reasonably prudent young man in the same circumstances as plaintiff, Harry Suda, Matthew Giegling, Timothy Kluempers, and the over 50 other young men identified by defendant would be put on notice of an actionable injury when subjected to the *non-sexual* conduct as described by plaintiff and others

Moreover, defendant has totally failed to even attempt to dispute plaintiff's evidence of repressed memory as it relates to the *sexual* abuse. Thus, the trial court literally has *no factual evidence* submitted by defendant to consider as support for its allegations and motion. *See, Armonett v Ezell*, 59 S W 3d 628, 633 (Mo App E D 2001) ("Undisputed facts are admitted for purposes of analyzing a summary judgment motion") The only factual evidence provided in this matter is by the plaintiff, who does not shoulder the burden of proof as to summary judgment *Hart*, 114 S W 3d at 345

Plaintiff's Lawsuit Was Timely Filed and
Defendant's Motion for Summary Judgment as to the
Statute of Limitations Should Be Denied

Plaintiff's evidence credibly establishes that he did not regain memory of the sexual abuse nor ascertain the resultant damage until 2005. Plaintiff's evidence credibly establishes that knowledge of the *non-sexual* interaction with Brother Mueller under the circumstances described by plaintiff and others, would not put a reasonably prudent young man in such a situation and context on notice of an actionable injury until 2005. Defendant provides no contrary factual evidence in support of its motion, but rather merely makes unsubstantiated allegations.

"The relevant statute of limitations here is five years after the cause of action accrued Sections 516.120 (4) and 516.100" *Powel*, 197 S W 3d at 587. Plaintiff's lawsuit was initiated on **January 3, 2006**, well-within the time period afforded under the statute of limitations. *Id*

Plaintiff would additionally point out that his cause of action is timely under the three year "discovery" Childhood Sexual Abuse statute of limitations, §537.046, which the *Powel* Court indicated would be applicable to such claims. *Powel*, 197 S W 3d at FN4⁸

⁸ Application of this statute was recently endorsed in a case pending before the Honorable Donald L. McCullin, Circuit Judge of the Circuit Court of the City of St. Louis. See Order of May 14, 2007, pp 11-14. Order provided as Exhibit 13.

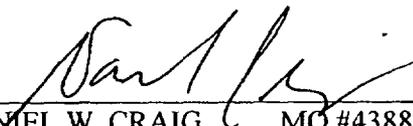
Under this statute, as long as the action was commenced after August 28, 2004, plaintiff has three years from the “date the plaintiff discovers, or reasonably should have discovered, that the injury or illness was caused by childhood sexual abuse, whichever later occurs” §537.046 (2) and (3). Since Brother Mueller’s sexual exploitation of young men was kept secret until 2005, and since plaintiff’s memory of the sexual abuse was not regained until such time, plaintiff did not discover, nor could not have reasonably discovered that his damage was caused by the sexual abuse until 2005. *Id*

Conclusion

In sum, the evidence and all reasonable inferences viewed in a light most favorable to plaintiff establishes that since the date of the sexual abuse in 1984 and 1985, plaintiff did not regain conscious recollection of the *sexual* abuse until 2005. The evidence also establishes that knowledge of the *non-sexual* interaction with Brother Mueller would not put a reasonably prudent young man, under the circumstances describe above, on notice of an actionable injury until 2005. Denial of summary judgment in this case would be appropriate and consistent with the proper standard of law in Missouri. *Powel*, 197 S W 3d at 580

WHEREFORE, based upon the evidence, authority, and argument provided above plaintiff respectfully requests that the trial court deny defendant’s motion for summary judgment

Respectfully Submitted,
DANIEL W CRAIG, P C

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via U S Mail, this
12th day of June, 2007, to

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ATTORNEY FOR PLAINTIFFS

**IN THE
MISSOURI SUPREME COURT**

STATE ex rel. MARIANIST)	
PROVINCE OF THE UNITED)	
STATES,)	
	)	No. SC88779
)	
Relator-Defendant,	)	St. Louis County, Missouri
	)	Judge John A. Ross
)	
vs.	)	Circuit Court Cause No. 06CC-000008
)	
)	
)	
HONORABLE JOHN A. ROSS,)	
JUDGE, CIRCUIT COURT,)	
COUNTY OF ST. LOUIS,)	
DIVISION 15)	
)	
)	
Respondent.)	

**APPENDIX OF DEFENDANT-RELATOR
MARIANIST PROVINCE OF THE UNITED STATES
Volume 2 of 2**

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ORAL ARGUMENT REQUESTED

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IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS
STATE OF MISSOURI

ROBERT WILLIAM VISNAW,)	
)	
Plaintiff,)	
	)	Cause No 06CC-000008
v)	
	)	Div No 15
MARIANIST PROVINCE OF THE)	
UNITED STATES, et al .)	
)	
Defendants)	

EXHIBIT BOOK TO
PLAINTIFF'S SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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RECEIVED
JUN 14 2007

ATTORNEYS FOR PLAINTIFF

EXHIBIT INDEX

<u>Exhibit</u>	<u>Exhibit Number</u>
George Harris, Ph D Deposition	1
George Harris, Ph D CV	2
Brandi Visnaw Deposition	3
Tracy Dye Schofield Deposition	4
Laura Margel Deposition	5
Ann Marie Visnaw Deposition	6
Father Thomas Doyle Deposition (excerpts)	7
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Harry Suda Deposition	9
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Timothy Kluempers Deposition (excerpts)	11
Brother Stephen Glodeck Deposition (excerpts)	12
Order-Judge Donald L McCullin	13

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IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

ROBERT WILLIAM VISNAW,)	
)	
Plaintiff,)	
)	
vs.	)	Cause No. 06CC-000008
	)	Division Number 15
MARIANIST PROVINCE OF THE)	
UNITED STATES, ST. JOHN)	
VIANNEY HIGH SCHOOL, INC.,)	
and WILLIAM MUELLER,)	
)	
Defendant.)	

DEPOSITION OF GEORGE A. HARRIS, PhD,
produced, sworn and examined on Wednesday, May 15,
2007, at the offices of Psych Logic, 8080 Ward Parkway,
Suite 140, in Kansas City, Missouri, before:
JAMES A LEACOCK, CCR, for
ESQUIRE DEPOSITION SERVICES

A Certified Court Reporter for the State of Missouri.

Taken on behalf of the Defendants

APPEARANCES:

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LAW OFFICES OF DAN CRAIG, P.C.
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Kansas City, Missouri 64106

For the Defendants:
HEPLERBROOM
By: Mr. Gerald T. Noce
800 Market Street, Suite 2300
St. Louis, Missouri 63101

Page 2	Page 4
<p>1 STIPULATIONS</p> <p>2</p> <p>3 It is hereby stipulated and agreed by and</p> <p>4 between the parties herein that presentment to the</p> <p>5 attorneys of record of a copy of this deposition</p> <p>6 shall be considered submission to the witness for</p> <p>7 his signature within the meaning of the Missouri</p> <p>8 Rules of Civil Procedure, but shall in no way be</p> <p>9 considered as a waiver of the witness' signature,</p> <p>10 and will be filed with the court, to be signed by</p> <p>11 the witness at any time before or at trial of this</p> <p>12 case</p> <p>13</p> <p>14 INDEX</p> <p>15 Page</p> <p>16 Examination by Mr Noce 3</p> <p>17 Examination by Mr Craig 54</p> <p>18 Examination by Mr Noce 61</p> <p>19</p> <p>20 Exhibit 1, Medical File of Dr Harris 3</p> <p>21 Exhibit 2, Medical Records of Dr Bernard 3</p> <p>22 Exhibit 3, Court Opinion from Westlaw 3</p> <p>23 Exhibit 4, Deposition of Mr Visnaw 3</p> <p>24 Exhibit 5, Curriculum Vitae 3</p> <p>25</p>	<p>1 to the client, Robert Visnaw, by you and your</p> <p>2 office?</p> <p>3 A Yes, it is</p> <p>4 Q By agreement it is my understanding that your</p> <p>5 office will copy every piece of paper in there and</p> <p>6 supply it to us and you will retain all of your</p> <p>7 original records Is that the --</p> <p>8 A I am happy to do it that way I thought that you</p> <p>9 had said that the court reporter would make copies</p> <p>10 of that But either way is fine with me</p> <p>11 Q Exhibit 1 contains all the records regarding all</p> <p>12 treatment, care and everything else regarding his</p> <p>13 treatment and care by your office as of today's</p> <p>14 date?</p> <p>15 A That is correct</p> <p>16 Q And it is understood that if you see him in the</p> <p>17 future, of course that would cause the generation</p> <p>18 of new records that would increase Exhibit 1</p> <p>19 Those records wouldn't be a part of your file</p> <p>20 today?</p> <p>21 A That is correct I suppose it is a legal</p> <p>22 determination whether they become a part of</p> <p>23 Exhibit 1 They would become a part of my file</p> <p>24 Q Yes, sir Good point Good legal distinction,</p> <p>25 too Okay Doctor, in the records that exist in</p>
Page 3	Page 5
<p>1 (The deposition commenced at 12:40 p.m.)</p> <p>2 GEORGE A HARRIS, PhD,</p> <p>3 of lawful age, being produced, sworn and examined</p> <p>4 on behalf of the Defendants, testified as follows</p> <p>5 EXAMINATION BY MR NOCE</p> <p>6 Q Would you state your name, please, for the record</p> <p>7 A George A Harris</p> <p>8 Q And you are a doctor of psychology?</p> <p>9 A That is correct.</p> <p>10 Q Doctor, my name is Jerry Noce, I represent the</p> <p>11 Marianist Order and St. John Vianney High School</p> <p>12 in a lawsuit that has been filed by one of your</p> <p>13 patients I am going to ask you some questions</p> <p>14 today about the treatment and care you have</p> <p>15 provided along with any opinions you might hold</p> <p>16 If you don't understand me I'm sure you will tell</p> <p>17 me that --</p> <p>18 A I will</p> <p>19 Q -- is that agreeable? If you answer any of my</p> <p>20 questions, I am going to assume that you did</p> <p>21 understand it and you are responding to it, is</p> <p>22 that agreeable?</p> <p>23 A That is</p> <p>24 Q Thank you Exhibit 1, is that a copy of your</p> <p>25 complete file for all treatment and care provided</p>	<p>1 Exhibit 1, when you see a patient, is it important</p> <p>2 for you to take records and take notes at each</p> <p>3 visit?</p> <p>4 A Yes</p> <p>5 Q And is that -- do you do so in accordance with</p> <p>6 your training to try to take down the important</p> <p>7 things that you are told?</p> <p>8 A Not necessarily</p> <p>9 Q You take down -- what is it that you take down,</p> <p>10 then?</p> <p>11 A We are required by law to keep a date of the</p> <p>12 session, a general statement of items discussed</p> <p>13 Of course we are required to have a diagnosis on</p> <p>14 file But I don't write down everything that is</p> <p>15 important in the session, no, I don't</p> <p>16 Q So if some other physician cares for your patient</p> <p>17 at some time in the future, maybe takes over your</p> <p>18 practice, that psychologist would have your</p> <p>19 records but would not have a record of all the</p> <p>20 important subjects discussed?</p> <p>21 A That is quite possible</p> <p>22 Q How do you -- why do you keep any records then?</p> <p>23 A I primarily keep records A to satisfy my legal</p> <p>24 requirements and B, to jog my own memory about</p> <p>25 what happened in prior sessions It is virtually</p>

Page 6	Page 8
<p>1 impossible to write down everything that happens 2 in a therapy or counseling session that is of 3 importance, because there are so many things that 4 are important And I wouldn't pretend that I am 5 able to write down everything 6 Q How many patients do you treat? 7 A Do you mean at any one time? 8 Q At any one time, how many patients do you treat? 9 A Well, at any one time it would be one, if it is an 10 individual session 11 Q Strike that How many patients are you seeing in 12 this office total? 13 A Do you mean how many current files I have? 14 Q How many current files do you have open regarding 15 patients? 16 A Okay That probably would be 40 or 50 17 Q Since you started treating the plaintiff in this 18 case, have you seen more than 40 or 50 patients? 19 A Oh, yes 20 Q Because people come and go? 21 A Yes 22 Q So how many would that be? 23 A I see probably 20 people per week in therapy 24 sessions And I think that I probably average 25 eight or nine sessions per client So over the</p>	<p>1 kind of got off the beaten path Exhibit 2, what 2 is Exhibit 2? 3 A These are the medical records from Dr John 4 Bernard of his treatment with Robert 5 Q And who provided those to you? 6 A Mr Craig did 7 Q There are various stickums on various pages Who 8 put those there? 9 A Mr Craig did 10 Q And do you know why? 11 A I think that they were items that he wanted me to 12 pay particular attention to Although I would 13 have to say that as I looked at these I wasn't 14 sure what the reason for some of the stickers was 15 Q Okay Do these records appear to start October of 16 '06, that is the first date at the top, and go 17 through -- does this just look to be one treatment 18 date and visit, or is it a number? 19 A To be frank with you, I wasn't clear about that 20 myself The record shows a date when this was 21 printed, but I wasn't sure if that was the date of 22 the session This one was, for example, dated May 23 20th of '03 And so that's on the same page as 24 the notation that says "date printed" So I am 25 assuming that this session was May 20th of '03 and</p>
Page 7	Page 9
<p>1 course of a year I don't know how all that adds up 2 exactly It is probably not as many patients as a 3 medical doctor would see Certainly not as many 4 patients as a medical doctor would see But 5 probably more than a psychoanalyst would see, 6 because an analyst would tend to see people very 7 long term and I tend not to 8 Q Aren't your records helpful for you in remembering 9 the specific issues dealing with the particular 10 patient? 11 A Yes. 12 Q Is that why you try to be as accurate as possible, 13 among other reasons? 14 A I think that is misphrasing 15 Q Do you not try to be accurate in your 16 recordkeeping? 17 A I think that you are implying something that I 18 didn't intend to imply What I write down I 19 intend to make as accurate but it is not 20 necessarily complete 21 Q To the extent that you record things, you record 22 them accurately? 23 A I would I wouldn't write anything down that was 24 untrue 25 Q Okay And I certainly did not mean to imply I</p>	<p>1 that probably refers to this material just above 2 it But then there isn't a clear date associated 3 with the next note I guess it is, maybe it is 4 right here I got confused a little bit about the 5 dates, because this says February 14th of '03 6 starting on the top of what appears to be that 7 note I didn't study these closely enough to 8 exactly get it figured out But I assume that 9 these were around 2003 10 Q Were these records that you relied on for your 11 treatment or for any diagnosis in this case? 12 A No, because I didn't have them until Mr Craig 13 recently provided them 14 Q Do you know when they were provided? 15 A Yes 16 Q You said recently? 17 A Yesterday 18 Q And you have not, I take it, studied them closely 19 to determine whether or not they affect any 20 opinions you have? 21 A I did read through them I wouldn't say that I 22 studied them intensely But I didn't see anything 23 that caused any change of thinking on my part 24 Q That's fine Exhibit 4 is a copy of Mr Visnaw's 25 the plaintiff in this case, deposition?</p>

3 (Pages 6 to 9)

Page 10

1 A That is correct
 2 Q And again it has several suckums to it Who put
 3 those on there?
 4 A Mr. Craig did
 5 Q Were you given any directions as it related, by
 6 Mr Craig, regarding the deposition?
 7 A No Only that he commented that there were items
 8 on pages that he wanted me to look at But we
 9 didn't discuss the specific items
 10 Q Did you read the entire deposition?
 11 A Yes Again, as I often tell people, somebody left
 12 the film out of my photographic memory and there
 13 is a lot of material in here So I read it, but I
 14 wouldn't say that I have mastered it
 15 Q When did you read it? Strike that When did you
 16 receive it?
 17 A Yesterday
 18 Q Okay And you have read it since then?
 19 A That is correct
 20 Q Exhibit 3 is a court opinion from Westlaw, Michael
 21 Powell versus Chaminade College Preparatory, Inc
 22 Was that provided to you?
 23 A Yes
 24 Q By Mr Craig?
 25 A Yes

Page 11

1 Q Have you read that?
 2 A Yes And I would have read a little bit more
 3 except that you guys showed up 30 minutes early
 4 So there is really a great deal in here that I
 5 skimmed through but don't understand and certainly
 6 don't feel that I have mastered
 7 Q Does the Court opinion, would it have any effect
 8 on the opinions that you would render?
 9 A Well, that's a very good question I assume that
 10 I am primarily a fact witness in this case or a
 11 treating expert, but not as an expert witness So
 12 you may ask me questions that I would consider
 13 beyond my role as a treating doctor in this case
 14 And there might be legal issues that would be
 15 important to you that wouldn't be important to me
 16 as a treating doctor
 17 Q Doctor Exhibit 5, that is your resume , your
 18 curriculum vita, is that correct?
 19 A That is correct
 20 Q I know from -- I went online and looked into your
 21 background and everything, Doctor It is my
 22 understanding according to an Eighth Circuit Court
 23 of Appeals case, if I can find it, that you do a
 24 lot of work for police officers?
 25 A That is correct

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1 Q A minute ago I had the case Do you recall being
 2 involved in a case -- and I only ask this as sort
 3 of an intro to another question -- of Jan Thomas
 4 versus Jim Corwins, Chief of Kansas City Police
 5 Department, et cetera?
 6 A Yes, I do
 7 Q It was in the Federal District Court down here I
 8 think it was with Judge Door It was appealed to
 9 the Eighth Circuit?
 10 A Yes I did Fitness For Duty evaluations for the
 11 Kansas City, Missouri Police Department and
 12 others And I did an evaluation of that employ ee
 13 I don't believe that I testified either in
 14 deposition or in trial about that case I may be
 15 incorrect about that, because I do a lot of them
 16 Q The only reason I ask is that in the opinion, and
 17 it is Page 6, it says, "Dr George Harris, Dr
 18 Harris, an independent licensed psychologist, who
 19 spends 80 percent of his professional time with
 20 clients from KCPD, performed Thomas' FFD
 21 evaluation " I was just wondering, are these
 22 three judges of the Eighth Circuit correct in
 23 their statement that 80 percent of your
 24 professional time is with clients from KCPD?
 25 A That is incorrect

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1 Q How much of your professional time is related to
 2 working with police officers?
 3 A I would say it would be the reverse of that It
 4 is more like 20 or 30 percent
 5 Q Is the rest of your practice just general private
 6 practice?
 7 A I do a variety of things Would you like me to
 8 give a summary?
 9 Q Yeah
 10 A A part of my practice is evaluations for police
 11 departments, fire departments and security
 12 personnel I do pre-employment evaluations and
 13 then I also do Fitness For Duty evaluations I do
 14 evaluations, Fitness For Duty evaluations for
 15 businesses and other companies and agencies that
 16 may have a problem employee and they are wanting a
 17 determination of whether the individual is able to
 18 return to work after a psychiatric illness or
 19 whether the person is dangerous or competent to
 20 work I do evaluations for attorneys in various
 21 matters, personal injury
 22 Q Do you do that for both plaintiffs and defendants
 23 in personal injury?
 24 A Yes I did provide in the C V a list of cases
 25 where I have been deposed or have appeared at

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1 trial Let's see, I got off track here I am a
 2 supervising psychologist at the Kansas City
 3 Regional Center for developmental disabilities I
 4 also assist in assessments for Midwest Career, an
 5 agency that evaluates ministers, people going into
 6 seminary, or ministers who have run into some kind
 7 of difficulty in their work and they are being
 8 required to go through an evaluation Then I also
 9 see clients in counseling, both individual couples
 10 and some family counseling
 11 Q From your practice, Doctor, you have treated
 12 police officers and law enforcement officers on a
 13 routine basis, haven't you? And evaluated I
 14 should say?
 15 A I evaluate more than treat And the reason for
 16 that is that if I enter into a treatment role with
 17 them, and then they are later referred to me by
 18 the department, I am in a conflict of roles, so I
 19 can't do both of those So when I get a phone
 20 call from an officer for one of the departments
 21 that I work with regularly, I tend to refer that
 22 client, a potential counseling client to another
 23 therapist
 24 Q Mr Visnaw is a law enforcement agent and you have
 25 treated him as a patient as opposed to evaluating

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1 him?
 2 A That is correct
 3 Q In your practice, is it your experience that
 4 people involved in law enforcement have higher
 5 incidence of emotional problems than the general
 6 population?
 7 A Well, I think you are asking for a subjective
 8 opinion and my subjective opinion would be no
 9 And I don't know that I have any empirical
 10 information to make that call one way or the
 11 other
 12 Q So your opinion is that law enforcement officers
 13 do not have a higher incident of emotional
 14 problems than the general public or population,
 15 that is your opinion?
 16 A I would say generally speaking they do not
 17 Police officers are by and large extroverted
 18 people They are often interested in physical
 19 fitness and physical activity They don't like
 20 sitting behind a desk But in terms of emotional
 21 problems, I wouldn't think that they have a higher
 22 incidence of emotional illness than any other
 23 group of people
 24 Q How about depression?
 25 A Well again, when I am referred a law enforcement

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1 officer, it is typically because of an emotional
 2 problem That is, whether it is for treatment or
 3 for evaluation, I am seeing them because there is
 4 an emotional problem So I don't tend to see an
 5 awful lot of police officers except for
 6 pre-employment evaluations who are functioning
 7 well The guys who are out on the street doing
 8 their job day in and day out don't come to see me
 9 Certainly police work has its stresses There is
 10 no doubt about that
 11 Q More so than the stresses of the general
 12 population?
 13 A Well, those are tough calls There was a research
 14 study some years ago that argued persuasively that
 15 one of the highest stress occupations was a
 16 secretary And the reason for that is that the
 17 secretary is subject to other people's time
 18 demands Never really being permitted to set
 19 their own schedules When I was in graduate
 20 school we were always told that the rate of
 21 depression for psychiatrists and dentists was
 22 high I don't know if that's true or not I
 23 really haven't studied the epidemiological data on
 24 the incidence of mental illness in various
 25 populations I haven't studied that extensively

Page 17

1 Q Does family history have any, is that a factor in
 2 whether or not people have depression?
 3 A Yes
 4 Q That is a known factor?
 5 A Yes
 6 Q In addition to that, some jobs are associated with
 7 stress?
 8 A Yes
 9 Q Including police work?
 10 A Yes
 11 Q Are some jobs related with depression also?
 12 A Well, I think you are beginning maybe to put words
 13 in my mouth, because I think what I said earlier
 14 is that I don't really know if some jobs are
 15 statistically -- I don't know how clear I am about
 16 that data Yes, you would expect police officers
 17 to have some depression and some stress because of
 18 the nature of their jobs, but then it is hard to
 19 find a job these days that doesn't have stress
 20 It is just different kinds of stress Does that
 21 make sense to you? Am I being fair to your
 22 question?
 23 Q I don't think so After you said I was putting
 24 words in your mouth I have a question with your
 25 response from there But let me move on Have

Page 18	Page 20
<p>1 you studied at all the issues of child abuse?</p> <p>2 A Yes</p> <p>3 Q Have you treated people -- obviously I am not</p> <p>4 going to ask you about particulars, but have you</p> <p>5 treated people who have been accused of child</p> <p>6 sexual abuse?</p> <p>7 A A few</p> <p>8 Q When did you first start treating those people?</p> <p>9 A I have been in private practice since 1987 or 8</p> <p>10 I forget the exact year And I have had a patient</p> <p>11 or two probably every couple of years since then</p> <p>12 I haven't seen an awful lot, but I would say since</p> <p>13 the beginning of my private practice I have had</p> <p>14 contact with some</p> <p>15 Q Have you noted that, say, from 1978 up to the</p> <p>16 present there has been a change in theories on how</p> <p>17 to treat those people?</p> <p>18 A Yes</p> <p>19 Q What changes have you noted?</p> <p>20 A Well, I would say that there has been an</p> <p>21 increasing pessimism about the ability of therapy</p> <p>22 to make changes in people who have sexual</p> <p>23 disorders There has been an increasing</p> <p>24 sophistication I think in the understanding of</p> <p>25 types of sexual disorders and sexual crimes For</p>	<p>1 Q Psychology and psychiatry are sciences, aren't</p> <p>2 they?</p> <p>3 A We like to think so</p> <p>4 Q Yes, sir And the reason I say that is they are</p> <p>5 not static, are they?</p> <p>6 A That is correct</p> <p>7 Q And there is research done every day all over this</p> <p>8 country on these very issues?</p> <p>9 A That is correct</p> <p>10 Q And the research is used to improve the physician</p> <p>11 and the clinician's ability to diagnose and treat</p> <p>12 people?</p> <p>13 A That is correct</p> <p>14 Q That is part of what you have seen since 1978 in</p> <p>15 general?</p> <p>16 A Yes</p> <p>17 Q And as it relates to this area that is the basis</p> <p>18 of this claim, in particular that has changed,</p> <p>19 there have been changes, too?</p> <p>20 A Well, I'm not sure that I understand your</p> <p>21 question Can you say that again</p> <p>22 Q Sure, let me start over As is in general, there</p> <p>23 is research performed all over the country by</p> <p>24 psychologists and psychiatrists to help people,</p> <p>25 right? Research?</p>
Page 19	Page 21
<p>1 example, I think that it is clear now that there</p> <p>2 are some people who are simply sexual predators</p> <p>3 and there are people who are regressed in their</p> <p>4 own emotional functioning and commit crimes in</p> <p>5 those kinds of states I think we know that there</p> <p>6 are people who have -- who develop a dementia and</p> <p>7 commit sexual crimes in those conditions I think</p> <p>8 there is a refined diagnostic ability related to</p> <p>9 sexual offenses</p> <p>10 Q Would it be fair to say that the treatment</p> <p>11 protocols -- strike that You said there is a</p> <p>12 growing pessimism Correct me if I am wrong, is</p> <p>13 it fair to say that in the late '70s and early</p> <p>14 '80s, when you were first coming into your</p> <p>15 practice, there was a body of knowledge or thought</p> <p>16 or theoretical idea out there that sexual</p> <p>17 predators could be successfully treated?</p> <p>18 A I think that the phrase that might have been used</p> <p>19 at that time would be sexual offenders rather than</p> <p>20 sexual predators But yes, I think there was a</p> <p>21 belief that therapy and treatment could help</p> <p>22 people And I think that there still is I don't</p> <p>23 want to imply that it is completely hopeless But</p> <p>24 I think that there is a recognition now that there</p> <p>25 are people who simply aren't going to change</p>	<p>1 A Yes</p> <p>2 Q And it relates generally to psychiatry and</p> <p>3 psychology?</p> <p>4 A Yes</p> <p>5 Q Also a part of that is research that has occurred</p> <p>6 over the last 25 years on this very subject that</p> <p>7 we are dealing with here that is alleged as sexual</p> <p>8 misconduct? How you treat those offenders or who</p> <p>9 may be called predators now?</p> <p>10 A Well, I am reluctant to answer your question</p> <p>11 exactly the way that you have asked it So if I</p> <p>12 could, allow me to answer it this way Of course</p> <p>13 there has not been any research specifically on</p> <p>14 Mr Visnaw's case</p> <p>15 Q No I mean this general subject matter I'm</p> <p>16 sorry if that wasn't clear</p> <p>17 A Well, I think I have already answered that, in the</p> <p>18 general subject area of sexual offenses, yes</p> <p>19 Q Now, kind of changing subjects a little bit I</p> <p>20 know you have treated Robert Visnaw for about two</p> <p>21 years now And is there any -- based upon</p> <p>22 everything that you know about Mr Visnaw, is</p> <p>23 there any reason that you could give us that he</p> <p>24 would repress incidents that occurred when he was</p> <p>25 in his mid 30's, that he would somehow relate back</p>

Page 22	Page 24
<p>1 to his youth?</p> <p>2 A Your question implies that I am espousing an</p> <p>3 active theory of repression of memory</p> <p>4 Q I am not I am not asking you to say that I am</p> <p>5 just asking you in general, is there an</p> <p>6 explanation that an individual at age, let me</p> <p>7 think, 36 would repress something that occurs at</p> <p>8 age 36?</p> <p>9 A I repeat my answer Your question implies that I</p> <p>10 am espousing a theory of repression of memory</p> <p>11 Q Would your answer be no then?</p> <p>12 A Well, if I simply answered no, my answer would be</p> <p>13 a misleading Because your question still makes</p> <p>14 assumptions that I am not in agreement with</p> <p>15 Q What assumptions am I asking you to agree with?</p> <p>16 A Here is the difficulty To say that a memory is</p> <p>17 repressed implies that there is some kind of</p> <p>18 psychological mechanism that causes a brain</p> <p>19 structure not to function I think there is a lot</p> <p>20 of debate about that in the scientific literature</p> <p>21 I tend to look at the problem in a little</p> <p>22 different way There are many things that we</p> <p>23 simply don't remember from an earlier time in</p> <p>24 life But when stimulated we can later recall</p> <p>25 Can I give you an example of that?</p>	<p>1 something will cause us to recall it</p> <p>2 Here is a personal example When I was</p> <p>3 in college a professor used to come in every day</p> <p>4 and write a saying on the blackboard And he</p> <p>5 provided no explanation for it He just wrote</p> <p>6 down the saying and then went on and taught the</p> <p>7 class So I know that I looked at these slogans</p> <p>8 or sayings that he wrote on the blackboard, but</p> <p>9 they weren't really a part of the class and I</p> <p>10 often didn't get them One day, 10 or 15 years</p> <p>11 ago, this would have been 20 or 25 years after I</p> <p>12 was in the class, I was having a conversation with</p> <p>13 someone and the person said to me, "You know, it</p> <p>14 just doesn't matter how hard you try, you can't do</p> <p>15 it " And suddenly I remembered and could</p> <p>16 visualize a saying that the professor had written</p> <p>17 on the blackboard And the saying was, "No matter</p> <p>18 how hard you try, you can't throw a potato chip</p> <p>19 very far "</p> <p>20 And I remembered 25 years later, I</p> <p>21 remembered that I was sitting in the classroom</p> <p>22 that day and I looked at that saying on the board</p> <p>23 and I thought, What the hell does that mean? I</p> <p>24 had no idea what it meant I was a sophomore in</p> <p>25 college and I looked at that and I was clueless</p>
Page 23	Page 25
<p>1 Q I think I may have been unclear I just want to</p> <p>2 ask you this There is testimony -- not yet</p> <p>3 testimony, but there will be testimony that Mr</p> <p>4 Visnaw went out to dinner with William Mueller in</p> <p>5 1998 or '99, at a time when he would have been 38</p> <p>6 39 years old Okay Is there any way under</p> <p>7 repressed recollection or anything else type of</p> <p>8 theory that that incident would be blocked or</p> <p>9 completely forgotten that you can explain to us as</p> <p>10 a psychologist?</p> <p>11 A You are simply using a different word to say the</p> <p>12 same thing You are saying blocked instead of</p> <p>13 repressed And the word that I would choose to</p> <p>14 use would be an unstimulated memory Can I give</p> <p>15 you an example?</p> <p>16 Q Go ahead</p> <p>17 A Well, first an explanation We don't have a clear</p> <p>18 enough understanding of memory to be able to say</p> <p>19 how psychologically a memory would be blocked or</p> <p>20 repressed Some people allege that I don't</p> <p>21 think that there is adequate scientific evidence,</p> <p>22 at least to my awareness, to hypothesize what that</p> <p>23 mechanism is in the brain What I do think is</p> <p>24 that there are many, many things that happen that</p> <p>25 we don't recall, but that at a later time in life</p>	<p>1 what that meant But with experience, I got the</p> <p>2 idea that there are some things that you just</p> <p>3 can't accomplish And then I was in this</p> <p>4 conversation and I don't know what it was about,</p> <p>5 what the person said, whether it was a phrase, a</p> <p>6 word, a nuance, I don't know exactly what it was</p> <p>7 But suddenly I had a visual image of that slogan</p> <p>8 on the blackboard I hadn't thought about it in</p> <p>9 all those years Hadn't given -- never recalled</p> <p>10 it But 25 years later I am having a flashback</p> <p>11 about something that was written on a blackboard</p> <p>12 when I was a college sophomore You can't</p> <p>13 separate memory from meaning</p> <p>14 Q So you equate the potato chip with, that you saw</p> <p>15 in a college classroom board with a phrase written</p> <p>16 during one of the classes when you were a</p> <p>17 sophomore or freshman with a 35 or 36-year-old</p> <p>18 remembering whether or not he had dinner or lunch</p> <p>19 with an individual while he was 35 or 36?</p> <p>20 MR CRAIG If you don't mind, Jerry I</p> <p>21 don't mind your line of questioning I think you</p> <p>22 have your dates way off This wasn't in '98, it</p> <p>23 was '89 I mean you are like ten years off at</p> <p>24 least</p> <p>25 MR NOEL I think that's what the</p>

Page 26	Page 28
1 witness will say	1 Q Is that in conjunction with his first visit to
2 MR CRAIG I know the guy in Seattle --	2 your office?
3 MR NOCE Yeah	3 A Yes
4 MR CRAIG My apology	4 Q If you look at Page 2 you have there, part of the
5 Q (By Mr Noce) Do you equate what you saw as a	5 document says, "Religious preference," and what
6 single phrase written on a blackboard when you	6 did he write in his hand there?
7 were a sophomore in college with whether or not a	7 A "Catholic "
8 person at age 35 or 36 remembers having lunch or	8 Q Then he has down below in your preprinted form, it
9 dinner with an individual?	9 says, "Any disability," and he checked one of
10 A I am not sure that I understand your question	10 them, what was that?
11 Q I asked if there was any explanation for somebody	11 A "No"
12 forgetting at age -- when they were 35 or 36, that	12 Q Then on the next page I believe is a part that
13 they went out and had dinner or lunch with an	13 starts off with, "Please complete and give this to
14 individual, if there is any explanation for that	14 Dr Harris " There is a series of questions, is
15 And then you start talking about it is hard to	15 that correct?
16 throw a potato chip And my follow-up is, what	16 A Yes
17 does the potato chip have to do with the 35 or	17 Q There are three of them, I think?
18 36-year-old, if anything?	18 A Yes
19 A Because you were asking about repressed memories	19 Q The second one is, "What would you like to be the
20 Even your question implies something that I think	20 outcome of counseling," parents, "What would you
21 is unfair Inaccurate You are saying --	21 like to accomplish or resolve? What are your
22 Q Whoa, whoa What is inaccurate about the	22 goals for counseling?" And then he records
23 question?	23 something there And then is the last line that
24 A I am about to tell you	24 he wrote in his hand, "Also because I was
25 Q Okay	25 unconscious, I need to come to terms with the fact
Page 27	Page 29
1 A What you are saying is, why would a person forget	1 that I may have been abused " Is that what he
2 And I think a different way of phrasing that is,	2 wrote?
3 why would a person not remember	3 A Yes
4 Q Or deny?	4 Q Who underlined "may"?
5 A That is possible, too Sure It is possible that	5 A I assume that he did
6 he has a conscious recollection of having had the	6 Q Is the next page an initial intake?
7 dinner and won't acknowledge that Sure, of	7 A Yes
8 course that is true But my point is, that to	8 Q Whose handwriting is on that page?
9 imply that there is an active repression of a	9 A That is my handwriting
10 memory is different from saying that a memory	10 Q Under presenting problem, you have -- what did you
11 simply isn't stimulated and doesn't come forward	11 write there?
12 Q If you would, Doctor, take a look at your pile	12 A Sexual molestation by priest
13 there And I am going to go through with you	13 Q Did he tell you that he was molested by a priest?
14 There is a, I think on the inside of the folder of	14 A This is an example of where my recording may not
15 Exhibit I, there is what is called a Personal Data	15 be completely accurate with respect to what he
16 Sheet - Adult Is that correct?	16 said The reason for that is I am not Catholic,
17 A It is	17 and so I wasn't familiar with the distinction
18 Q You've got the original there Now it is signed	18 between a priest, a brother, et cetera, the
19 by Mr Visnaw Now who would have been the person	19 various ranks and types within the Catholic
20 to fill out all the handwritten portions of that	20 church I am still not very clear about it But
21 Personal Data Sheet?	21 I later have come to understand that Brother
22 A Mr Visnaw	22 Mueller was not a priest, but there is some other
23 Q Is it your record, does your record reflect that	23 category for people within the church called
24 he would have done that on November 3rd, 2005?	24 brothers And I don't understand exactly what
25 A Yes	25 that is

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1 Q Did he write in those first three pages anywhere
 2 that he had been sexually abused, in the first
 3 three pages that he filled out? Or sexually
 4 molested?
 5 A Well, what he wrote was that "I may have been
 6 abused "
 7 Q Right He may have been abused He didn't say,
 8 "I may have been sexually molested or I may have
 9 been sexually abused," he said, "I may have been
 10 abused " That's what he wrote?
 11 A That's what he wrote That's correct
 12 Q So my question is, did he write anywhere in the
 13 forms that he was sexually molested?
 14 A No, I don't think so
 15 Q Or that he was sexually abused? Did he write
 16 that?
 17 A No, I don't think so
 18 Q Then in the history of the problem, did he pose a
 19 question to you, he wanted to know what happened
 20 while passed out?
 21 A It is possible that that note reflects a question
 22 of myself
 23 Q That is in your handwriting?
 24 A Yes This often happens in my notes when I am
 25 writing things down, I may make a notation of

Page 31

1 something that my patient has said and I may make
 2 a notation for myself Like, this as an example,
 3 what happened while he was passed out That is
 4 sort of the 64,000 dollar question
 5 Q When you see patients, you have a full range of
 6 possible treatments, don't you? I mean, you can
 7 counsel people or if you see somebody who is in
 8 really bad shape, you can even have them
 9 hospitalized, can't you?
 10 A I don't hospitalize people and I very seldom get
 11 referrals or accept referrals of people who are
 12 needing hospitalization I don't any longer have
 13 even associate privileges at any of the area
 14 hospitals I used to, but I dropped that because
 15 I just didn't go there
 16 Q Was there -- in the range, psychologists in
 17 treating patients, if necessary, can arrange to
 18 have them hospitalized for their best interests,
 19 can't they?
 20 A Certainly can make referrals to psychiatrists who
 21 tend to manage the hospitalization. And yes, I
 22 have done that
 23 Q In this case, after seeing him, Mr Visnaw for the
 24 first time, you didn't deem that necessary, did
 25 you?

Page 32

1 A That is correct
 2 Q And at this point in time, your records don't
 3 reflect that you restricted his activities?
 4 A That is correct
 5 Q I have the next visit being, Doctor, on November
 6 8th, is that correct?
 7 A Yes
 8 Q Then the next visit, do you have it as November
 9 30?
 10 A Yes
 11 Q There is a part of that form, November 30 It
 12 says, "Issues addressed "
 13 A Yes
 14 Q It has quotes, "Why I kept quiet for 20 years,"
 15 closed quote?
 16 A Yes
 17 Q Is that your handwriting?
 18 A Yes, it is
 19 Q When you put quotes on something, under issues
 20 addressed, is that based on the fact that it is
 21 the statement of your patient?
 22 A Yes It might not be a completely exact or
 23 complete quotation, but it would generally be a
 24 reflection of what the patient said to me
 25 Q Did you understand him to be telling you why he

Page 33

1 kept quiet about what happened for 20 years?
 2 A It is a good question And if I can take a second
 3 I will try to reconstruct my thinking about this
 4 statement At the time that he first consulted
 5 me, I don't think that he was completely clear
 6 that he had in fact been sexually molested I
 7 think that he thought that he had been but he
 8 was -- there was some confusion about that The
 9 distinction between the sexual abuse and the
 10 experimentation, that is where he was rendered
 11 unconscious, often got kind of muddled in the
 12 conversation I think that he had come to a
 13 recognition that even if no sexual contact had
 14 occurred, that he should have spoken up about the
 15 experiments, that is about a teacher in the school
 16 taking a student and then doing some kind of
 17 experiment to have them lose consciousness And
 18 so I think that he was generally expressing here a
 19 feeling of dismay that he had just accepted all
 20 this time all of it That is he had never really
 21 said very much about Brother Mueller's
 22 experiments He had not made any complaints about
 23 it And I think that he was thinking that he
 24 should have
 25 Q Twenty years ago?

Page 34	Page 36
<p>1 A Well, he said, "Why I kept quiet for 20 years," 2 yeah 3 Q And at that time after treatment you put on as a 4 response of therapy, "Okay"? 5 A Yes 6 Q In other words, he seems to be doing okay in the 7 treatment? 8 A Par for the course 9 Q Next, I am trying to follow along 12/22/05 Is 10 that the next visit? 11 A You know, I am missing that session I wonder if 12 we -- 13 Q This is just a form you fill out? 14 A Oh oh That's not my actual session note Those 15 are -- well, they are sort of in a way This is a 16 form that I have to fill out for the Employee 17 Assistance Program This form is simply an 18 authorization to extend EAP sessions It is not a 19 session note, it is more of a summary of preceding 20 sessions 21 Q So it is not from when you saw him, it is, like 22 you said, the summary? 23 A Yeah For example, after I had seen Robert for 24 three sessions, then I am required to fill out 25 this note and send it in to the EAP to get</p>	<p>1 A Yes 2 Q Was it your observation that he was doing well? 3 A Yes 4 Q And "V little symptoms," what does that mean? 5 A Very little symptoms 6 Q Then down below there is D , and then "Repressed 7 memory issues " Does that mean that is something 8 you discussed? 9 A That is correct 10 Q Who brought that up? 11 A Again, I don't recall Maybe I am repressing 12 that I don't mean to make light of it Here's 13 what generally happens when I am working with 14 people who have felt that they have been sexually 15 abused I try to spend some time explaining to 16 them how I look at the issue of repression, just 17 as I did with you earlier when I quibbled with 18 your use of the term And I explained to Robert 19 that this whole issue of repressed memory is hotly 20 debated And I told him that I wouldn't be a good 21 person to serve as an expert witness if someone 22 was making the argument for a repressed memory if 23 that implies that there is some psychological 24 mechanism that causes a nerve fiber to be blocked 25 off from the rest of the brain I just don't have</p>
Page 35	Page 37
<p>1 additional sessions authorized 2 Q The next actual visit would have been on January 3 3rd, '06? 4 A Yes 5 Q And it says, "Google, Brother William Muller " Is 6 that is in your handwriting? 7 A Yes, that is my handwriting 8 Q I think you misspelled Mueller there, didn't you? 9 A I did 10 Q Was that an idea you had to do that, or what? 11 A Probably I don't have a -- I am going to sound 12 like Alberto Gonzales here I don't have a 13 specific recall of that date, on January 3rd of 14 2006 However, what happened here is that Robert 15 was discussing what had happened to him and had 16 told me that there was some news articles in the 17 St Louis press about it I don't know whether it 18 was his suggestion or mine, or my thought I 19 thought maybe I should try to look up the news 20 articles and just read a little bit 21 Q Just a little background? 22 A Yes 23 Q Then did you write some of -- it says "Issues 24 addressed " but it appears to me some of your 25 findings are reflected there?</p>	<p>1 an understanding of how that works 2 physiologically 3 Q When you say it is "hotly debated," do you mean 4 there are people, respected people in psychology 5 on both sides of the issue? 6 A That is correct 7 Q I have that he was in your office again on the 8 26th? 9 A That is correct 10 Q And you noted then that the response to therapy 11 you were providing was good? 12 A That is correct 13 Q Then I have him back to see you on February 2nd 14 And again, you made an observation that his 15 response to therapy was good? 16 A That is correct. 17 Q When you say that, as a layman, does that indicate 18 to me and other lay people that he is doing well 19 and progressing? 20 A Yes 21 Q Was that the same finding that you made on 22 February 6th -- February 9th, 2006? 23 A Yes, that is correct 24 Q Then you saw him on February 23rd And he made 25 some comments to you, I guess, about having to</p>

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1 answer interrogatories And you understood that
 2 to be a part of the litigation process?
 3 A That is correct
 4 Q Then it says, damages -- or "D," which I
 5 understand to mean discussed?
 6 A Yes
 7 Q "Effects versus damages issues " What does that
 8 mean?
 9 A Once again I don't have a specific recall of the
 10 session But, what I believe that that means is
 11 that -- I discussed with him that a person might
 12 have a traumatic incident in their life or might
 13 have an event that occurs and this might cause
 14 significant emotional effects It might cause a
 15 loss of trust, it might cause suspiciousness, it
 16 might cause conflicts in interpersonal
 17 relationships But that might be separate from
 18 the issue legally of damages That is how might
 19 all of that have affected Robert's career in law
 20 enforcement And I commented to him that my
 21 primary locus would be on the effects that
 22 occurred to him because of the relationship with
 23 Brother Mueller But that I probably wouldn't be
 24 able to address any issue of damages
 25 Q Are fear, embarrassment, shame, are those natural

Page 39

1 responses to some situations involving abuse?
 2 A I don't like the word "natural," but taking that
 3 word out, yes
 4 Q And are those elements of damage to people, are
 5 they parts of their damage?
 6 A Well I will leave that to the lawyers to decide
 7 Q Parts of their emotional damage?
 8 A Yes
 9 Q On this occasion, February 23rd, 2006, a response
 10 to therapy "Okay, doing better, less anxious "
 11 Is that even a better finding than what you had
 12 seen in the past?
 13 A Oh, not necessarily It was my general feeling
 14 that Robert was able to talk about things As he
 15 talked about it, I think that he got more
 16 comfortable generally He felt very embarrassed,
 17 very ashamed It is a difficult thing to talk
 18 about And I was trying to encourage him to not
 19 feel ashamed about it There wasn't anything to
 20 feel ashamed of
 21 Q Let me ask you this, Doctor Do you see in some
 22 individuals who were involved in litigation the
 23 fact that they have a hard time dealing generally
 24 with life while the litigation is still going on?
 25 I don't mean to imply anything But do you see

Page 40

1 that?
 2 A Sure
 3 Q Do you see that, again naturally, without any
 4 claim of -- without any denigration of a person,
 5 do you see that the end of litigation is helpful
 6 to people?
 7 A It can be
 8 Q It gives them some closure?
 9 A Yes
 10 Q I don't know how many of these types of cases you
 11 have dealt with in the past that have actually
 12 been involved in litigation And I don't want to
 13 know about names or anything But have you?
 14 A Many
 15 Q Have you seen cases settle or close where there is
 16 an agreement to provide the plaintiff with certain
 17 non-economic items?
 18 A Yes
 19 Q Have you felt that that is helpful to the patient
 20 and plaintiff?
 21 A Yes
 22 Q As I understand it, Doctor, the next time you saw
 23 Mr Visnaw would have been May 31st, 2006?
 24 A That is correct
 25 Q At this time he gave many comments to you about

Page 41

1 what he recalled about the incidents?
 2 A Yes
 3 Q And then it says -- in fact I don't think there is
 4 anything down below as to like response to therapy
 5 or anything else It just looks like what you
 6 recorded is what he was telling you?
 7 A Generally, yes, that is correct
 8 Q Then the next page would be again issues
 9 addressed, right?
 10 A On July 25th?
 11 Q Yes, sir
 12 A That is correct
 13 Q Then the next visit, yes, July 25th He mentions
 14 again the stress involved actually with his
 15 deposition coming up
 16 A Are we looking at August 17th here?
 17 Q I'm sorry, I am looking at July 25
 18 A Yes
 19 Q And that is something that you have seen in your
 20 practice, that people get upset and anxious about
 21 the actual litigation process?
 22 A Yes
 23 Q Then you saw him again on August 17, 2006?
 24 A Yes
 25 Q Again he told you some problems that he was going

Page 42

1 through?

2 A Yes

3 Q Then I have it that you didn't see him at all in

4 2006

5 A There is a session noted October 12th of '06 Do

6 you not have that?

7 Q I don't think so I am thinking I have

8 everything Could I see it?

9 A I have one dated October 12th and one dated

10 October 19th My apologies I thought we had

11 everything copied and sent to you

12 MR CRAIG Yes, those were sent

13 MR NOCE Is this something that came

14 today, Dan?

15 MR CRAIG Yesterday The doctor gave

16 them to me yesterday

17 Q (By Mr Noce) Again you saw him on October 12th

18 and he was talking about the deposition and things

19 of that nature More litigation issues And then

20 he saw you a week later said the deposition was

21 very upsetting?

22 A Yes

23 Q Do your records reflect anywhere that he was

24 having any problems of any kind with his libido?

25 A Well, no, but that was discussed

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1 Q What was the discussion and when did you have

2 that?

3 A Oh, I don't know that I could pin down the exact

4 date But there is no doubt that this whole

5 process being very stressful has affected him I

6 think it is just very difficult to feel really

7 whole, well and sexual when you are under that

8 much stress

9 Q Did you receive from somebody some records from

10 Snap?

11 A Is that an e-mail?

12 Q Yes, sir

13 A I didn't remember the word "snap " But there are

14 some e-mails in my file

15 Q Do you have any kind of relationship with that

16 organization at all?

17 A No

18 Q Have you written to the post dispatch or any other

19 newspapers in response to a request made by Snap?

20 A No Would you like to know why I have the e-mail?

21 Q Sure I am not supposed to ask those questions,

22 but go ahead

23 A Well, the Missouri Psychological Association has a

24 list serve And I am a member of that And so

25 this is a posting to the Missouri Psychological

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1 Association list serve from a, I think a St Louis

2 area psychologist And at the time that I got the

3 e-mail, or that posting from the list serve, I

4 didn't know whether it had anything to do with

5 Robert's case or not As it turns out I don't

6 think that it did But I printed it off and put

7 it in the file for that reason

8 Q All right. The next thing that I have is a letter

9 dated -- I'm sorry Mr. Visnaw came to see you in

10 March 27th, 2007

11 A Hang on just a moment, let me find the notation

12 for that I believe that is correct, but somehow

13 I have misplaced that

14 Q. I think it might be attached to the letter you

15 gave to --

16 MR CRAIG If you want to peek at this,

17 Doctor

18 A Yes.

19 Q (By Mr Noce) Before he saw you in March, there

20 would have been what, about a five-month gap in

21 treatment?

22 A That sounds about right

23 Q When you, back in October, when you last would

24 have counseled or had a session with Mr Visnaw

25 would you generally schedule a new appointment or

Page 45

1 would he be told to contact us if you need us or

2 what would be the general advice?

3 A. Generally speaking, I don't try to push people

4 into scheduling appointments unless I think that

5 they are at risk in some way I would rather that

6 they schedule an appointment when they have

7 something that comes up that they really feel some

8 pressure to talk about I tend not to schedule

9 lots of sessions in advance, that is three, four

10 five, six, seven weeks out Let me rephrase that

11 I wouldn't schedule six appointments in a row for

12 each successive week, unless I really thought that

13 we were going to need those sessions And the

14 reason that I don't do that, is that I don't want

15 people to think that they are expected to come in

16 I don't want them to think that I think they have

17 a problem that they have to address, unless I

18 really think they do And so I don't want to

19 imply that people should just schedule a whole

20 bunch of appointments and run up the insurance

21 bill What I find is that most people come in,

22 they talk about issues that are bubbling up and

23 most people are perfectly capable of scheduling

24 another appointment when they feel a need

25 Q When you would have seen him October 19th, 2006,

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1 just make sure I think that was the last visit
 2 before this That would have been your position?
 3 A That's correct
 4 Q In other words, you didn't want to schedule
 5 something but if he wanted to come back to see
 6 you, that would be fine?
 7 A That is correct
 8 Q And he did that in March of '07?
 9 A That is correct
 10 Q And again, at that time it says, "Issues
 11 addressed " It says, ' Things going well for a
 12 while " Then I can't read your handwriting,
 13 Doctor
 14 A "Then have a conversation with Father Doyle and"
 15 -- I can't read my handwriting either "With
 16 Father Doyle and this restarted process "
 17 Q Do you know who Father Doyle is?
 18 A I knew at the time and it is escaping me right at
 19 the moment
 20 Q If I represented to you that he is an expert
 21 retained by plaintiff's counsel in this case,
 22 would you understand that again to be a part of
 23 the litigation process?
 24 A Yes, that makes sense
 25 Q Then it says, "Had an accidental discharge with a

Page 47

1 weapon when he was distracted " Is that what --
 2 A Yes
 3 Q Did you think that was in any way related to the
 4 issues in this lawsuit or was that unrelated?
 5 A You may be asking me a question that is better
 6 suited for an expert witness I work a lot with
 7 police officers and I would probably resent a
 8 therapist who reached quick conclusion about such
 9 a thing without a lot of background I will give
 10 you a thought about it if we can --
 11 Q My only thought would be, are you prepared to say,
 12 based upon a reasonable degree of psychological
 13 certainty, that that is related to the claims made
 14 in the case or is it just something else that
 15 happened in his life?
 16 A I would say it is more probable than not that the
 17 stress of going through the depositions and the
 18 trial and dealing with the issues that are brought
 19 up in this whole process did cause him to be
 20 distracted and he wasn't as careful as he
 21 ordinarily would be with his weapon I would
 22 rather that if that issue became a problem to
 23 resolve with respect to his employment, that an
 24 expert witness be retained to evaluate him,
 25 because I wouldn't want his employment affected by

Page 48

1 my more probable than not opinion
 2 Q Just for our purposes here, I understand what you
 3 just told me, but are you prepared to say that is
 4 related based on a reasonable degree of
 5 psychological certainty?
 6 A If that means more probable than not, yes
 7 Q How about based upon a reasonable degree of
 8 psychological certainty?
 9 MR CRAIG I just object to the extent
 10 that is in no case law He doesn't have to
 11 use those exact terms, reasonable degree of
 12 certainty So you are entitled to state it
 13 or couch it in terms that you feel
 14 comfortable with, Doctor
 15 A I would rather say that I think it is more
 16 probable than not It goes at the 51 percent
 17 confidence level rather than the 80 or 90 percent
 18 confidence level
 19 Q (By Mr Noce) But in response to what he told you
 20 there, you did issue a report on his behalf?
 21 A That is correct
 22 Q In that you said that you have seen nothing in
 23 your sessions with Mr Visnaw that would cause you
 24 to conclude that he is unable to work?
 25 A That is correct

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1 Q And that is your opinion?
 2 A That is correct
 3 Q It looks like on May 10th, 2007, you were
 4 contacted by Mr Craig And you responded to his
 5 inquiry and said, "I have seen Mr Visnaw only
 6 once in 2007 " As of that date, is that correct?
 7 A That is correct
 8 Q Has he been back since May 10, 2007?
 9 A No
 10 Q Are there any appointments scheduled for him?
 11 A I don't think so
 12 Q Does your file reflect any pending appointments?
 13 A No
 14 Q Do you believe that Mr Visnaw, based on your
 15 treatment and care of him to this point, needs to
 16 be hospitalized?
 17 A No
 18 Q Do you believe, based on your treatment and care
 19 of him to this point, that there needs to be any
 20 restrictions placed on him by you to his
 21 activities of daily living?
 22 A No
 23 Q Have you scheduled any future treatment for him?
 24 A No
 25 Q Have you reached an opinion as to a diagnosis from

Page 50

1 your treatment?

2 A That's a very difficult question I believe that

3 the diagnosis that I used for him was Major

4 Depression 296.2 That was recorded on the EAP

5 form that I sent to Health and Human Services

6 Q 296.2?

7 A Yes

8 Q Is that a DSM?

9 A It is

10 Q DSM-IV?

11 A Yes I don't really like diagnoses very much

12 When I first saw Mr Visnaw I wrote out

13 delayed -- "Rule out delayed onset PTSD or anxiety

14 disorder, NOS," meaning not otherwise specified

15 "Major depression " So I was considering all of

16 the diagnoses As I sit here today, I don't know

17 that I think that major depression is really the

18 best diagnosis It is what I reported on November

19 3rd of '05 The anxiety disorder diagnoses would

20 probably be appropriate also

21 Q Have you recorded that anywhere or reported that

22 anywhere in your file?

23 A No, I haven't And the difficulty is that

24 diagnoses don't really do a very good job of

25 describing situations like this I certainly

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1 don't mean to imply that I think Mr Visnaw is

2 dysfunctional That is I don't worry about him in

3 his work That is really the job for a Fitness

4 For Duty evaluator, who might do different kinds

5 of psychological testing, et cetera But there

6 are certainly symptoms of anxiety, irritability

7 which is usually the way men experience depression

8 or often the way men experience depression There

9 are certainly many symptoms there and they can fit

10 into a number of different diagnoses

11 Q Did he ever relate to you other unrelated issues

12 that may have caused or contributed to cause any

13 of the diagnoses that you have stated?

14 A Well, yes He has had a range of life

15 difficulties, as I think most of us have had, or

16 many of us have had various difficulties I

17 believe that he was previously divorced

18 Q Can that be a cause of anxiety disorder and

19 depression?

20 A Certainly

21 Q Anything else?

22 A Well, I think that he -- in addition to having the

23 questions about the Catholic church because of

24 what happened with Brother Mueller I think that

25 there may have been other religious questions that

Page 52

1 came up for him He certainly had conflict with

2 his -- with one of his sisters, as I recall And

3 of course one of his sisters died So yes, there

4 are a range of life issues that could be stressful

5 and could contribute to anxiety or depression

6 Q Did he ever tell you that he had discussed these

7 incidents from high school with his father?

8 A Do you mean the incidents with Brother Mueller?

9 Q Yes, sir

10 A Yes, I believe that he did

11 Q Can you tell me, Doctor, what opinions, aside from

12 the diagnosis that you made in this case what

13 opinions you are prepared to give in this case,

14 other than what you have already told me?

15 A Well, I wouldn't offer an opinion that wasn't

16 asked for

17 Q I am asking you now, give me all of them that you

18 are ready to give

19 A Well, I have no idea what question you might ask

20 me

21 Q I am simply asking you, because I am trying to

22 find out now I understand that you are going to

23 come in and testify live and I am trying to be

24 prepared to cross-examine you So what I would

25 like you to tell me now, because I have a right to

Page 53

1 ask you this and if you get additional or

2 different opinions in the future, I think the case

3 law requires that I be alerted to those That's

4 between Dan and I But what I am trying to do now

5 is find out if you hold any opinions that you are

6 prepared to give, in this case, if you would tell

7 them to me now I just want to know what they are

8 now

9 MR CRAIG Let me just, obviously you

10 know he is not a retained expert He is a

11 treating physician

12 MR NOCE Right

13 MR CRAIG So if anything -- he is a

14 non-retained expert This is not the typical

15 situation where you can just walk in and say

16 "Give me your opinions," because you have

17 been hired to render them I will be happy

18 to -- there are a few that you have been

19 dancing around, I think some of the more

20 critical issues

21 MR NOCE I don't dance too good, but I

22 want to find out what he has to say

23 MR CRAIG If you want me to flush them

24 out with him, I will be happy to do that

25 Q (By Mr Noce) Let me ask you first and then he

Page 54	Page 56
<p>1 can flush them out. What opinions do you hold as 2 it relates to your patient Mr. Visnaw? 3 A That is fundamentally an impossible question to 4 answer. I have a thousand thoughts and opinions, 5 but I am not going to answer any question that 6 isn't put to me. 7 Q Do you have any opinions as you sit here today 8 regarding Mr. Visnaw? 9 A Sure. 10 Q We have already covered the diagnoses. True? 11 A Yes. 12 Q Is there any other opinion you hold regarding 13 diagnoses? 14 A You are asking the question the same way and I 15 have got to give you the same answer. I would 16 have a thousand different things to say about Mr. 17 Visnaw, but I am not going to offer anything until 18 I am asked. 19 Q I am going to let Mr. Craig ask you those 20 questions and see if I can get an answer. 21 EXAMINATION BY MR. CRAIG 22 Q Doctor, let's see if we can maybe bring this to a 23 head here and get you taken care of. Mr. Visnaw 24 is your patient obviously? 25 A That is correct.</p>	<p>1 that he had been sexually abused. And then after 2 he began seeing me, he believed that he remembered 3 additional things about the abuse. As he thought 4 about it, and as he attempted to recall, he 5 believed that he remembered things that he had 6 never previously remembered. And so my operating 7 assumption has been that his realization of being 8 sexually abused occurred after reading the 9 newspaper articles. 10 Q Which would have been around the time that he 11 started a short period of time before he started 12 getting treatment from you, is that correct? 13 A That is my understanding. I don't have the exact 14 date. I didn't record it in the file. That 15 wouldn't have been -- having the exact date of 16 that wouldn't have been a high priority for me. 17 But it was around that time. 18 Q And I think the evidence in the case is that it 19 was September of '05 when the news of William 20 Mueller became public and he first found out about 21 it, so that would be consistent with what you are 22 saying? 23 A I can accept that. 24 Q So this is sort of a related question. Have you 25 formed an opinion as to the moment, then, that</p>
Page 55	Page 57
<p>1 Q And you understand that he has reported to you 2 having been subjected to overt genital sexual 3 abuse by William Mueller while a student in high 4 school in the 1980's, correct? 5 A That is correct. 6 Q And he has reported that to you since the time you 7 started treating him, which would have begun in 8 November of 2005, is that correct? 9 A That is correct. 10 Q Have you formed an opinion as to when Robert first 11 obtained conscious recollection of that overt 12 sexual abuse? 13 MR. NOCE: Object to the form of the 14 question. You can answer. 15 A It is one of those questions that probably is best 16 answered by an expert witness. I will be happy to 17 respond to it. 18 Q (By Mr. Craig) Please. 19 A When Robert came in he told me that he had read 20 these newspaper articles about Brother Mueller. 21 And I don't recall the exact date of the newspaper 22 articles, but it was just relatively briefly 23 before he came to see his primary care doctor and 24 then to see me. And I believe it was those 25 newspaper articles that stimulated him to suspect</p>	<p>1 Robert would have -- I want you to use a term you 2 are comfortable with. But appreciated or 3 ascertained that he had been sexually abused by 4 William Mueller? 5 MR. NOCE: Object to the form of the 6 question. It is vague, overly broad. 7 A Yes, about the same time. I think that it was the 8 information and the newspaper articles that sent a 9 shockwave of anxiety through him. And that's 10 really when this whole thing started for him. 11 Q (By Mr. Craig) Now as I understand it, correct me 12 if I am wrong, there were certain of the non-overt 13 sexual details of his encounter with Brother 14 Mueller that he has always remembered, or always 15 recalled, is that correct? 16 A Yes. He reported to me that he was always aware 17 of the experiments where he was rendered 18 unconscious. So yes. 19 Q And in your opinion, should that have caused him 20 to understand at that time, since he remembered 21 all those details, of the non-sexual details, 22 should he have appreciated the fact that he was 23 sexually abused at that time? 24 MR. NOCE: Object to the form of the 25 question, overly broad and vague. No.</p>

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1 foundation
 2 A The short answer to that is no. The longer answer
 3 is, he -- I don't see how he could have at any
 4 time remembered something that occurred when he
 5 was unconscious. I am not a neurologist nor a
 6 neuropsychologist. But if I am unconscious, I
 7 think I am not recording things for memory. So I
 8 don't believe that he is now able to remember
 9 things that occurred to him while he was
 10 unconscious. However, there is sort of a gradual
 11 transition between consciousness and
 12 unconsciousness. And so then the question is, did
 13 he form some kind of memories during that period
 14 when he was beginning to wake up from this period
 15 of unconsciousness. I think that is possible.
 16 And those are the things that he is stating that
 17 he is beginning to recall.
 18 Q (By Mr. Craig) You understand the context in
 19 which these experiments took place between Bob and
 20 Brother Mueller. What I mean by that is, you
 21 understand that this was at his high school?
 22 A That's what he told me.
 23 Q And you understand that this was a religious
 24 authority over Bob?
 25 A That is my understanding.

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1 Q And did he explain to you that this gentleman
 2 Mueller, this Brother Mueller approached him that
 3 this was going to be a psychological experiment
 4 and he needed his assistance and that it was
 5 legitimate, and that sort of background that he
 6 provided to Robert before the experimentation?
 7 A That's how Robert explained it to me.
 8 Q Have you formed any opinions relative to the fact
 9 that if it was done in that context, that would
 10 cause a young man like Robert to accept at face
 11 value what he had been told by a religious
 12 authority?
 13 MR. NOCE: Object to the form of the
 14 question, lacks foundation.
 15 A Yes. I think that that is how this sort of thing
 16 happens all the time. I think that young people
 17 from childhood up through teen years, and really
 18 even into adulthood, trust authority figures. I
 19 believe a large percentage of our country trusted
 20 the president with respect to weapons of mass
 21 destruction and we are living to regret it.
 22 MR. NOCE: Move to strike that as
 23 nonresponsive. I did see the contributions
 24 when we Googled you to Claire McCaskill in
 25 there. That's a part that comes up.

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1 MR. CRAIG: I am asking the questions
 2 here.
 3 MR. NOCE: I know. That has got nothing
 4 -- that is completely irrelevant to that
 5 part.
 6 MR. CRAIG: He said it happens all the
 7 time.
 8 Q (By Mr. Craig) Doctor, if I was to suggest to you
 9 that since Robert always had conscious
 10 recollection of the non-sexual parts of the
 11 experiments, having been told you are going to be
 12 part of a psychological study, you can't tell
 13 anyone being tied up, that sort of stuff, that
 14 that should have been an indication to this young
 15 man that he was being sexually abused, would you
 16 agree with that?
 17 A Can you ask the question again. I didn't catch it
 18 all.
 19 Q If I were to point out that Robert has always been
 20 consciously, has always consciously recalled the
 21 non-sexual parts of the experiments, okay. Such
 22 as being tied up, such as being told he is going
 23 to be part of a psychological experiment, things
 24 like that, he has always remembered that
 25 A Right.

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1 Q Always recalled that. If I were to suggest that
 2 that alone should have been enough for this young
 3 man to appreciate that he was being sexually
 4 abused or exploited, would you agree with that?
 5 A No.
 6 Q Why?
 7 A He would just accept that Brother Mueller was
 8 doing a psychological experiment and he would
 9 trust him.
 10 Q And is that something that would be subjective to
 11 Robert Visnaw or something in your experience
 12 would be an objective response of young men in his
 13 position?
 14 A I don't know what percentage I would put on it,
 15 but I would say a large percentage of young people
 16 would just accept the authority's explanation.
 17 Q Doctor, I think at this time I have pretty much
 18 gotten some of the opinions that I will be asking
 19 you at trial about. Maybe that has given Jerry an
 20 understanding of what he needs to ask.
 21 EXAMINATION BY MR. NOCE
 22 Q Let me ask you a few more follow-up. Do you know
 23 how old Mr. Visnaw was when these four incidents
 24 took place? Do you know how old he was?
 25 A My understanding is that he was 17.

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1 Q 17 to 18 Does that --
 2 MR CRAIG He wasn't 18
 3 Q (By Mr Noce) He is 17 He was a junior and
 4 senior in high school Does that affect anything,
 5 any opinions you stated?
 6 A Well, I thought they all occurred while he was a
 7 senior, but I may be wrong about that But
 8 whether it is junior and senior or senior, no, it
 9 doesn't change my opinion
 10 Q Is it your understanding that he always remembered
 11 that he was not to tell people about this?
 12 A Yes
 13 Q He always remembered that?
 14 A Yes
 15 Q And that he always remembered that a knife was
 16 held to his throat?
 17 A No
 18 Q He didn't remember that?
 19 A I'm not sure about that one I don't know about
 20 that one
 21 Q Is that of any significance?
 22 A Not really
 23 Q That he always was fearful about what happened to
 24 him?
 25 MR CRAIG Objection, misstates

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1 testimony
 2 Q (By Mr Noce) You can answer Did you understand
 3 that to be the case?
 4 A No, not exactly I don't think that he had a
 5 conscious awareness or statement to himself that
 6 he was fearful I think that he was, but I think
 7 that it was not at a clearly verbalized,
 8 consciousness level
 9 Q Do you think that he knew that something bad had
 10 happened to him?
 11 A Not exactly
 12 Q Do you think the fact that he has been in law
 13 enforcement for ten years would have put him on
 14 any notice of these four incidents of being told
 15 by someone, "Don't tell any adults about them,"
 16 do you think that would have put him on notice of
 17 anything or not?
 18 A Logically you would like to think that it would
 19 Q That's what I would like I want to go on the
 20 logic part of it
 21 A But I am a psychologist
 22 Q But logically
 23 A I know, but I am a psychologist
 24 Q Logically, yes then go to the illogical
 25 A Well, because we're not completely logical

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1 characters We are psychological people
 2 Psychologically I think it is extremely credible
 3 that he would not think critically about what
 4 happened to him and piece it all together
 5 Q Objectively? Objectively?
 6 A Correct
 7 Q He would have been put on notice objectively,
 8 though wouldn't he? A 17-year-old when all this
 9 is happening?
 10 A I don't know what you mean by put on notice
 11 Q Well, he would have some questions about it?
 12 A Not really
 13 Q Not logically he wouldn't?
 14 MR CRAIG Given the whole
 15 circumstances of the event?
 16 MR. NOCE Sure Sure
 17 Q (By Mr Noce) Let's talk on the logical objective
 18 basis
 19 A Looking at it from the perspective of a
 20 56-year-old man, me, when I see high school kids
 21 whose teachers are taking them in and doing
 22 strange experiments with them or taking them on
 23 long fishing trips or camping excursions the
 24 suspicious part of me says, "What's up with that?"
 25 Would I expect that kind of cautiousness from a

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1 17-year-old? No, I wouldn't
 2 Q You would not Okay Your charges today for all
 3 the treatment, would it be more than a thousand
 4 dollars do you think?
 5 A How many sessions have we had?
 6 MR CRAIG I have this Maybe this
 7 will help you, Doctor I don't have all the
 8 charges, I will say that much
 9 A Well, my hourly fee is \$125, but the CAP only
 10 pays, I don't know, half of that 55 or 60 So
 11 10 or 11 sessions, the total fee would be under
 12 \$2,000 And the amount allowable under EAP or
 13 insurance would be 60 percent of that probably
 14 Q (By Mr Noce) That's the amount you accept in
 15 full discharge of the bill?
 16 A That is correct
 17 Q Okay
 18 A It is a lousy business
 19 Q You make up for it in depositions, though
 20 Because what do you charge for depositions?
 21 A \$250 an hour
 22 Q That's all I have
 23 MR CRAIG Nothing further Thank you
 24 Doctor
 25 - - -

1
2
3 _____ I certify that I have read my testimony and request
No changes be made

4
5 _____ I certify that I have read my testimony and request
the above changes be made

6
7
8 _____
9 GEORGE A HARRIS, PhD
10 Subscribed and sworn to before me this _____
11 day of _____, 2007

12 My commission expires _____

13
14
15 _____
16 Notary Public

17 Visnaw vs Maranist
18 JAL 5-15-2007

19
20
21
22
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25

1 CERTIFICATE

2
3 STATE OF MISSOURI)
4) SS
5 COUNTY OF JACKSON)

6 I, JAMES A. LEACOCK Certified Court Reporter
7 within and for the State of Missouri do hereby certify
8 that pursuant to Notice to Take Deposition there came
9 before me

10 GEORGE A HARRIS PhD,
11 who was by me first duly sworn to testify the whole
12 truth of his knowledge concerning this matter in
13 controversy aforesaid that he was examined and his
14 examination then and there written in shorthand by me
15 and afterwards typed being correctly and accurately
16 set forth in the foregoing 66 pages and said
17 deposition is now herewith returned

18 I further certify that I am not counsel attorney
19 or relative of either party or clerk or stenographer of
20 either party or of the attorney of either party or
21 otherwise interested in the event of this suit

22 IN WITNESS WHEREOF I have hereunto set my hand
23 and affixed my Seal at my office in Independence
24 Missouri this 29th day of May 2007

25

26 _____
27 James A Leacock CCR
28 Certified Court Reporter #662

29
30
31
32
33
34
35

A	<p>ability 18 21 19 8 20 11</p> <p>able 6 5 13 17 23 18 38 24 39 14 58 8</p> <p>abuse 18 1,6 33 9 39 1 55 3 12 56 3</p> <p>abused 29 1 30 2,6 30 7,9,10,15 36 15 56 1,8 57 3 57 23 60 15 61 4</p> <p>accept 31 11 56 23 59 10 61 7,16 65 14</p> <p>accepted 33 19</p> <p>accidental 46 25</p> <p>accomplish 25 3 28 21</p> <p>accurate 7 12,15,19 29 15</p> <p>accurately 7 22 67 11</p> <p>accused 18 5</p> <p>acknowledge 27 7</p> <p>active 22 3 27 9</p> <p>activities 32 3 49 21</p> <p>activity 15 19</p> <p>actual 34 14 35 2 41 21</p> <p>addition 17 6 51 22</p> <p>additional 35 1 53 1 56 3</p> <p>address 38 24 45 17</p> <p>addressed 32 12,20 35 24 41 9 46 11</p> <p>adds 7 1</p> <p>adequate 23 21</p> <p>Adult 27 16</p> <p>adulthood 59 18</p> <p>adults 63 15</p> <p>advance 45 9</p> <p>advice 45 2</p> <p>affect 9 19 62 4</p> <p>affixed 67 16</p> <p>aforesaid 67 10</p> <p>age 3 3 22 6,8 26 8 26 12</p> <p>agencies 13 15</p> <p>agency 14 5</p> <p>agent 14 24</p> <p>ago 12 1 16 14 24 11 33 25</p>	<p>agree 22 15 60 16 61 4</p> <p>agreeable 3 19,22</p> <p>agreed 2 3</p> <p>agreement 4 4 22 14 40 16</p> <p>ahead 23 16 43 22</p> <p>Alberto 35 12</p> <p>alerted 53 3</p> <p>allege 23 20</p> <p>alleged 21 7</p> <p>allow 21 12</p> <p>allowable 65 12</p> <p>amount 65 12,14</p> <p>analyst 7 6</p> <p>answer 3 19 21 10 21 12 22 9,11,12 38 1 54 4,5,15,20 55 14 58 2,2 63 2</p> <p>answered 21 17 22 12 55 16</p> <p>anxiety 50 13,19 51 6,18 52 5 57 9</p> <p>anxious 39 10 41 20</p> <p>apologies 42 10</p> <p>apology 26 4</p> <p>appealed 12 8</p> <p>Appeals 11 23</p> <p>appear 8 15</p> <p>APPEARANCES 1 17</p> <p>appeared 13 25</p> <p>appears 9 6 35 24</p> <p>appointment 44 25 45 6,24</p> <p>appointments 45 4 45 11,20 49 10,12</p> <p>appreciate 61 3</p> <p>appreciated 57 2 57 22</p> <p>approached 59 2</p> <p>appropriate 50 20 20 17 21 18 31 13 44 2</p> <p>argued 16 14</p> <p>argument 36 22</p> <p>arrange 31 17</p> <p>articles 35 16,20 55 20,22,25 56 9 57 8</p> <p>ascertained 57 3</p> <p>ashamed 39 17,19 39 20</p> <p>aside 52 11</p> <p>asked 21 11 26 11</p>	<p>52 16 54 18</p> <p>asking 15 7 22 4,5 22 15 26 19 47 5 52 17,21 54 14 60 1 61 18</p> <p>assessments 14 4</p> <p>assist 14 4</p> <p>assistance 34 17 59 4</p> <p>associate 31 13</p> <p>associated 9 2 17 6</p> <p>Association 43 23 44 1</p> <p>assume 3 20 9 8 11 9 29 5</p> <p>assuming 8 25</p> <p>assumption 56 7</p> <p>assumptions 22 14 22 15</p> <p>attached 44 14</p> <p>attempted 56 4</p> <p>attention 8 12</p> <p>attorney 67 13,14</p> <p>attorneys 2 5 13 20</p> <p>August 41 16,23</p> <p>authority 58 24 59 12,18</p> <p>authority's 61 16</p> <p>authorization 34 18</p> <p>authorized 35 1</p> <p>average 6 24</p> <p>aware 57 16</p> <p>awareness 23 22 63 5</p> <p>awful 16 5 18 12</p>	<p>believe 12 13 28 12 38 10 44 12 49 14 49 18 50 2 51 17 52 10 55 24 58 8 59 19</p> <p>believed 56 2,5</p> <p>Bernard 2 21 8 4</p> <p>best 31 18 50 18 55 15</p> <p>better 39 10,11 47 5</p> <p>beyond 11 13</p> <p>bill 45 21 65 15</p> <p>bit 9 4 11 2 21 19 35 20</p> <p>blackboard 24 4,8 24 17 25 8,11 26 6</p> <p>blocked 23 8,12,19 36 24</p> <p>board 24 22 25 15</p> <p>Bob 58 19,24</p> <p>body 19 15</p> <p>Boulevard 1 19</p> <p>brain 22 18 23 23 36 25</p> <p>briefly 55 22</p> <p>bring 54 22</p> <p>broad 57 6,25</p> <p>brother 29 18,21 33 21 35 5 38 23 51 24 52 8 55 20 57 13 58 20 59 2 61 7</p> <p>brothers 29 24</p> <p>brought 36 10 47 18</p> <p>bubbling 45 22</p> <p>bunch 45 20</p> <p>business 65 18</p> <p>businesses 13 15</p>	<p>case 2 12 6 18 9 11 9 25 11 10,13,23 12 1,2,14 21 14 31 23 44 5 46 21 47 14 48 10 52 12 52 13 53 2,6 56 18 63 3</p> <p>cases 13 24 40 10 40 15</p> <p>catch 60 17</p> <p>category 29 23</p> <p>Catholic 28 7 29 16 29 19 51 23</p> <p>cause 1 5 4 17 24 1 38 13,14,15,16 47 19 48 23 51 12 51 18 59 10</p> <p>caused 9 23 51 12 57 19</p> <p>causes 22 18 36 24</p> <p>cautiousness 64 25</p> <p>CCR 1 13 67 19</p> <p>Center 14 3</p> <p>certain 40 16 57 12</p> <p>certainly 7 3,25 11 5 16 9 31 20 50 25 51 6,9,20 52 1</p> <p>certainty 47 13 48 5,8,12</p> <p>Certified 1 14 67 5 67 20</p> <p>certify 66 3,4 67 6 67 13</p> <p>cetera 12 5 29 18 51 5</p> <p>Chaminade 10 21</p> <p>change 9 23 18 16 19,25 62 9</p> <p>changed 20 18</p> <p>changes 18 19,22 20 19 66 3,5</p> <p>changing 21 19</p> <p>characters 64 1</p> <p>charge 65 20</p> <p>charges 65 2,8</p> <p>checked 28 9</p> <p>Chief 12 4</p> <p>child 18 1 5</p> <p>childhood 59 17</p> <p>chip 24 18 25 14 26 16,17</p> <p>choose 23 13</p> <p>church 29 20 23 51 23</p> <p>Circuit 1 1 11 22</p>
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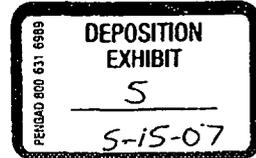
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EDUCATION

University of Missouri-Columbia, B.A in Psychology, minor in Data Processing. Cum Laude.
1972

University of Missouri-Kansas City, M.A. with clinical emphasis 1974

University of Missouri-Kansas City, Ph.D 1979. (became Division of Counseling Psychology and Counselor Education with provisional APA approval in 1982) Doctoral degree approved by the State Committee of Psychologists and Association of State and Provincial Psychology Boards.

Post-doctoral training: one year supervision with Bernard Kleinman, Ph D., two years training in Bowen Family Systems Theory with Katherine Kent, M.S , summer session as visiting scholar at the University of Michigan Consortium for Political and Social Research, family and divorce mediation certification through American Association of Family Mediators, diplomate from Prescribing Psychologists' Register training program in psychopharmacology

EMPLOYMENT

Psychologist in private practice (February, 2000 to present)
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(previous private practice addresses at 4901 Main and 4706 Broadway in KC as partner in Professional Psychological Institute from June, 1988 to February, 2000)

Psychologist in private practice Campbell and Associates, Kansas City, Missouri, July, 1985 to June, 1988.

Associate Professor: Washburn University, September, 1978 to May, 1988.

Counselor: Catholic Social Services of Topeka, September, 1979 to May, 1985 (part-time.)

Training Coordinator: Jackson County, Missouri Department of Corrections, May, 1977 to September, 1978.

Counselor: Jackson County, Missouri Department of Corrections, February, 1976 to May, 1977

Psychologist: Goodwill Industries Vocational Rehabilitation Services of K C , January, 1975 to May, 1976.

I conduct seminars nationally for mental health professionals through my company, New Century Seminars. NCS has received grants from pharmaceutical companies and psychiatric hospitals to offer a variety of programs. I am the consulting psychologist for the Kansas City Regional Center for developmental disabilities I also provide consulting for Midwest Career Center, an evaluation

program for ministers I taught psychology courses for Johnson County Community College and Avila College while in graduate school I have provide psychological services for many area police departments, including the Kansas City, Missouri Police Department, for over twenty years. This work includes pre-employment evaluations and fitness for duty evaluations of officers with psychological trauma from critical incidents

SERVICE.

I am a founding board member and past chairman of Heartland, Inc , which is affiliated with L'Arche, an international federation of homes for people with developmental disabilities I have reviewed manuscripts for book and journal publishers, including the Journal of Counseling and Development. I served on the Board of Directors of the Topeka Battered Women's Task Force and the Topeka Chapter of the National Council on Alcoholism

CERTIFICATES:

Health Service Provider Status-Missouri psychologist license
Diplomate, Certified-Fellow of Prescnbing Psychologists Register (Required training and examination)
Diplomate-American Board of Forensic Examiners and Amencan Board of Psychological Specialties (Membership requires submission of credentials but is not selective.)
Credentials have been reviewed and accepted by the Association of State and Provincial Psychology Boards

REFERENCES

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George A. Harris, Ph D. publications list

Books

Harris, G. (1995) *Overcoming Resistance: Success in Counseling Men* Silver Springs, Maryland: American Correctional Association

Harris, G. (1983). *Broken Ears, Wounded Hearts* Washington D C Gallaudet College Press (1984 award from President's Committee on Employment of the Handicapped)

Harris, G. and Watkins, D. (1987). *Counseling the Involuntary and Resistant Client* Silver Springs, Maryland. American Correctional Association

Harris, G (Ed.) (1991) *Tough Customers: Counseling Unwilling Clients* Silver Springs, Maryland American Correctional Association.

Other book length works

Harris, G. (1986). *Impact of a youth crisis counseling program on recidivism of status offenders.* Resources in Education ED number 271680

Harris, G , Megerman, C and Cellier, C. (1979) *Work release in Jackson County, Missouri. report prepared for technical assistance and resource center, Washburn University of Topeka. Topeka, Kansas.*

Harris, G and Moses, J (1987) *Marketing Professional Services Through Advertising* Sarasota, Florida: Professional Resource Exchange. (audiotape and workbook)

Chapters and articles

Harris, G (1980) A theoretical examination of stress in corrections *Criminal Justice Review* 5(1). 17-24

Harris, G. (1980). *Stress in the correctional environment* *The Kansas Sheriff* 21(1) 17-21

Harris, G. (1984) An interview with Stanton Samenow, co-author of the *Criminal Personality* *Journal of Counseling and Development.* 63(4) 227-229

Harris, G. (1984). *Fairy tales, Beatlemania and a handicapped child* in *Parents Speak Out* Turnbull, A , and Turnbull, H.R., (eds) Columbus Charles E Merrill. 260-268

Callison, H and Harris, G (1985) *History of corrections. in Introduction to administration of justice: theory and practice* D Chang and J. Fagin (eds) Geneva, Ill Paladim House 219-228.

Harris, G. and Kirk, N (1985) A behavioral continuum a look at the personality disorders *Journal of Offender Counseling* 6(1) 2-8

Harris, G. (1987). *Homes for the mentally retarded person- a glimpse for the counseling professional* *Journal of Counseling and Development* 65(6). 322-324

Harris, G. (1987) *Influence of reasoning, disagreement, and democratic decision making on levels of domestic violence* *Journal of Justice Issues,* 2(1) 49-63

Harris, G (1989) Managing the stress of litigation *Everyday Law*

Harris, G (1991). The successful psychotherapy receptionist available from the author

Harris, G (1991). A proposal for correctional treatment of the white collar offenders in *Tough Customers: Counseling Unwilling Clients* (G. Harris, Ed.) Silver Springs, Maryland. American Correctional Association 43-54.

Harris, G (1991) Counseling difficult clients *Directions in Rehabilitation Counseling*. (2)2. 1-22.

Harris, G (1991) Eclecticism, again *Journal of Mental Health Counseling* 13(4) 427-431.

Harris, G (1996) Suggestions for Effective Psychotherapy and Overcoming Treatment Resistance in *Creative Therapies and Programs in Corrections* American Correctional Association. 49-58.

Harris, G (1998) *Overcoming Noncompliance with Medication* *Missouri Psychologist* Vol 1 #2 8-13

Harris, G. (1999) Managing patient resistance to and non-compliance with psychoactive prescriptions Vol 2 2-5

Conference papers

Harris, G (March, 1982) An integration of concepts in sociopathy, narcissism, and the criminal personality Paper presented to the Academy of Criminal Justice Sciences, Oklahoma City, Oklahoma

Harris, G. (March, 1984). When battered women kill A look at the self defense plea Paper presented to the Academy of Criminal Justice Sciences, Louisville, Kentucky

Harris, G. (1986). Impact of a youth crisis counseling program on recidivism of status offenders- an update of a previously completed program evaluation Paper presented to the American Association of Counseling and Development, Los Angeles, California

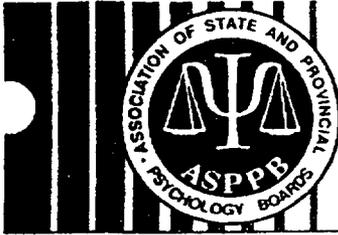
Other media publications

Harris, G and Lewinsohn, T (1980) Getting and keeping a job in criminal justice Washburn University of Topeka Criminal Justice Film Library. Topeka, Kansas (3/4" videotape)

Harris, G. (1988). Values Clarification Questions for Mental Illness, Handicap and Disability and Criminal Justice. (pamphlets available from the author)

Harris, G. (1990) Psychological and Legal Implications of Divorce Source papers prepared for Knowles Law Book Publishing Company to produce videotape

Harris, G (2003) Dear Dr Menninger Women's Voices from the 1930's (videos)



The Association of State and Provincial Psychology Boards

Certificate of Professional Qualification in Psychology

P.O. Box 4389 • Montgomery, AL 36103 • 334/832-4580 • e-mail cpq@asppb.org

8/10/99

George A Harris
12210 Avila Dr
Kansas City, MO 64145

Re CPQ Number 374

Dear Dr Harris

Congratulations! The ASPPB Certification Committee has determined that you have met all standards for the Certificate of Professional Qualification in Psychology (CPQ). Enclosed with this letter is your CPQ validation card. Your name will be listed in the next CPQ directory. You will receive a directory when it is published in August, 1999.

Your certification is valid for two years, beginning this month and ending on 8/6/2001. As your anniversary date approaches, we will forward the necessary renewal materials to you. It is therefore important that you notify us of any address change in a timely manner. Please use the spaces on the back of the validation card insert to make any changes.

ASPPB and the Certification Committee congratulate you, and thank you for your support of the Certificate of Professional Qualification in Psychology.

Sincerely,

Randolph P. Reaves
ASPPB Executive Officer & General Counsel

State of Missouri

Department of Economic Development
Division of Professional Registration
State Committee of Psychology
Psychologist

Health Service Provider

VALID THROUGH JANUARY 31, 2008
ORIGINAL CERTIFICATE/LICENSE NO. 00508

GEORGE ALBERT HARRIS
8080 WARD PARKWAY # 140
KANSAS CITY MO 64114
USA

Pamela Dossae
EXECUTIVE DIRECTOR

Allison Crighead
DIVISION DIRECTOR

Account Number: MO HARG 8080

Date: 2/12/07 Initials: KB

DARWIN NATIONAL ASSURANCE COMPANY

C/O: American Professional Agency, Inc.
95 Broadway, Amityville, NY 11701

This is to certify that the insurance policies specified below have been issued by the company indicated above to the insured named herein and that, subject to their provisions and conditions, such policies afford the coverages indicated insofar as such coverages apply to the occupation or business of the Named Insured(s) as stated

THIS CERTIFICATE OF INSURANCE NEITHER AFFIRMATIVELY NOR NEGATIVELY AMENDS, EXTENDS OR ALTERS THE COVERAGE(S) AFFORDED BY THE POLICY(IES) LISTED ON THIS CERTIFICATE

Name and Address of Insured:

GEORGE A. HARRIS, PH.D.
8080 WARD PARKWAY
SUITE 140
KANSAS CITY MO 64114

Additional Named Insureds:

Type of Work Covered: PROFESSIONAL PSYCHOLOGIST

Location of Operations: N/A
(if different than address listed above)

Claim History:

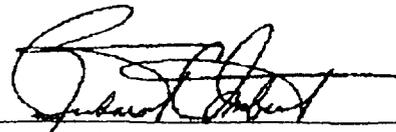
Coverages	Policy Number	Effective Date	Expiration Date	Limits of Liability
PROFESSIONAL/ LIABILITY	TO BE ASSIGNED	3/01/07	3/01/08	2,000,000 4,000,000

NOTICE OF CANCELLATION WILL ONLY BE GIVEN TO THE FIRST NAMED INSURED ON THIS POLICY AND HE OR SHE SHALL ACT ON BEHALF OF ALL INSUREDS WITH RESPECT TO GIVING OR RECEIVING NOTICE OF CANCELLATION.

Comments:

This Certificate Issued to.

Name: GEORGE A. HARRIS, PH.D.
8080 WARD PARKWAY
Address: SUITE 140
KANSAS CITY MO 64114


Authorized Representative

CEU's for George Harris, Ph D (partial list since 1988)

Prior to 1988 I attended a variety of training programs in structural and strategic family therapy domestic violence, treatment of batterers and treatment of criminal offenders I also participated in a two year training program in Bowen family therapy (approximately 3 hours/month class instruction) and was a visiting scholar in the Consortium for Political and Social Research at the University of Michigan in the summer of 1983)

Continuing education since 1988
(courses are approximately 6 CEU's per day unless otherwise specified)

June 10, 11, 12, 25, 26, 1988 Robert Benjamin, J D , MSW	40 hour mediation certification training program
Summer, 1989 Associates in Clinical Hypnosis	Advances in Clinical Hypnosis
May 4, 1990 David Burns, M D	Advances in Cognitive Therapy
April 12, 13, 1991 Raymond and Heather Cattell, Ph D	A Practical Guide to the 16PF
May 31, 1991 Martin Levit, Ph D	Critical Thinking for Therapists
June 7, 1991 Gene Pekarik, Ph D	Brief Psychotherapy
May 11, 12 1992 Charlie Kreiner, Gregory Vogt, Ph D	Counseling Men
June 13, 14 1992 David Reynolds, Ph D	Morita and Naikan Therapy
September 27, 1992 Jim Roberts, M S W	Marital Therapy That Works
February 28, 1992 Bruce Liese, Ph D	Cognitive Therapy
February, 1993 Bruce Liese, Ph D	Cognitive Therapy of Mood Disorders
March, 1993 MCC Behavioral Care	Short-term Intensive Psychotherapy
November 12, 1993 Jim Lichtenberg, Ph D	Ethics Update Case Documentation and Risk Management (two hours)
June 24 25, 1994 Stuart Greenburg, Ph D and Kevin Moreland Ph D	Forensic Psychology & Forensic Use of the MMPI
July 15, 1994 Thomas Widiger Ph D	DSM IV Professional Development Workshop

February 23, 1995 Michael Maloney, Ph D	Child Sexual Abuse Evaluation
February 24, 1995 Stuart Greenberg, Ph D	Personal Injury Evaluation Ethics, Practice and Case Law
April 7,8, 9 MOPA Annual convention 7 CEU's (Law and Psychology Sibling Perspectives on Developmental Disability, Family Therapy with Adolescents, Infidelity in Marriage, Sleep Disorders ADHD, Brief Therapy) one hour presentations on each subject	
1995 Series 1 Psychopharmacology Prescribing Psychologists Register Self-Study 18 CEU hours	
October, 1995 Orlando, Florida	Series 2 Psychopharmacology Prescribing Psychologists Register 18 CEU hours
December, 1995, Las Vegas, Nevada	Series 3 Psychopharmacology Prescribing Psychologists Register 18 CEU Hours
January 12, 13 14, 15 Warren Farrell Ph D	Framing on Gender Issues-Fsalen Calif 24 hours
March 3, 4 1996 various presenters	Prescribing Psychologists Register 18 CEU's
March 22 1996 Mark Meers, J D	Toward a Kinder Culture Surrounding the Divorce Process
March 29, 1996 Margo Fallon, Ph D	Psychodramatic Action Techniques
1996 (various dates)	Completion of Prescribing Psychologists Register Level 5 6, 7 18 hours each level
October 4, 1996 (four hours) Steven Segraves M D	Advances in Psychotropic Medication
October 18, 1996 Dan Card J D	Ethical and Legal Issues in Therapy
November 2, 1996 Donna Forgey, R N , Ph D	Psychoneuroimmunology
February 28, 1997 Avner Stern, Ph D	Attention Deficit Hyperactivity Disorder
March 2, 1997 William Foote, Ph D	The Role of the Forensic Psychologist in Employment Discrimination Cases (American Academy of Forensic Psychology)
March 14, 1997 Dan Claiborn, Ph D	Borderline Personality Disorder
March 21 1997 Warren Farrell Ph D	Why Men Are the Way They Are

May 2, 1997 Eugene Kirkland, M A	Coaching Practice
July 10, 11 Bonnie Buchele, Ph D and John O Hearn M D	Group Psychotherapy
June 20, 1997 Roy Davis, D Min	Ethical Issues
June 13, 1997 Phil Klever, LCSW	Bowen Therapy
May 30, 1997 Dan Claiborn, Ph D	Expert Witness Testimony
June 21, 22 1997 (various presenters)	Prescribing Psychologists' Register Psychopharmacology Update
July 31, August 1, 1997 Jerome Wagner, Ph D	Enneagram
February 23, 1998 Reid Meloy Ph D	Assessment of Violence Potential
March 26, 1998 James Jarvis, D Min	Telemedicine (1/2 day)
April 17 1998 Ann Gabrick, M S W	Treating Eating Disorders
April 2, 1998 Dan Claiborn, Ph D	Improving Child Custody Evaluations (1/2 day)
May 7, 1998 Robin Inwald, Ph D	Personnel Assessment in Businesses and Security Agencies
April 23-24, 1998 John Gottman, Ph D	Marital Therapy
September 24, 1998 Roy Davis, D Min	Ethical Issues in Marital and Family Counseling 1/2 day
October 2, 1998 Avner Stern, Ph D	Evaluation and Treatment of ADHD
October 9, 1998 Rosalyn Schultz, Ph D	Evaluation and Treatment of Child Sexual Abuse
October 10 Jerome Sattler, Ph D	Child Maltreatment Theory and Practice two hours
October 23 1998 Terence Gorski, M A	Relapse Prevention

November 6 1998 John Greist M D Dan Egl, Ph D	Obsessive Compulsive Disorder
November 19, 1998 Dana Rodenbaugh, LCSW	Career Counseling Working to Live
November 11, 1998 Randy Otto, Ph D	Assessing Malingering and Defensiveness
December 17, 1998 Mary Kay Kisthardt	Domestic Relations Training on Family Law and Theory (four hours)
April 16 1999 Stuart Zola, Ph D	Memory
May 22, 23, 1999	Prescribing Psychologists Register Annual Update 18 CE hours
May 25 1999	Mediation Parenting Plan Requirements and Agreement Writing 3 CLE
June 18 1999 Stephen Samuelson M D	Psychotherapy and Interventions for Compulsive Gambling 2 hours
November 7, 1999 Wilbert Van Gorp, Ph D (7 hours)	Neuropsychology for the Forensic Psychologist
March 10 2000 PHICO Professional Education 4 hrs	Professional Ethics and Boundary Issues
March 24, 2000 Hugh O Donnell, J D	Procedure and Pleadings 2 CE Jackson County Domestic Court
March 24 2000	Evolving Paradigms in Health Care and Managed Care 3 CE
April 25, 2000 Robert Benjamin M S W J D	Advanced Mediation and Conflict Management
April 28 2000 John Greist, M D , Dan Egl, Ph D	Social Anxiety Disorder
July 19 2000 Debbie Bratcher, L C S W	Therapeutic Interventions How to Avoid Power Struggles With Adolescents 1 hr
August 17 2000 Ken Spaulding M D	Post Traumatic Stress Disorder 1 hour
October, 2000	Prescribing Psychologist Register Annual Update 15 CE

February 21, 2001 George A. Harris	Dear Dr. Menninger: Women's Voices of the 1930's 1.5 CE
February 23, 2001 Martin Zehr, Ph.D., J.D.	Diagnosis of Dementia 2 hours
March 30, 2001 Paul Lipsitt, LL.B., Ph.D.	Preparation for Diplomate Exam
April 1, 2001 Mark Zelig, Ph.D.	Police Psychology
April 26-29, 2001 American Academy of Forensic Psychology	Advanced Intensive Workshop in Forensic Psychology 24 CE
May 18, 2001 Al Jones, Clarence Kelley and Associates	Targeting Volatile Employees: Updating Workplace Violence Strategies 1.5 CE
September 26, 2001 Maria Hunt, Ph.D.	Intro to Industrial/Organizational Psychology 2 CE
November 16, 2001 Peter Schloss, J.D. and Hugh O'Donnell, J.D.	Zen of Mediation 7.5 CE
March 1, 2002 David Sheehan, M.D.	Diagnosis and Treatment of Panic Disorders 2 CE
April 19, 2002 M.K. Kisthardt	Legal Issues in Mediation 4 CE
June 7, 2002 M. Patton, C. Esser	Mediation Training 4 CE
June 13, 2002 G. Harris	Counseling the Involuntary and Resistant Client (presentation) 3 CE
June 21, 2002 G. Harris-moderator	Dear Dr. Menninger: Women's Voices of the 1930's/panel discussion 2 CE
July 30, 2002 S. Miller, B. Duncan	Pathways to Possibility with "Impossible" Cases 4 CE
August 8, 2002 S. Brown	Sexual Predators 1 CE
September 12, 2002 D. Pyle	Spirituality and Psychotherapy 1 CE
September 13, 2002 E. Freeman	Cultural Competency 4.5 CE
October 25, 2002 David Shapiro, Ph.D.	Current Controversies in Forensic Psychology 7 CE

October 24, 2002 Donald Bersoff J D	Ethical Issues for the Forensic Practitioner Ph D 7 CE
November 8, 2002 P Schloss, H O Donnell	Mediation Training 4 CE
March 10, 2003 C Savage	Clinical Aspects of Memory 6 CE
April 18, 2003 B A Stewart	Legal Aspects of Mediation 4 CE
April 25, 2003 C Winterowd	Cognitive Therapy with Chronic Pain Patients 2 CE
May 10, 11, 2003 G Stummel	Prescribing Psychologists Register-Annual Update 15 CE
May 30, 2003 D Buckingham	Psychopharmacology with Children 2 CE
June 4, 2003 G Harris	Ethical Issues in Forensic Mental Health 3 CE
June 10, 2003 J Vanier	Becoming Human: The Deeper Side of Developmental Disabilities 2 CE
June 27, 2003 G Harris (presenter)	Dear Dr. Menninger: Women's Voices from the 1930's 4 CE
December 5, 2003 Sherrill Rosen and Karl Fimmerman	Mediation Training 4 CE
March 10, 2004 Eric Harris, Ed D J D	Ethical Decision Making and Risk Management in Clinical Practice 6 CE
May 11, 2004 Jim Roberts MSW	Marital Therapy 1 CE
June 8, 2004 M K Kisthardt	Mediation Training 4 CE
June 12-13, 2004 RL Fackett	Prescribing Psychologist Register Annual Update 18 CE
September 18, 2004 panel presentation	Unrequited Love 2 CE
November 11, 2004 presentation	Psychological Testing for Occupational Nurses 2 CE
February 23, 2005 Kyle Shupps	Police Intervention with the Mentally III 1.5 CE

March 4, 2005 Bernard Beitman	Neural Circuitry from a Psychotherapeutic Perspective 2 CE
March 16,17, 2005 Stanley Brodsky	Testifying in Court 14 CE
April 6, 2005 Eric Harris	Legal and Ethical Risks and Risk Management in Professional Practice 6 CE
April 8, 2005 Roy Davis et al	Faith Based Social Services 4 CE
April 15, 2005 Matt Nesseltri et al	Advantages and Responsibilities for MO Psychologists with Prescriptive Authority 3 CE
May 13, 2005 Collaborative Law Inc	Collaborative Law 3 CE
June 24 2005 Penny Montgomery	Brain Wave Biofeedback 2 CE
August 17, 2005 Roy Davis	Quantum Mind 1 CE
September 9, 2005 C Hillila, G Krutchmer	Bringing Children Into Mediation 4 CE
November 11,12, 2005 Washburn School of Law	Advocating for Life 14 CE
March 1, 2006 Yvonne Thorne, Ed D	Cultivating Wholeness in the Assessment Process 3 CE
March 25, 2006 Melba Vasquez, Ph D	Dilemmas in Ethical Practice and Strategies for Decision Making 3 CE
June 17, 2006 various	Missouri Psychological Association meeting 5 CE (includes 75 CE ethics)
June 28, 2006 Gregory Pvlakis, LMSW	Issues Facing Returning Military Veterans 1.5 CE
July 7, 2006 Eric Schuman PA	Headache and Pain Management 1 CE
October 4, 2006 Edith Freeman, Ph D	Evidence Based Culutral and Solution Focused Skills 4.5 CE
December 1 2006 Greg Dietz Ph D	Using the WISC-IV Integrated in Assessment 1.5 CE
January 19 2007 G Harris, Ph D B Russell Ph D , J D	Child Custody Evaluations 3 CE plus 6 hours preparation

February 23, 2007 Alan Domian, Ph D	Ego analysis the Better Cognitive Therapy 2 CE
March 22, 2007 Izzy Kalman, M S	Anger Control Made Easy 6 CE
March 29, 2007 Gary Schoener	Clinical Supervision Ethical Legal and Practice Issues 6 CE
March 30, 2007 Brian Russell, J D , Ph D George Harris Ph D	Ethical Obligations and Practical Solutions for Keeping Storing and Disposing of Records 3 CE
March 30, 2007 Doug Bonney, J D	Issues Psychologists May Face in Testifying in Depositions and in Court 2 CE
May 4,5 2007 Diane Dief, LLB Susan Gamache, Ph D Amy Wolff, CFP	Framing in Interdisciplinary Collaborative Practice 14 CE

List of depositions and court appearances 2001-2006

George A. Harris, Ph.D.

Jacqueline M. Mason v Wal-Mart Store, Inc d/b/a Sam's Wholesale Club and Johny Rowland defense 99 CV 214219	2001 Kelly Moothart, defendant's
Betty Anderson v Ed North Circuit Court Greene County 100CC1187 deposition	2001 Eric Jensen, plaintiff's
Tracy Smith v Northland Obstetrics Clay County CV 100 0445CC deposition	2001 Jeff Henry, plaintiff's
Phillips v Phillips District Court Franklin County, Kansas 00 D 160 trial	2001 Mark Corder
Denise Hawthorne v Magna Steyr Missouri Division of Worker's Compensation Injury # 00-175778	2002 Tony Anderson, defendant's
Raymond Mercer v Keith Scott and Company Missouri Division of Workers' Compensation Injury # 00-043117	2002 Steve Effertz, plaintiff's
Gwendolyn Thomas v US Postal Service US Ment Systems Protection Board-Central Office CH-0752-02-0483-1-1	2002 Mike Brown, defendant's
McCormack v Capital Electric Construction Circuit Court of Jackson County, Missouri CV97-29297 deposition and trial	2002, 2003 Jana Richards, defendant's
Cora Graves v W VanZant Circuit Court of Jackson County deposition	2003 Jeff Henry, plaintiff's

Kristi Castle v Michael Castle Clay County Circuit Court CV101-2143DR	2003 Debbie Conklin, defendant's
Anthony Hogan v Dennis Eckold et al Circuit Court of Jackson County 01CV-209620 deposition	2003 Dale Close, defendant's
Freeman v Eagle-Picher Technologies Western District Court-Missouri 02-5010-CV-SW-1	2003 Deryl Edwards, Jr, defendant's
Harris v Wasson-Hunt et al Western District-Missouri 02-00546-CV-W-6 deposition	2004 Dale Close, defendant's
Jan Thomas v Jim Corwin, KCMO Police U S Western District Court No 04626 deposition	2005 Jim Sullivan, defendant's
J Schmidt v KCPL Company et al Circuit Court of Jackson County 04-CV223402 deposition	2006 Peter Iouras, plaintiff's

PsychLogic
8080 Ward Parkway, Suite 140
Kansas City, Missouri 64114
(816) 361-3404
Voice Mail and Fax (816) 361-2084

expert witness qualifying questions for George Harris

Q: What is your name?

A: George A. Harris

Q: Where do you live?

A: My home in South KC MO

Q: What is your occupation?

A: I'm a psychologist in private practice

Q: What is your office address?

A: 8080 Ward Parkway, KC MO

Q: Are you licensed as a doctoral level psychologist in Missouri?

A: Yes

Q: Have you also been given Health Service Provider approval in Missouri?

A: Yes

Q: Where did you earn your doctoral degree?

A: University of Missouri-Kansas City

(optional question)

Q: *In what field?*

A: *Counseling*

Q: Has your doctoral degree been approved by any national accrediting agencies?

A: Yes, the Association of State and Provincial Psychology Boards has examined and approved my credentials

Q: How long have you been in private practice?

A: Since about 1985

Q: Has there ever at any time been a complaint or malpractice claim filed against you?

A: No

Q: Dr. Harris, have you achieved any additional certificates or accreditations?

A: Yes, I am a diplomate of the Prescribing Psychologists Register. I am also a diplomate of the American Board of Forensic Examiners, and a diplomate of the American Board of Psychological Specialties. The ABFE and ABPS require submission of credentials but are primarily membership organizations and diplomate status is not highly competitive.

Q: Are these honorary titles or are they awarded on merit?

A: Diplomate status is awarded only to those who have completed additional training and met other criteria.

Q: Have you written any books or scholarly articles?

A: Yes, I have written or edited several books and many articles on various psychological topics.

Q: Have any of these books received special awards?

A: Yes, my book *Broken Ears, Wounded Hearts* was recognized by the President's Committee on Employment of the Handicapped as best book of 1984. My book on *Marketing Professional Services* was an alternate selection of the Behavioral Sciences Book Service.

Q: Have you written any books on counseling and psychological treatment?

A: Yes, I have written or edited three books on counseling resistant clients. These books are used nation wide in correctional and substance abuse treatment programs.

Q: In addition to your graduate school training, have you received any special training in psychological testing?

A: Yes, I have taken additional training in the forensic use of the MMPI. I also completed continuing education with Drs. Heather and Raymond Cattell, the creator of the 16PF, on that instrument.

Q: Dr. Harris, would you tell us about some of your prior employment?

A: I was a psychologist in vocational rehabilitation with Goodwill Industries. Later I was a counselor then training coordinator for the Jackson County Missouri Department of Corrections. After that, I was a tenured professor at Washburn University in Topeka, Kansas. Then I entered private practice in Kansas City.

Q: Have you done any consulting work?

A: Yes, I was a consultant for the Justice Department's National Institute of Corrections for several years on training and personnel selection issues.

Q: In your private practice, do you regularly conduct evaluations of police and other clients?

A: Yes, I conduct employment and fitness for duty evaluations for the Kansas City, Missouri police department and other area agencies. I am also consulting psychologist for the Kansas City Regional Center for Developmental Disabilities, where I supervise masters level psychologists doing testing.

Q: Have you ever been selected for a research fellowship?

A: Yes, I was selected as a visiting scholar at the University of Michigan's Consortium for Political and Social Research.

Q: Did you publish any scholarly articles as a result of this fellowship?

A: Yes, I wrote two articles on domestic violence.

Q: Have you published any other research on program evaluation?

A: Yes, I did a year long study of the Jackson County Work Release Program and a year long study of a Family Counseling Program in Wichita, Kansas.

Optional

Q: *Do you serve on any boards or volunteer organizations?*

A: *Yes, I served on the Topeka Chapter of the National Council on Alcoholism and the Topeka Battered Women's Task Force. I have also served as a founding board member of Heartland, Inc., a group home affiliated with the International Federation of L'Arche, an organization that establishes group homes for mentally handicapped people worldwide. I also serve on the board of the Greater Kansas City Psychological Association.*

Q: Have you previously testified as an expert witness?

A: Yes, I have served as an expert witness and consultant for a number of attorneys. I've provided a list of depositions and appearances to the court.

Q: Are you a neuropsychologist?

A: No, however I have taken training in screening of neuropsychological injuries for forensic evaluations. For complete neuropsychological evaluations, I refer the patient to a neuropsychologist.

Q: Have you worked with brain injured patients?

A: Yes, as a psychologist in a vocational rehabilitation agency, I regularly worked with clients with various brain and spinal cord injuries.

Q: Have you had training in use of neurological problems and psychotropic

medication?

A: Yes, I am a diplomate of the Prescribing Psychologists Register, a training program that covers brain and biological bases of behavior

Q: Are you authorized to prescribe medication?

A: No, however, psychologists with appropriate training are authorized by the state board of psychologists to consult with physicians about medication issues and to give opinions regarding medication issues

PsychLogic
8080 Ward Parkway, Suite 140
Kansas City, Missouri 64114
(816) 361-3404
Fax (816) 361-2084
Voice Mail (816) 2084

**Notes regarding frequent questions and
ethical issues for forensic evaluations**

Though I am not an attorney, I have a responsibility to understand the legal issues involved in a case and to select evaluation procedures to best answer the questions before the court. I also need to understand the civil rights of parties involved in the litigation. Consequently, it is helpful for the referring attorney to discuss these matters with me prior to the evaluation.

During the evaluation I gather a wide variety of information. Some of the information may turn out to be irrelevant to the referral question and may not be included in the final report. Other information may be relevant but may be considered prejudicial in a legal proceeding. I will respond to requests by counsel to remove such information from the final report and will maintain earlier drafts of the report for examination by all counsel in the matter at hand.

When I submit a report to the referring attorney, I ask that the report be examined for factual inaccuracies that may affect the opinion offered. I will, of course, make corrections as needed and maintain the earlier draft in file. I will also respond to requests for clarification of opinion.

Psychological tests are copyrighted and I am not permitted to copy the test for counsel. I will make examination copies available in my office. Psychological test results can be released only to a qualified psychologist retained by opposing counsel.

It is usually inappropriate for a psychologist to provide treatment and forensic evaluation for the same person. This practice may be common for medical doctors who treat injuries and provide testimony, but it is not usually acceptable for psychologists. Consequently, I cannot provide an evaluation then continue providing treatment for a referral.

PsychLogic
8080 Ward Parkway, Suite 140
Kansas City, Missouri 64114
(816) 361-3404
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Fee Schedule and Policy for Forensic Services

George A. Harris, Ph.D.

Evaluation, consultation with counsel, discussion with collateral contacts: \$200/hour. Report writing is billed at one hour per page. Usual retainer for most evaluations is \$800, except child custody matters. Retainer for child custody evaluations is \$2,000 per person to be evaluated, but charges are on an hourly basis. Unused retainer funds would, of course, be refunded, and balances due would be billed.

Deposition testimony (including travel time): \$250/hour, payable one week in advance for time reserved but not less than three hours. In the event that opposition counsel declines to pay in advance and does not pay for the deposition when billed, retaining counsel must assume responsibility for this fee.

Trial testimony (including travel time): \$250/hour. Time and date for trial must be specified two weeks in advance, and a minimum of three hours applies. If an appearance time cannot be assured, an eight hour minimum applies. If an appearance date cannot be assured, billing will include time for all days set aside to be available for trial.

Charges are billed for all time reserved by client or counsel unless canceled at least one week in advance (two weeks for trial dates)

Fees are the responsibility of and are billed to retaining counsel and will not be billed to counsel's client.

Additional charges include computer scoring charges and other reasonable costs (mileage, copying).

Counsel is requested to provide for review all documents and other information relevant to the case prior to the initial evaluation appointment.

Counsel is requested to provide, in writing, clarification of what documents and information produced and obtained are considered protected work product. Counsel is reminded that psychologists are required to report suspicions of child abuse and threats of harm to others regardless of the nature of the evaluation

American College of Advanced Practice Psychologists

upon evaluation and recommendation by its
examining board, hereby awards



DR. GEORGE A. HARRIS

The Professional Designation as a *Founding Fellow* of the
American College of Advanced Practice Psychologists

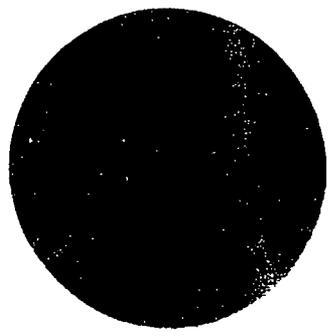
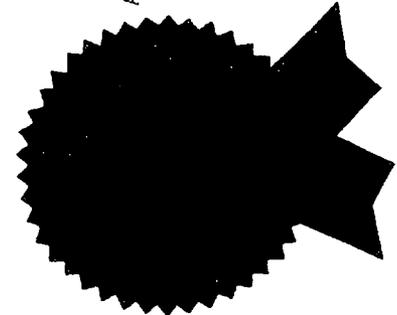
**FACAPP, BOARD CERTIFIED,
FOUNDING-FELLOW**

WITH ALL THE ANNUAL CONTINUING EDUCATION TRAINING AND
ETHICAL REQUIREMENTS, RIGHTS, PRIVILEGES, AND HONORS
THEREUNTO PERTAINING.

Date 7/99

Samuel A. Feldman
Samuel A. Feldman, Ph. D., FAPM, FPPR,
FSMI, FACAPP, President

Attest





To all whom it may concern:
Greetings:

Be it known that the Curators, having been advised by the Faculty that
George Albert Harris
has completed the Course of Study required of candidates for the degree of

Doctor of Philosophy
Counseling and Guidance

and is qualified to receive the same, do by these presents confer said degree
with all the honors and privileges appertaining thereto.

In testimony whereof the signatures of the proper officials and the
seal of the University are affixed.

Done at the University in the City of Kansas City, State of Missouri
this eleventh day of May, in the year of our Lord
one thousand nine hundred and seventy-nine.

Wallace R. Stacey
President of the Board of Curators



George A. Harris
George A. Harris

American Board of Psychological Specialties

The requirements listed below are in addition to the general Diplomate requirements listed on page 15.

Requirements for Diplomate Status

- A doctoral degree in Psychology from a regionally accredited graduate program
- Agree to uphold the *Ethical Principles of Psychologists and Code of Conduct* and the *Guidelines for Psychologists* as promulgated by the American Psychological Association, or the Canadian Psychological Association
- Documentation of 1,000 hours of experience in the practice of forensic psychology.
- Documentation of 100 hours of training in forensic psychology
- Work sample, as described in the Specialties Qualification Guidelines of the ACFE, for each specialty in which the applicant is applying
- Passing the written examination for each specialty in which the applicant is applying
- Three letters of reference from professionals who are familiar with the applicant's work

Additional Requirements after January 1, 2000

- Successful completion of Ethics and Forensic Psychology I courses
- Successful completion of comprehensive three-part examination

Additional Requirements after January 1, 2001

- Successful completion of Law and Forensic Psychology II courses
- Successful completion of comprehensive three-part examination

Additional Requirements after January 1, 2002

- Successful completion of Evidence and Forensic Psychology III courses
- Successful completion of comprehensive three-part examination

Sample Questions from the ABPS Exam will appear in the next issue of *The Forensic Examiner*.

"Rigorous certifications are designed to assure the highest standards of excellence, integrity, and practice of ABPS members."

Joyce A. Kovelman, Ph.D. DABPS, DABFE, DABFM



Definition

Forensic Psychology is the application of the findings, principles, practices and theories of the science and profession of psychology to the civil and criminal justice system

Diplomate Status Available in the Following Specialty Fields:

Behavioral Science
Child Custody Evaluation
Child Psychology
Clinical Psychology
Counseling Psychology
Education and School Psychology
Family/Marital/Domestic Relations Psychology
Hypnosis
Medical Psychology
Neuropsychology
Psychoanalysis
Psychology
Psychotherapy
Psychological Assessment, Evaluation and Testing
Psychological Disabilities Evaluation
Psychopharmacology
Rehabilitation Psychology
Sexual Abuse
Substance Abuse Psychology
Trauma/PTSD

Surgery or Doctor of Dental Medicine degree

- A current valid license to practice dentistry
- Provide supporting documentation (photocopies of degrees, diplomas, certificates, and/or licenses) showing a good foundation in general medicine, mental or public health
- Minimum of five years of related experience
- One copy of a work product, a book or article the applicant has written, a copy of a deposition, trial transcript, evaluation, examination or report

In addition to the three core courses (ACFE 101 Ethics, ACFE 105 Law and ACFE 110 Evidence), each candidate for Diplomate in Forensic Dentistry is required to successfully complete the following three specialty courses through the Mentor Program and pass the examinations. In the future, ACFE may be able to offer some of these specialty courses, as needed, at regional/annual meetings. You also may choose to take these courses through credit by examination only. The examinations are then taken through a Proctor in your local area at a college/university, library or testing center.

- **ACFE 240 Practical Forensic Dentistry I**
The objective of Practical Forensic Dentistry is to provide an introduction to the field of forensic dentistry. It incorporates the four major areas of forensic dentistry: body identification by dental means, bite mark recognition and analysis, personal injury analysis, and malpractice analysis. It also introduces the student to forensic medicine and expert witness testimony.
- **ACFE 241 Forensic Dentistry II**
This course is designed for the true forensic professional who wishes to develop strong skills in body identification and bite mark analysis. Examines the dentist as an expert witness and presents an analysis of personal injury and malpractice.
- **ACFE 242 Forensic Dentistry III**
Advanced Forensic Dentistry includes a short overview of Forensic Dentistry I with emphasis on the difficulties in identifying the victim. Comprised of hands on learning, this course uses diagnostic cast, x-rays and photos to make the learning experience valuable for years to come.

PSYCHOLOGICAL SPECIALTIES

In order to become a Diplomate in Psychological Specialties, all candidates must have the following qualifications:

- A doctoral degree in Psychology from a regionally accredited graduate program
- Agree to uphold the *Ethical Principles of Psychologist and Code of Conduct* and the *Guidelines for Psychologists* as promulgated by the American Psychological Association, or the Canadian Psychological Association
- Documentation of 1,000 hours of experience in the practice of forensic psychology
- Documentation of 100 hours of training in forensic psychology
- Work sample, as described in the Specialties Qualification Guidelines of ACFE, for each specialty in which the applicant is applying

In addition to the three core courses (ACFE 101 Ethics, ACFE 105 Law and ACFE 110 Evidence) each candidate for Diplomate in Psychological Specialties is required to successfully complete the following three specialty courses through the Mentor Program and pass the examinations. In the future, ACFE may be able to offer some of these specialty courses, as needed, at regional/annual meetings. You also may choose to take these courses through credit by examination only. The examinations are then taken through a Proctor in your local area at a college/university, library or testing center.

- **ACFE 260 Forensic Psychology I**
This course introduces tools available for risk assessment and management planning as they relate to ethical and legal issues in the practice of forensic psychology.
- **ACFE 261 Forensic Psychology II**
This course provides a fundamental real world model to employ for the assessment and analysis of data obtained from a given witness, victim, defendant or patient in order to assess the degree of, distortion, deception and malingering that may be present.
- **ACFE 262 Forensic Psychology III**
A course of study that spotlights criminal and civil procedures, advanced techniques of evaluations and treatment as well as

forensic techniques as they apply to neuropsychological assessment.

FORENSIC NURSING

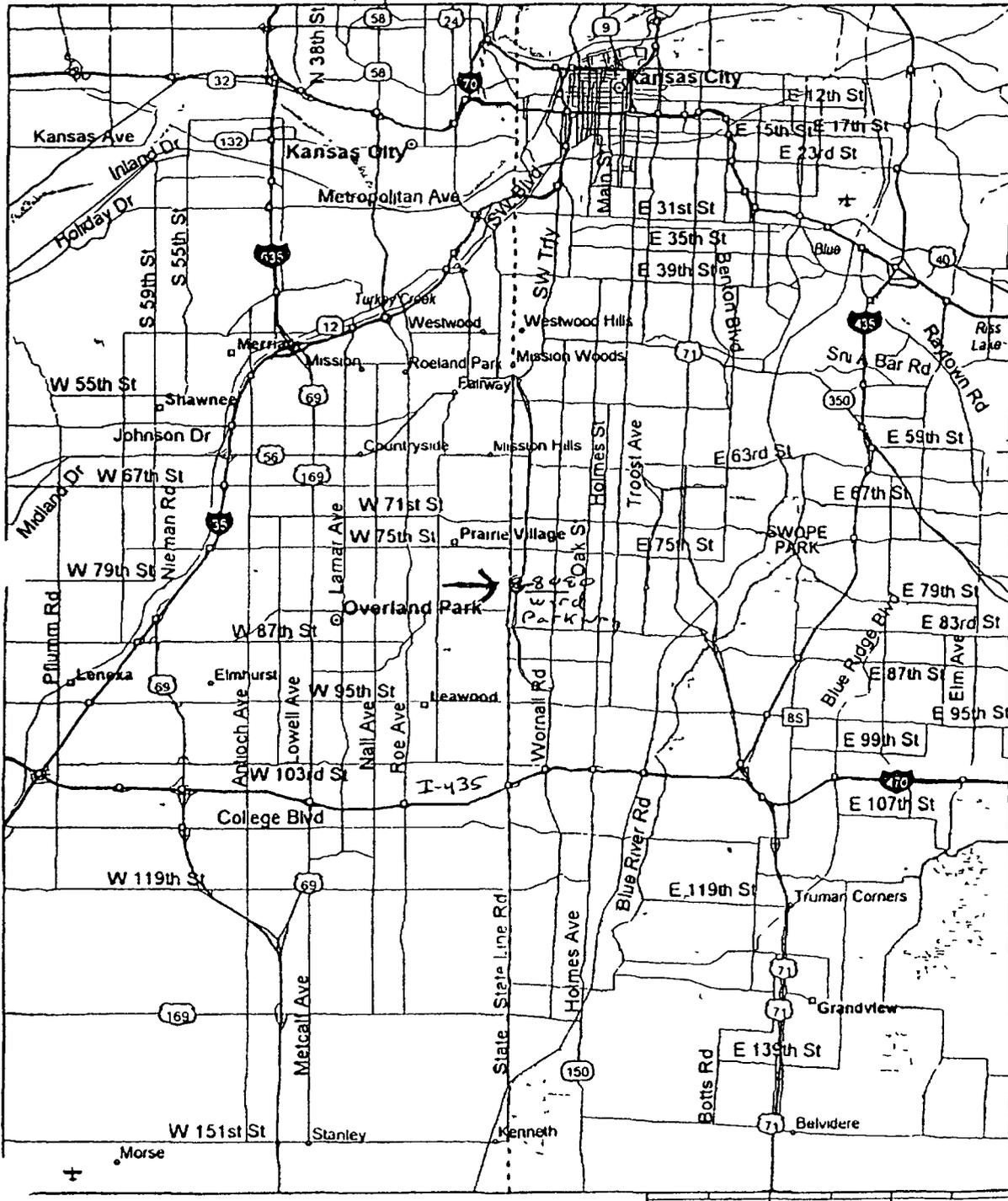
In order to become a Diplomate in Forensic Nursing, all candidates must have the following qualifications:

- Graduation from an accredited nursing school with a minimum of a BSN and a RN license
- Provide supporting documentation (photocopies of degrees, diplomas, certificates, and/or licenses)
- Submission of applicant's work product regarding forensic nursing
- Minimum of five years experience in nursing

In addition to the three core courses (ACFE 101 Ethics, ACFE 105 Law and ACFE 110 Evidence) each candidate for Diplomate in Forensic Nursing is required to successfully complete the following three specialty courses through the Mentor Program and pass the examinations. In the future, ACFE may be able to offer some of these specialty courses, as needed, at regional/annual meetings. You also may choose to take these courses through credit by examination only. The examinations are then taken through a Proctor in your local area at a college/university, library or testing center.

- **ACFE 250 Forensic Nursing I**
This course was designated to provide the RN with a broad, in-depth background of the ethical, legal and sociocultural issues in the practice of forensic nursing.
- **ACFE 251 Forensic Nursing II**
This course provides the RN the opportunity to combine nursing knowledge with forensic science in scientific investigation, evidence collection and preservation, analysis and legal documentation.
- **ACFE 252 Forensic Nursing III**
This course provides the RN an in-depth overview of advanced forensic nursing practice. Techniques of forensic assessment and physical examination, evidence collection, chain of custody, forensic documentation that withstands courtroom scrutiny and challenges of forensic nursing will be discussed.

George A. Harris, Ph.D. 8080 Ward Parkway, Suite 920 140
816 361 4040 (entrance is on West side of building!!!)
3404



Streets98

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

1			
2			
3	ROBERT WILLIAM VISNAW,)	
)	
4	Plaintiff,)	
)	
5	vs.	)	Cause No. 06CC-000008
		)	Division Number 15
6	MARIANIST PROVINCE OF THE)	
	UNITED STATES, ST. JOHN)	
7	VIANNEY HIGH SCHOOL, INC.,)	
	and WILLIAM MUELLER,)	
8)	
	Defendant.)	

9

10 DEPOSITION OF BRANDI VISNAW,

11 produced, sworn and examined on Wednesday, May 15,

12 2007, at the law offices of Dan Craig, P.C., 1125 Grand

13 Boulevard, Suite 900, in Kansas City, Missouri, before:

 JAMES A. LEACOCK, CCR, for

 ESQUIRE DEPOSITION SERVICES

14 A Certified Court Reporter for the State of Missouri.

15 Taken on behalf of the Defendants.

16 APPEARANCES:

17

18 For the Plaintiff:

 LAW OFFICES OF DAN CRAIG, P.C.

19 By: Mr. Dan Craig

 1125 Grand Boulevard, Suite 900

20 Kansas City, Missouri 64106

21 For the Defendants:

 HEPLERBROOM

22 By: Mr. Gerald T. Noce

 800 Market Street, Suite 2300

23 St. Louis, Missouri 63101

24 Also Present:

 Mr. Robert Visnaw

25

Page 6	Page 8
1 Q How did you meet him?	1 right now?
2 A My sister introduced us My older sister Kelli	2 A No
3 Kelli is with an I	3 Q During the time you have known your husband since
4 Q What was that -- what were the circumstances of	4 1998, has he been a member of any church?
5 meeting your husband?	5 A No
6 A It was her birthday We were going out to	6 Q Has he ever discussed that with you?
7 celebrate her birthday And he was her next door	7 A Yes
8 neighbor and she asked him to come along	8 Q The first time he discussed that with you, when
9 Q Then about how long after that were the two of you	9 was that? When did you first discuss whether or
10 married?	10 not he --
11 A The following year of October	11 A Probably about two years ago when I started going
12 Q So it would have been October 1999?	12 to church myself
13 A Yes	13 Q Was there anything that took place that got you
14 Q What is your anniversary date?	14 going back to church two years ago?
15 A 10/9/99	15 A My daughter, the oldest daughter I3 asked if we
16 Q Have you ever been married before?	16 could start going That lasted a day
17 A Yes	17 Q Had she been a member of that church through her
18 Q Once or more than once?	18 father?
19 A Once	19 A No
20 Q What years were you married?	20 Q Did your husband ever -- I am going to start,
21 A It was July 10th, 1993	21 first of all, before 2005 when all this stuff came
22 Q That marriage ended in divorce?	22 to light --
23 A Correct	23 A Yes
24 Q Who was the person you were married to?	24 Q -- in I think it was around September, August,
25 A Robert Brian Evans	25 September time Before that, had your husband
Page 7	Page 9
1 Q When and where did you obtain that divorce? Just	1 ever discussed with you his religious background
2 the year	2 at all?
3 A It was final in 1998 October 1998, I believe	3 A Yes
4 Q Was the divorce issued in Missouri or Kansas?	4 Q What had he told you?
5 A Kansas	5 A He had gone to a Catholic school and he discussed
6 Q In what county?	6 a lot about religion with me in just casual
7 A Johnson	7 conversations, but made it well known that he did
8 Q Were you brought up in any organized religion?	8 not -- he was not comfortable with any organized
9 A I went to a First Christian church when we moved	9 religion
10 to Olathe, when I was about four, and went until I	10 Q Did he tell you when those feelings started?
11 was in fourth grade Then my mother started	11 A No
12 working weekends, so we stopped going	12 Q Did he tell you generally that that was his
13 Q Are you affiliated or do you consider yourself a	13 position or feeling as it related to organized
14 member of an organized church right now?	14 religion since high school days?
15 A Yes I go to Christ Family Church in Olathe And	15 A No
16 I have been going there for just over two years	16 Q Did he put a time on it at all?
17 Q Before that were you a member of any church or	17 A No
18 congregation at all?	18 Q Did you ever come to realize about when he started
19 A No	19 holding that position?
20 Q So would it be fair to say from your early grade	20 A No
21 school years until you were about 29, you were not	21 Q Did he ever discuss with you anything about his
22 involved on a regular basis with any particular	22 high school years at all?
23 church?	23 A No
24 A Correct	24 Q I am talking about before 2005 Before all this
25 Q Is your husband a member of any particular church	25 came to light in September October, August?

3 (Pages 6 to 9)

Page 10	Page 12
1 A All he talked about high school was his diving	1 A I believe we just had lunch one time
2 Q Did he talk about anything else, teachers, 3 anything else other than diving?	2 Q Is there -- and I know you are fairly aware of 3 what this lawsuit is all about I'm certain that 4 you have spoken to your husband on many occasions 5 about it
4 A No	6 A Yes
5 Q Have you been back to St. Louis, either before or 6 after you got married?	7 Q I assume that is true As his wife, based on your 8 observations, is there anything you believe he can 9 or cannot do on account of what he claims in this 10 lawsuit?
7 A Yes	11 A Can you rephrase that
8 Q By the way, where did you get married?	12 Q Sure Is there anything that you believe he is 13 unable to do because of what he claims in this 14 lawsuit?
9 A We got married in -- it was a Holiday Inn by a 10 judge in Olathe	15 A Physically unable to do?
11 Q Was there any discussion about having a religious 12 ceremony at all?	16 Q Yes, ma'am
13 A No	17 A No
14 Q When you went back to St. Louis, did you ever have 15 occasion to go by Vianney High School?	18 Q Is there anything that he has ever refused to do 19 that you have ever requested that you think might 20 be related to this lawsuit and his claim?
16 A Just driving by on the highway	21 A Going to church with me and the family
17 Q When you did that, what, did Mr. Visnaw just point 18 it out?	22 Q Anything other than that?
19 A There's my high school All excited	23 A No
20 Q Did you stop by or anything like that?	24 Q Do you know how long he has held the position that 25 he does not want to go to church?
21 A Never	
22 Q Did he make any other comments other than to say 23 'There's my high school'?	
24 A No	
25 Q You just, when you said that, what I observed is,	
Page 11	Page 13
1 there's my high school, kind of a smile Did he 2 do that when he pointed it out to you?	1 A Ever since I started going, which was April of 2 2005
3 A Yeah Yes, sorry	3 Q How about before that do you know how long he has 4 held the position that he does not want to attend 5 church services?
4 Q Yeah is okay We know what that means	6 A Always Always Since I have known him '98 I 7 guess We never really discussed it before, 8 because I didn't go I wasn't adamant on going
5 A Okay	9 Q You understand your husband has been in treatment 10 with a Dr. Harris?
6 Q Yeah and now are okay Uh-huh and huh-uh are the 7 troubling ones Did he go by the parish where he 8 grew up or anything like that?	11 A Yes
9 A No	12 Q He also had a Dr. Bernard who is his family 13 physician, I guess he is an internist or something 14 probably, right?
10 Q Would this be on your way from Kansas City to 11 visit family members of Mr. Visnaw?	15 A Just a primary care physician
12 A His mother	16 Q Is that -- is Dr. Bernard, is that where you used 17 to work?
13 Q She lives in South St. Louis County?	18 A Yes No -- well, I did not -- there are six 19 different offices for College Park Family Care and 20 I did not work in Dr. Bernard's office
14 A She did then Is it still South St. Louis? Can I 15 ask? She has moved, so I don't know -- I think it 16 is still South St. Louis County	21 Q Are they sort of in a practice where there are 22 individual practices within one space or location?
17 Q Have you ever met any of your husband's high 18 school friends at all?	23 A It is one company and six different offices All 24 the doctors work for College Park Family Care
19 A I met a friend that he had in high school, but he 20 did not go to the same school	25 Q What was the doctor's specialty that you worked
21 Q Do you remember who that was?	
22 A Greg Meier, M-e-i-e-r	
23 Q Does he live here in the Kansas City area?	
24 A No	
25 Q How did you meet Greg?	

Page 14	Page 16
<p>1 for in that group?</p> <p>2 A Primary care physician as well</p> <p>3 Q When your husband first started going to Dr</p> <p>4 Bernard, was that, you think, in any way was</p> <p>5 related to the fact that you worked in that --</p> <p>6 A Yes</p> <p>7 Q He didn't see your doc, he saw another doc with</p> <p>8 the same specialty?</p> <p>9 A No, my personal doctor was Dr John Bernard The</p> <p>10 doctor I worked for at College Park was Dr David</p> <p>11 Dobratz D-o-b-r-a-t-z.</p> <p>12 Q Have you gone to any of the sessions with Dr</p> <p>13 Harris?</p> <p>14 A No</p> <p>15 Q Do you know Dr Harris at all?</p> <p>16 A No</p> <p>17 Q Have you discussed with your husband the claims</p> <p>18 that he is making in this lawsuit?</p> <p>19 A I don't understand exactly</p> <p>20 Q What he says happened and what he says has</p> <p>21 resulted --</p> <p>22 A Yes</p> <p>23 Q -- to him, what is the result then to him from</p> <p>24 what he says happened?</p> <p>25 A Yes</p>	<p>1 discussed so late at night?</p> <p>2 A I had gone to bed after I got the message from his</p> <p>3 mom He was watching T V He didn't come to bed</p> <p>4 for quite a while after that</p> <p>5 Q Then did he wake you and talk about it?</p> <p>6 A Yes</p> <p>7 Q Is this the day after the message came from mom or</p> <p>8 the same day?</p> <p>9 A I think it is the same day, but I don't recall</p> <p>10 exactly</p> <p>11 Q Do you know whether it was a weekday or a weekend?</p> <p>12 A Weekday</p> <p>13 Q So your husband would have worked the next day?</p> <p>14 A Correct</p> <p>15 Q On that first discussion, what did he tell you?</p> <p>16 A He says, "I think I may have been a victim " He</p> <p>17 should be in the news for molestation</p> <p>18 Q Did he say anything else to you on that first</p> <p>19 occasion?</p> <p>20 A No I don't think it was that night</p> <p>21 Q This would have been before he ever spoke to Dr</p> <p>22 Harris?</p> <p>23 A Correct</p> <p>24 Q What did you say to him when he made those</p> <p>25 comments?</p>
Page 15	Page 17
<p>1 Q When was the first time you and your husband</p> <p>2 discussed this?</p> <p>3 A The first time we discussed this was, I don't know</p> <p>4 the exact day, but it was in September of 2005</p> <p>5 Q What was it he said to you at that time?</p> <p>6 A He didn't say anything to me I got a message</p> <p>7 from -- well, right away he didn't say anything</p> <p>8 to me I got a message from his mother, asking if</p> <p>9 he knew why Brother Mueller would be in the news</p> <p>10 And he told me no And it was too late to call</p> <p>11 his mom, so he hadn't called her back to discuss</p> <p>12 that any further that night</p> <p>13 Q Was it like a recorded message on the voice mail</p> <p>14 at home?</p> <p>15 A Yes, answering machine</p> <p>16 Q By the time you received the message and discussed</p> <p>17 with Robert, it is too late to call mom?</p> <p>18 A Correct</p> <p>19 Q Had you ever heard that name before?</p> <p>20 A Never</p> <p>21 Q When was the first time after that that you</p> <p>22 discussed it again?</p> <p>23 A I don't recall exactly, but it was either late</p> <p>24 that night or the next night Like at midnight</p> <p>25 Q Was there a reason why it would have been</p>	<p>1 A Something like you don't -- honestly I don't</p> <p>2 remember I don't remember the conversation But</p> <p>3 it was just, You think? What do you mean? He</p> <p>4 says, "I don't know I don't know "</p> <p>5 Q This would have -- I just want to make sure that I</p> <p>6 can get it as close as I can First of all, the</p> <p>7 tape recording from mom, was that retained or was</p> <p>8 it simply erased?</p> <p>9 A I erased it right away</p> <p>10 Q Her message was simply do you know why Brother</p> <p>11 Mueller would be --</p> <p>12 A Correct</p> <p>13 Q -- In the news?</p> <p>14 A Correct</p> <p>15 Q Nothing more?</p> <p>16 A Nothing more</p> <p>17 Q Just like a question?</p> <p>18 A Yes</p> <p>19 Q You relayed that to your husband?</p> <p>20 A Yes</p> <p>21 Q Then your husband said to you in response to that</p> <p>22 I think I may have been a victim He should be in</p> <p>23 the news for molestation Words to that effect?</p> <p>24 A Not exact words, but words to that effect,</p> <p>25 correct And it was several hours later</p>

Page 18	Page 20
1 Q You weren't taking notes or anything?	1 had done to them, as far as sessions with helping
2 A No	2 them out with a thesis on fear for his Masters
3 Q But this is what you remember?	3 Degree And that they had been rendered
4 A Yes	4 unconscious and possibly either had been used and
5 Q Then you may have had some brief reply to him	5 he said that those sessions are familiar to him
6 like, Do you think?	6 Q Did he say anything else to you at that time?
7 A Yes	7 A No
8 Q Then that was essentially all the discussion was	8 Q Have you ever, you yourself ever spoken with any
9 the first night?	9 of these other people who have brought suits or
10 A Correct	10 have been quoted in the newspaper?
11 Q The best you can put this at would be September	11 A No
12 or --	12 Q Have you ever spoken with David Clohessy or
13 A I think it was mid to late September I don't	13 anybody with Snap?
14 know exactly	14 A I don't know who that is
15 Q When was the next time that you discussed this	15 Q Was there anything else that the two of you
16 with your husband?	16 discussed at that time?
17 A If I remember correctly, the next day he had	17 A No
18 gotten on the Internet and saw an article in the	18 Q Before that, this information got into the
19 newspaper I believe it was the St. Louis	19 newspaper, did you believe you had a wonderful
20 dispatch I'm not sure And had read some	20 marriage?
21 allegations from other people regarding Brother	21 A Oh, it wasn't perfect But it was -- there was
22 Mueller	22 just usual ups and downs I here wasn't anything I
23 Q When you say "he," you meant your husband?	23 was worried about with our marriage We had a
24 A Yes	24 pretty good marriage
25 Q So he read the newspaper article Then did the	25 Q Would you agree with me you had a good and loving
Page 19	Page 21
1 two of you -- did you read the article also?	1 relationship with your husband?
2 A Yes He called me at work and I looked it up and	2 A Yes
3 read it, too	3 Q Is that the same today?
4 Q Now, do you have Internet at home also?	4 A It is still loving It is not always good
5 A Yes	5 Q Is there any change in your relationship with your
6 Q When you saw you looked it up, did you go on	6 husband that you can say here under oath is
7 line --	7 related to what he claims in this lawsuit?
8 A Yes	8 A Yes
9 Q -- and pick up the article? And then after	9 Q What is that?
10 that -- was that phone call simply to say "I read	10 A Intimacy is nearly none
11 an article, you ought to read it," or something to	11 Q Is that a change since the discussions?
12 that effect?	12 A Yes
13 A Yes	13 Q Since this information came in the newspaper -- if
14 Q Was there a discussion about the article at that	14 you need a break at any time, you tell me
15 time?	15 A I'm good
16 A Not at that time	16 Q That is a change from before all this came out in
17 Q Did you discuss the article later?	17 the newspaper?
18 A Yes	18 A Yes Wait You say that is a change -- yes, that
19 Q Was it the same day?	19 is a change from before Sorry
20 A I think so I would assume so	20 Q I am kind of going with --
21 Q Tell me what the article -- what the discussion	21 A This was not going on before We had no issues
22 was regarding that article	22 with that before
23 A The details I don't remember I don't even	23 Q The phone call and the newspaper articles, that's
24 remember who it was but it was something like the	24 kind of the time frame that you see?
25 person describing what doctor -- Brother Mueller	25 A Yes

Page 22	Page 24
1 Q Were you pregnant at that time?	1 would say Mueller So I don't know either I
2 A No	2 forget
3 Q Did you get pregnant -- I mean, you have been	3 A I forget too
4 pregnant how many times since then? Just once?	4 Q Has he told you whether or not he has ever had any
5 A Once I just had my son I think he was seven	5 contact with Brother Mueller or former Brother
6 months old And then my daughter I got pregnant	6 Mueller since he left high school?
7 with a couple months after	7 A The only thing I knew about before, and this was
8 Q What you are saying, as I understand now, your	8 just probably -- I can't even say when I found out
9 feeling is there are issues with intimacy in your	9 exactly But he had got a letter from Brother
10 marriage?	10 Mueller just saying hi, how are you doing, and
11 A Definitely	11 thanking him for helping him out with his
12 Q Is there anything else that you believe is somehow	12 research Experiment or whatever And then just
13 related?	13 up until the last maybe three or four weeks he did
14 A There is a lot of tension and stress between us	14 not remember but heard from somebody, what was her
15 just because he has a lot of stress himself	15 name, Laura, I don't know her last name, an
16 Q Is that solely related to what is going on in the	16 ex-girlfriend that they had had lunch together,
17 lawsuit or is there anything else?	17 that he did not remember that Or dinner
18 A Yes Well, and he adds to daily stresses from	18 together
19 work and family life But tolerable without all	19 Q Does he say now that he remembers having that
20 the other stuff All the other court-related	20 dinner?
21 stress	21 A No He does not remember
22 Q In your mind can you determine whether it is	22 Q Did he say he talked to her? Did Robert talk to
23 related to what happened in '86, '85 when your	23 the former girlfriend?
24 husband was in high school or is it related to all	24 A Yes
25 this litigation going on now as far as you can	25 Q When did he do that?
Page 23	Page 25
1 tell?	1 A She had called -- it was about three to four weeks
2 A As far as I can tell, what happened in 1980 --	2 ago She had called his sister and wanted to
3 what did you say, 6 or whenever that was	3 discuss why lawyers would want to be talking to
4 Q You believe it is related to that as opposed to	4 her with Robert before she talked to anybody, to
5 the litigation?	5 make sure it was okay to call She had no idea
6 A Correct I think the litigation brings back those	6 what was going on
7 problems that happened	7 Q Did you talk to her at all?
8 Q Is there any other problem that you relate to your	8 A I talked to her for like maybe ten minutes
9 husband's -- strike that Let me start over	9 Q What discussion -- is this the lady in Washington
10 Are there any other problems that you	10 State?
11 relate to what is claimed in this lawsuit, other	11 A Yes
12 than the intimacy issues and tension and stress,	12 Q What discussion did you have with her?
13 anything else?	13 A Pretty much just that it was okay with me that she
14 A Religious issues	14 talks to him
15 Q And you believe, based on what he has told you,	15 Q Talks to the lawyer or --
16 that relates back to what happened in '85 '86?	16 A No, talks to Bob My husband
17 A Now I believe so, yes	17 Q Former girlfriend
18 Q What do you mean now?	18 A Yeah That we had kids and -- four kids and been
19 A Now -- I couldn't place why he had strong feelings	19 married for -- just a little bit about his family
20 against organized religion before his recollection	20 Q Was there anything else that you talked to her
21 of what happened with Brother Mueller	21 about as it related to the substance of her -- the
22 Q Does he say Mueller or Mueller?	22 substance of what she was going to testify about?
23 A I don't know how to pronounce it I have heard it	23 A I told her that he would have to go into it but
24 both from him, so Is it Mueller?	24 it was something to do with something that
25 Q The spelling is M-u-e-l-l-e-r Old time Germans	25 happened when he was in school I did say

Page 26	Page 28
1 something with molestation, but he would have to	1 didn't know why what?
2 go into details as far as the rest of it I	2 A Didn't know why Brother Mueller would be in the
3 talked to her about, a little bit about he doesn't	3 news
4 go to church with me And she said, Yeah he was	4 Q And when did he tell you that?
5 very strong Catholic, but didn't -- wasn't	5 A Right away as soon as I told him that the
6 practicing " Something to that effect We didn't	6 answering machine, his mother's message on the
7 go into a lot of detail	7 answering machine
8 Q Anything else you talked about?	8 Q So the first response was he didn't know why?
9 A No	9 A Correct
10 Q And then your husband had discussion with her	10 Q Then later that night he said --
11 too?	11 A I may
12 A Yes	12 Q -- I do know why Or he may have been molesting
13 Q Were you present when that discussion was going	13 people?
14 on?	14 A Correct
15 A I was in the house but he was in another room	15 Q Does your husband receive any kind of mailings,
16 Q How long was his discussion with the witness?	16 newsletters, anything like that from the high
17 A Maybe five, ten minutes	17 school?
18 Q Did he tell you about what they talked about?	18 A I think he was getting an e-mail, I don't know how
19 A The only thing that he really mentioned was that	19 often they put out an e-mail
20 she had mentioned they had dinner together and he	20 Q Like alumni newsletter type thing?
21 didn't remember that at all That she remembered	21 A Yes But I am not positive
22 certain details about the dinner, so it must have	22 Q Did he attend, to your knowledge, any 20th high
23 happened But he still couldn't recall anything	23 school reunion or anything like that?
24 about it	24 A No
25 Q Was there anything that she told you that was	25 Q Do you know whether that would have happened while
Page 27	Page 29
1 surprising to you at all?	1 you were married?
2 A No	2 A Yes
3 Q Or that you thought was sort of inconsistent with	3 Q Was he aware there was a reunion?
4 what you understood about your husband's	4 A Yes
5 background at all?	5 Q Did he decide one way or the other not to attend
6 A No	6 it?
7 Q Did the two of you discuss what she said after Bob	7 A Yeah, he decided he didn't care to go
8 got off the phone?	8 Q He would have been, as I remember, class of '85
9 A No	9 So the reunion would have been held sometime in
10 Q Other than what you have already told me?	10 2005?
11 A Correct	11 A Correct
12 Q Did you see any change in your husband, other than	12 Q Was the reunion scheduled before or after he got
13 what you have already told me about, since that	13 this phone call from mom?
14 phone call, that voice mail message from mom?	14 A I believe before
15 Other than the intimacy, the stress and tension,	15 Q Was there a reason -- it may be just inconvenience
16 was there anything else?	16 or something, but was there any reason he gave you
17 MR CRAIG She mentioned the religious	17 at that time that he chose not to attend his 20th
18 aspect	18 reunion?
19 Q (By Mr Noce) And the religious	19 A He just didn't care There was nobody there that
20 A He was instantly -- it is like a light switched	20 he cared to go see
21 when I told him that, about the message Even	21 Q He doesn't keep track of anybody from high school
22 though he said no, he didn't know why, it just	22 days?
23 kind of seemed like a switch went off where he was	23 A No
24 very withdrawn and quiet	24 Q Did he ever comment to you whether he thought he
25 Q Let me stop you just for a second You said he	25 received a good education?

Page 30	Page 32
<p>1 A Yes</p> <p>2 Q What does he say about that?</p> <p>3 A He chose to go to a Catholic school because --</p> <p>4 versus a public school, because he would get a</p> <p>5 better education. He thinks he got a very</p> <p>6 education from Vianney. He is glad he went</p> <p>7 Q He really doesn't have any contact now with the</p> <p>8 school or with any of his fellow alums?</p> <p>9 A Correct</p> <p>10 Q I kind of cut you off before. We talked of a</p> <p>11 couple of the occasions that the two of you</p> <p>12 discussed what happened to him. We talked about</p> <p>13 the first one is when you heard about the message</p> <p>14 from mom, then later that night about when he made</p> <p>15 the comment to you. And then I think you talked</p> <p>16 about the next day after he went on line --</p> <p>17 A Yes</p> <p>18 Q -- and you went on line there was a discussion</p> <p>19 Have you had discussions since then about it?</p> <p>20 A Yes</p> <p>21 Q I know it is hard to think of all of them, but can</p> <p>22 you think of the important discussions that you</p> <p>23 have had with him about this?</p> <p>24 A One of the most important ones was -- the first</p> <p>25 one that I can recall that would be very important</p>	<p>1 A Yes</p> <p>2 Q Did he ever mention anything about a knife to you?</p> <p>3 A Yes</p> <p>4 Q Was that on the same occasion or a different</p> <p>5 occasion?</p> <p>6 A I think a different occasion. I want to say the</p> <p>7 second or third.</p> <p>8 Q Did he ever say whether or not Mueller used any</p> <p>9 foreign substance?</p> <p>10 A No</p> <p>11 Q In other words, as far as your husband can recall,</p> <p>12 there was never any ether or chloroform used, as</p> <p>13 far as he knew?</p> <p>14 A As far as I can recall, no.</p> <p>15 Q Had there been any other discussions, important</p> <p>16 discussions like that about what happened?</p> <p>17 A Well, I think more -- in more detail a few more</p> <p>18 times, but</p> <p>19 Q Were they always generally the same type of</p> <p>20 discussion about this is what I recall happened,</p> <p>21 four occasions, this occasion, this occasion, this</p> <p>22 occasion, this occasion, and kind of going over it</p> <p>23 with you?</p> <p>24 A Yeah, he was not -- he wasn't very -- he didn't</p> <p>25 recall a lot of it at the beginning, so it wasn't</p>
Page 31	Page 33
<p>1 was the fact that he went through, walked me</p> <p>2 through what he remembered of this sessions that</p> <p>3 he had with Brother Mueller</p> <p>4 Q When did that discussion take place?</p> <p>5 A A couple months. It had been a couple, like two</p> <p>6 to three months after he had gotten -- we got the</p> <p>7 first phone call from his mother</p> <p>8 Q Would that be before or after he started seeing</p> <p>9 Dr. Harris?</p> <p>10 A I believe after</p> <p>11 Q So he walked you through it and told you what</p> <p>12 happened on, in the lawsuit and in his testimony I</p> <p>13 think he has mentioned four occasions?</p> <p>14 A Yes</p> <p>15 Q Is that your understanding as you sit here today?</p> <p>16 A Yes</p> <p>17 Q Has he ever told you in any way what he felt was</p> <p>18 the most damaging occasion?</p> <p>19 A Yes</p> <p>20 Q What was that?</p> <p>21 A The fourth and final session where he had been</p> <p>22 rendered unconscious and he was starting to wake</p> <p>23 up and had felt Brother Mueller touching his</p> <p>24 genitals and masturbating at the same time</p> <p>25 Q And he said that was the last occasion?</p>	<p>1 a lot of detail each time we discussed it. But</p> <p>2 like we may be talked about it two or three times</p> <p>3 before the detail. When he did tell me that he</p> <p>4 was molested, it was in an argument</p> <p>5 Q An argument?</p> <p>6 A That we were having</p> <p>7 Q Was the argument in any way related to what</p> <p>8 happened back --</p> <p>9 A The start of the argument was not. But I don't</p> <p>10 remember exactly what it was about. It wasn't</p> <p>11 related. And it was -- he just broke out, Look,</p> <p>12 you don't know what I am going through. And I</p> <p>13 said "No, I don't know what you are going</p> <p>14 through. Why don't you tell me." And he said,</p> <p>15 "Well, I was molested." And not the exact words</p> <p>16 but I don't remember exact words, but That was</p> <p>17 when I was like, Oh, my God. And he told me more</p> <p>18 detail then</p> <p>19 Q Was that after the newspaper articles were</p> <p>20 discussed?</p> <p>21 A Yes</p> <p>22 Q But before he went into detail about what actually</p> <p>23 occurred?</p> <p>24 A Yes</p> <p>25 Q Did your husband ever have any treatment for</p>

Page 34	Page 36
<p>1 depression on any occasion before that phone call 2 from your mother-in-law? 3 A No He had seen Dr Bernard at my request because 4 we were going through a lot of tension I believe 5 at the time with my 13-year-old and differences 6 between parental disciplining 7 Q Was that before any of this came to light -- 8 A Yes 9 Q -- regarding the lawsuit and what his claims are? 10 A Yes 11 Q Was that for -- did Dr Bernard, to your 12 knowledge, prescribe any medicines? 13 A No Not for depression 14 Q Do you know whether or not your husband was ever 15 on -- you are familiar with Paxil? 16 A Absolutely 17 Q Has your husband ever been prescribed Paxil before 18 that September newspaper article, 2005? 19 A It sounds familiar Because I remember -- I 20 remember discussing issues about impotency with 21 the Paxil or decreased libido because of the 22 Paxil But I don't remember exactly 23 Q Is he on any meds now? 24 A Now he is, yes 25 Q What meds is your husband on now?</p>	<p>1 A Yes 2 Q -- being a trial for I think all of us could say 3 for all parents 4 A Yes 5 Q So you had that issue going on As I read the 6 medical records and the counseling records, it was 7 also some tension from the possibility of being 8 moved? 9 A Oh, yes 10 Q To I think Connecticut? 11 A Vermont 12 Q Vermont 13 A I forgot about that 14 Q Did that cause some stress? 15 A A lot of tension 16 Q Would you agree with me that is completely 17 unrelated to this? 18 A Completely unrelated 19 Q And the teenage issues, same way? 20 A Completely unrelated 21 Q That was troubling for everybody who was going 22 through it? 23 A Yes 24 Q Were there any other issues like that going on 25 that you would think that are normal stress in a</p>
Page 35	Page 37
<p>1 A Effexor I believe that's it 2 Q Are you familiar with that medicine? 3 A Yes 4 Q From your practice? 5 A Yes 6 Q What is that medicine for? 7 A Anti-depression 8 Q Does it have any side effects that you know of? 9 A Not visible to me with him It has potential side 10 effects 11 Q I mean, does it have any libido side effects? 12 A With him? 13 Q No, is it generally known? 14 A Generally, possibly I don't know exactly what 15 they all, all that whole class is 16 Q Have you seen any side effects in your husband 17 that you think might be related to the medicine? 18 A No It was he had issues with decreased libido 19 before he started taking the Effexor 20 Q When was that first a problem? 21 A When this first came out it started right away 22 Q You mean like still in the fall of '05? 23 A Yes 24 Q Have there been -- you mentioned about the 25 parenting of teenage children --</p>	<p>1 family life that would be unrelated to the claims 2 in this case? 3 A Now? 4 Q Since 2005 Since September of 2005 Anything 5 else going on that could be a stressor? 6 A His job He does want to move He is constantly 7 putting in for a move I constantly remind him I 8 don't want to 9 Q Is it one of these deals where to get ahead you 10 have to take the assignments and move, to your 11 knowledge? 12 A Yes To move up Yes 13 Q To advance 14 A Yes 15 Q He wants to advance? 16 A Yes 17 Q But it has the down sides which would be the move? 18 A My roots and my daughter's roots especially, my 19 oldest, are here So yes 20 Q Everybody is here? 21 A Yes Except him 22 Q Except him I mean you were born and raised -- 23 A Since I was four, yes 24 Q -- in the Kansas City area? Do you have your 25 parents still here?</p>

Page 38	<p>1 A Yes</p> <p>2 Q Your sisters and brothers and I don't even know if</p> <p>3 you have brothers?</p> <p>4 A Yes Two sisters and a brother</p> <p>5 Q Everybody is here and that is a good support for</p> <p>6 you and you don't want to move?</p> <p>7 A Correct</p> <p>8 Q And Bob his family -- is there anybody here?</p> <p>9 A No Oh, yes He has a cousin</p> <p>10 Q A cousin here?</p> <p>11 A Yeah</p> <p>12 Q Other than that, the family is back in St Louis</p> <p>13 still?</p> <p>14 A Correct</p> <p>15 Q How often does the issue of the move come up?</p> <p>16 A Every time he puts in a job, I would say at least</p> <p>17 on average once a month</p> <p>18 Q Trying to catch you at a moment of weakness</p> <p>19 A Hey, what job that is so good he can't turn away</p> <p>20 and I can't stop him</p> <p>21 Q Have you had any -- have you ever gone in to be a</p> <p>22 part of the sessions with Dr Harris?</p> <p>23 A No</p> <p>24 Q Do you know Dr Harris from anywhere?</p> <p>25 A I have never met him I saw him on the news once</p>	Page 40	<p>1 the issues in his lawsuit you have already told me</p> <p>2 about today?</p> <p>3 A Yes I believe so</p> <p>4 Q What problems do you observe with your husband</p> <p>5 that you believe are related to what he claims in</p> <p>6 this lawsuit? Now, you have already told me about</p> <p>7 religious issues?</p> <p>8 A Yes</p> <p>9 Q You told me about the tension and strife in the</p> <p>10 family?</p> <p>11 A Yes</p> <p>12 Q And you have told me about the libido issues?</p> <p>13 A Intimacy period yes</p> <p>14 Q Is there anything else that you can tell me?</p> <p>15 A I think his relationship with his children as</p> <p>16 well His family in general</p> <p>17 Q What -- I am going to cover first of all</p> <p>18 relationship with his family</p> <p>19 A Okay</p> <p>20 Q I am figuring that means like everybody other than</p> <p>21 you and the kids</p> <p>22 A No</p> <p>23 Q Are you talking about your --</p> <p>24 A To my knowledge I don't know that it has affected</p> <p>25 that I don't see that I am more worried about</p>
Page 39	<p>1 totally unrelated to this It had something to do</p> <p>2 with I think the Royals stadium They were</p> <p>3 talking about getting rid of the stadium and he</p> <p>4 was on there talking because he was -- not as a</p> <p>5 psychiatrist or psychologist, but just as a fan</p> <p>6 Q Is there anything your husband has told you that</p> <p>7 he wants from my clients of a non-economic nature?</p> <p>8 A An apology</p> <p>9 Q Is there anything else he said to you in that</p> <p>10 regard?</p> <p>11 A Well, that was more than -- he wants more than an</p> <p>12 apology He wants them to acknowledge the fact</p> <p>13 that it was going on They knew it was going on</p> <p>14 and they did nothing to stop it until it was too</p> <p>15 late</p> <p>16 Q Anything else he said to you?</p> <p>17 A No</p> <p>18 Q Would you tell me -- and we have gone over a</p> <p>19 little bit, but if there are any other discussions</p> <p>20 you have had with your husband about this that we</p> <p>21 have not discussed, that you haven't testified to</p> <p>22 that you can recall?</p> <p>23 A No Not that I can recall</p> <p>24 Q Would it be your testimony that every important</p> <p>25 discussion you have had with your husband about</p>	Page 41	<p>1 me and the kids</p> <p>2 Q So let me ask it this way then As far as you can</p> <p>3 say here today under oath, you don't know one way</p> <p>4 or the other whether what he is claiming in this</p> <p>5 lawsuit has affected his relationship with his</p> <p>6 mother, his siblings, and any other family members</p> <p>7 outside his immediate family?</p> <p>8 A Correct</p> <p>9 Q Tell me what you want to say, what have you</p> <p>10 observed as it relates to his relationship with</p> <p>11 his family? The family being immediate family,</p> <p>12 you and your kids</p> <p>13 A He wouldn't bathe the kids I believe more Brett</p> <p>14 and Mikayla Obviously Brianna was bathing</p> <p>15 herself</p> <p>16 Q Brett has been born?</p> <p>17 A He was about six, seven months He was born</p> <p>18 January 31st of 2005 So shortly after that,</p> <p>19 within a year's time taking a bath I noticed he</p> <p>20 wouldn't give him a bath for a while He used to</p> <p>21 have no problem with going to do it And then if</p> <p>22 he did, it had to be a bubble bath And when</p> <p>23 the -- the kids wake up every night and come</p> <p>24 downstairs to our bedroom And any time one of</p> <p>25 the kids gets in bed he will get up out of bed and</p>

Page 42	Page 44
1 sleep on the couch So almost every night he is	1 you need to testify to?
2 on the couch Or upstairs in Mikayla -- if	2 A I didn't think about all these questions, no
3 Mikayla comes down, he will sleep in her bed	3 Q But you did have a chance to meet with Mr Craig
4 Q When you say "the kids," I assume you mean your	4 ahead of time?
5 kids?	5 A We didn't really go over detail what would be
6 A Mikayla and Brett	6 asked Just pretty much that hard questions would
7 Q So Mikayla is six?	7 be asked
8 A Six	8 Q Is there anything else that you want to tell me
9 Q And is your husband a light sleeper or heavy	9 about that you think I haven't asked you about --
10 sleeper?	10 A No
11 A He is neither I mean, if something is going on	11 Q -- as it relates to your husband's claim?
12 in the house he will wake up But he doesn't --	12 A Not that I can recall
13 like me, I will sleep through it When the kids	13 Q Is there anything important that you think we
14 wake up I usually don't realize they are awake	14 haven't covered --
15 until they are in bed	15 A No
16 Q As it relates to this issue about leaving the bed	16 Q -- about your husband's claim? We have covered
17 when the kids come down?	17 how it affects your marriage?
18 A Yes	18 A Uh-huh.
19 Q And sleeping elsewhere, has he ever told you why	19 Q True?
20 he does that?	20 A True
21 A Because he is not comfortable sleeping in the bed	21 Q We have covered what your observations are as to
22 with the kids there	22 how he has changed?
23 Q I just want to nail this down When you say that,	23 A True
24 what do you mean he is not comfortable? Has he	24 Q Since he got that phone call from his mom?
25 ever explained that beyond simply saying, "I am	25 A Yes
Page 43	Page 45
1 not comfortable with the kids sleeping in the	1 Q And all the tensions in the family life and
2 bed?"	2 everything like that, true?
3 A No	3 A True
4 Q Anything else that you have observed?	4 Q Has he ever told you specifically -- strike that
5 A He just doesn't -- he is just more distant as far	5 Let me go through my notes I think I am done
6 as like hugs and kisses and those little things	6 for this day even now, your husband
7 that I think mean a lot to kids and me	7 still does not attend church?
8 Q Is that something that has changed?	8 A Correct
9 A Yes	9 Q And has opinions he holds about organized religion
10 Q Tell me how that has changed	10 that are not positive?
11 A He just doesn't offer them up all that often	11 A Correct
12 Q That's different than he was before this phone	12 Q Have you seen any change in that at all?
13 call?	13 A No
14 A Yes If I go up to him and hug him, he would	14 Q Has he told you that these are positions that he
15 remember he has to go do something, or he would	15 has held ever since all this occurred to him?
16 pull away quickly	16 A He never told me when that started And I never
17 Q Anything else?	17 asked specifically
18 A No	18 Q He has been treating with Dr Harris since I think
19 Q You have explained to me entirely how your	19 the doctor's records say November 3 2005
20 marriage has been affected?	20 A Yes I think so
21 A That I can recall right now, yeah	21 Q And I think he got directed to Dr Harris through
22 Q That you can recall right now?	22 work?
23 A Yes	23 A Yes, correct
24 Q Keeping in mind you have known your deposition was	24 Q Now, have you seen an improvement in your husband
25 being taken, you have probably thought about what	25 since he started counseling with Dr Harris?

Page 46	Page 48
<p>1 A There are ups and downs 2 Q What do you mean by that? 3 A Well, just I think he is getting -- coping better, 4 and then I don't know what happens, but then all 5 of a sudden he just becomes more angry and 6 stressed out again I ask him, 'Have you taken 7 your medicine, have you seen the doctor lately?'" 8 You know, one of those Something is going on, 9 you need to recognize it 10 Q When you were working in the family practice, did 11 your physician as a primary care physician treat 12 people who had emotional disorders? 13 A Yes 14 Q And he would -- was it a "he"? 15 A He 16 Q And a physician you worked for had many options -- 17 A Oh, yes 18 Q -- of people who presented those issues? 19 A Yes 20 Q Over the years have you seen instances where the 21 person actually needed hospitalization? 22 A Yes 23 Q And your husband has never been hospitalized? 24 A Not for anything related to this 25 Q Right To your knowledge, has your husband lost</p>	<p>1 Q In those records often a doctor would place 2 restrictions on people because of a medical or 3 even emotional problems? 4 A Yes 5 Q And they would usually either direct them verbally 6 and the nurse would be there to make sure it is 7 recorded? 8 A No 9 Q How would the doctor restrict somebody in writing 10 if they wanted to restrict -- 11 A They would either write a prescription to their -- 12 Q I'm sorry I was thinking that my question was so 13 bad that I wasn't being very clear in what I was 14 asking you When you worked in the doctor's 15 office, from time to time the doctor would place 16 restrictions on the patient's -- 17 A Yes 18 Q -- activities? 19 A Yes 20 Q What would you observe in how the doctor would do 21 that? 22 A Well it was being done, I didn't observe 23 anything It was usually back in the exam room 24 and I wasn't there I had my own desk, I was 25 usually making phone calls, doing my own</p>
Page 47	Page 49
<p>1 any wages for work at all related to this? 2 A Just -- well, yes He was ordered to take a week 3 off of work because he was very stressed out and 4 couldn't focus 5 Q Do you know why that happened? 6 A He was stressed out 7 Q Was that something that Dr Harris recommended? 8 A Yes, I believe it was -- yes, it was Dr Harris 9 Sorry 10 Q Other than that, other than perhaps the week that 11 Dr Harris had him stay off of work, are there any 12 other financial losses that you are aware of? 13 A No financial losses, but he had other days in 14 there I mean, obviously the dates that he needs 15 to take for appointments and stuff But other 16 than that, no financial losses, no 17 Q So he had that week and Dr Harris will say why he 18 kept him off then But other than that, you are 19 not aware of any financial loss your husband or 20 the family sustained because of the claims made 21 here? 22 A Correct 23 Q When you worked in the doctor's office, you kept 24 track of records, didn't you? 25 A Yes</p>	<p>1 documentation So I didn't see what the doctor 2 was doing 3 Q What I was wondering whether the doctor would put 4 it in writing that, you know, stay off work for a 5 month? 6 A Well, all doctors are different My experience 7 with my doctor was he would write a prescription 8 to the person to give to their employer to stay 9 off of work for this amount of time or he would 10 make a note on their check-in sheet and would 11 dictate it later and then the transcriptionist 12 would type it in 13 Q ADL's, are you familiar with that? 14 A Yes 15 Q Activities of daily life And sometimes 16 restrictions are placed on activities of daily 17 life, which would be work, home life, hobbies 18 things of that nature? 19 A Yes 20 Q Do you know whether any physician has ever placed 21 any restrictions on the activities of daily life 22 for your husband? 23 A Not that I can recall, no 24 Q I wanted to ask what kind of hobbies did your 25 husband have when you first met him? I don't know</p>

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1 if he played on a softball team?
 2 A We played softball together with a couple friends
 3 and coed slow pitch We still do
 4 Q Like a league?
 5 A Yes
 6 Q And you still do that, you and he still?
 7 A Yes
 8 Q Is it Wednesday nights?
 9 A Sunday nights
 10 Q Sunday nights One night a week Okay Any
 11 other activities like that, hobbies that Bob had
 12 then that he doesn't have now?
 13 A I don't recall when he got his motorcycle, but he
 14 liked to go riding on his Harley We got rid of
 15 that when I quit work
 16 Q Was that financial?
 17 A That was financial
 18 Q Got rid of that
 19 A He was very reluctant
 20 MR CRAIG Smart, too
 21 Q (By Mr Noce) Any other hobbies that Bob had then
 22 that he doesn't participate, other than the
 23 financial Harley loss and still playing softball?
 24 A No I don't think so
 25 Q Is there anything that you want to say to me in

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1
 2
 3 I certify that I have read my testimony and request
 No changes be made
 4
 5 I certify that I have read my testimony and request
 the above changes be made
 6
 7
 8
 9
 10 BRANDI VISNAW
 11 Subscribed and sworn to before me this ____
 12 day of _____, 2007
 13
 14 My commission expires _____
 15
 16
 17 Notary Public
 18 Visnaw vs Marianist
 19 JAL 5-15-2007
 20
 21
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 23
 24
 25

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1 this, you know, in your chance now that we haven't
 2 talked about, that you maybe want me to understand
 3 about your husband's loss or that you
 4 would want me to perhaps even convey to my
 5 clients?
 6 A My biggest thing is his religious connection It
 7 has only become very big to me in the last couple
 8 years and I wish that my husband could advance
 9 with me That we could be connected spiritually
 10 We don't have that connection I don't believe
 11 so
 12 Q Anything else you want to tell me?
 13 A I don't think so
 14 Q Thanks a lot for your time
 15 A Thank you
 16 - - -
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Page 53

1 CERTIFICATE
 2
 3 STATE OF MISSOURI)
) SS
 4 COUNTY OF JACKSON)
 5
 6 I, JAMES A. LEACOCK, Certified Court Reporter
 within and for the State of Missouri do hereby certify
 that pursuant to Notice to Take Deposition there came
 before me
 7
 8 BRANDI VISNAW
 9 who was by me first duly sworn to testify the whole
 truth of her knowledge concerning this matter in
 10 controversy aforesaid that she was examined and her
 examination then and there written in shorthand by me
 11 and afterwards typed being correctly and accurately
 set forth in the foregoing 52 pages and said
 12 deposition is now herewith returned
 13 I further certify that I am not counsel attorney
 or relative of either party or clerk or stenographer of
 14 either party or of the attorney of either party or
 otherwise interested in the event of this suit
 15
 16 IN WITNESS WHEREOF I have hereunto set my hand
 and affixed my Seal at my office in Independence
 Missouri, this 29th day of May, 2007
 17
 18
 19
 20 James A. Leacock CCR
 Certified Court Reporter #662
 21
 22
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 24
 25

A	assume 3 16 12 7 19 20 42 4	52 9 53 8	40 15	3 23
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accurately 53 11	attorney 53 13,14	Brett 5 15 41 13,16	Christ 7 15	copied 46 3
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49 15,16,21 50 11	9 25	Brianna 5 15,17	7 23,25 8 4,12,14	6 23 7 24 15 18
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advance 37 13,15	a.m 3 1	brother 15 9 17 10	City 1 12,20 11 10	38 14 41 8 45 8
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IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

ROBERT WILLIAM VISNAW,)	
)	
Plaintiff,)	
)	
vs.	)	Cause No. 06CC-000008
	)	Division Number 15
MARIANIST PROVINCE OF THE)	
UNITED STATES, ST. JOHN)	
VIANNEY HIGH SCHOOL, INC.,)	
and WILLIAM MUELLER,)	
)	
Defendant.)	

VIDEOTAPED DEPOSITION OF
TRACY SCHOFIELD

produced, sworn and examined on Wednesday, May 15,
2007, at the law offices of Dan Craig, P.C., 1125 Grand
Boulevard, Suite 900, in Kansas City, Missouri, before:

JAMES A. LEACOCK, CCR, for
ESQUIRE DEPOSITION SERVICES
A Certified Court Reporter for the State of Missouri.
Taken on behalf of the Defendants.

APPEARANCES:

For the Plaintiff:
LAW OFFICES OF DAN CRAIG, P C.
By: Mr. Dan Craig
1125 Grand Boulevard, Suite 900
Kansas City, Missouri 64106

For the Defendants:
HEPLERBROOM
By: Mr. Gerald T. Noce
800 Market Street, Suite 2300
St. Louis, Missouri 63101

Videographer:
Mr. Brian Bennett, TBC Video

Page 2		Page 4	
1	STIPULATIONS	1	MR NOCE My name is Jerry Noce I am
2		2	the lawyer for the Marianist and for St John
3	It is hereby stipulated and agreed by and	3	Vianney High School
4	between parties herein that presentment by the	4	THE VIDEOGRAPHER Will the reporter now
5	reporter to the witness of a copy of this deposition	5	swear in the witness
6	is hereby waived, and that a copy of the deposition	6	TRACY SCHOFIELD
7	may be mailed to the witness for her to read, make	7	of lawful age, being produced, sworn and examined
8	corrections and sign at any time before or at trial	8	on behalf of the Defendant, testified as follows
9	of this case, and that if not signed by time of	9	EXAMINATION BY MR NOCE
10	trial, may be used as though signed	10	Q Would you state your name, please, for the record
11		11	A Tracy Lynn Schofield
12		12	Q Ms Schofield, my name is Jerry Noce and I am the
13	INDEX	13	lawyer -- we just met I am the lawyer for the
14	Page	14	Marianist and for St John Vianney High School
15	Examination by Mr Noce 3	15	Or Vianney High School as we knew it back in St
16		16	Louis I am going to ask you some questions
17		17	today If you don't understand me, would you tell
18		18	me that?
19		19	A Yes
20		20	Q If you answer a question, I am going to assume you
21		21	understood it and you are responding, is that
22		22	agreeable?
23		23	A Yes
24		24	Q Would you tell the jury how old -- what is the
25		25	date of your birth?
Page 3		Page 5	
1	THE VIDEOGRAPHER Good morning We are	1	A 6/20/69
2	going on the video record at 10 59 a m My	2	Q And where were you born?
3	name is Brian Bennett, and I am a legal	3	A St Louis, Missouri
4	videographer in association with Esquire	4	Q What part of town did you grow up in?
5	Deposition Services located at 720 Olive	5	A South St Louis
6	Street, Suite 1610, St Louis, Missouri The	6	Q In the city or county?
7	court reporter today is Jim Leacock of	7	A City
8	Esquire Deposition Services Here begins the	8	Q Where did you attend high school?
9	video deposition of Tracy Schofield, taking	9	A Two, Classical Senior Academy and then St John
10	place at the offices of Dan Craig, P C , 1125	10	the Baptist My last two years
11	Grand Boulevard, Suite 900, Kansas City,	11	Q Now, just in case somebody might know you or know
12	Missouri, 64106 Here begins the videotape	12	your family is Schofield your married name?
13	I'm sorry	13	A Correct
14	Today's date is May 15th, 2007 The	14	Q What is your maiden name?
15	deposition is being taken in the matter of	15	A Dry
16	Visnaw versus Mueller, In the Circuit Court	16	Q Have you ever been known by any other names other
17	of St Louis County, Case Number 06CC-000008	17	than Tracy Dry and now Tracy Schofield?
18	The deposition is being taken on behalf of	18	A No
19	the defendants The party at whose instance	19	Q Tracy, Classical Senior Academy was that the old
20	this deposition is being recorded on audio	20	Southwest High School?
21	visual recording device are the defendants	21	A Soldan
22	Will counsel please state their names for the	22	Q Old Soldan High School
23	record	23	A Correct, over in north St Louis
24	MR. CRAIG Dan Craig on behalf of	24	Q On Union?
25	Plaintiff Visnaw	25	A Correct

Page 6	Page 8
<p>1 Q Just north of Forest Park?</p> <p>2 A Yes</p> <p>3 Q And you attended that school for two years and</p> <p>4 then you transferred to St John the Baptist?</p> <p>5 A St John the Baptist, which is over off Gravois</p> <p>6 Q And St John the Baptist is a Catholic school, is</p> <p>7 that right?</p> <p>8 A Correct</p> <p>9 Q I think it is one of those schools that is</p> <p>10 operated by that parish?</p> <p>11 A That I don't know</p> <p>12 Q And the reason I am asking you this, were you a</p> <p>13 member of that parish?</p> <p>14 A No I am not Catholic</p> <p>15 Q That was going to be my next question</p> <p>16 A So I had to pay extra to go there</p> <p>17 Q So you attended St John High School even though</p> <p>18 you were not a member of the parish, in fact you</p> <p>19 weren't even a member of the religion?</p> <p>20 A No, correct</p> <p>21 Q Was there a reason you attended St John?</p> <p>22 A Just I wanted to go to a school closer to home</p> <p>23 And it was only about 500 students total</p> <p>24 Q Did you think you were getting a good education</p> <p>25 there?</p>	<p>1 A Yes</p> <p>2 Q -- and family? And where was that, that you</p> <p>3 lived?</p> <p>4 A Do you need the address?</p> <p>5 Q Yes</p> <p>6 A 3921 Humphrey</p> <p>7 Q So it would be in South St. Louis?</p> <p>8 A South St. Louis, correct</p> <p>9 Q On Humphrey I guess that is west of Grand?</p> <p>10 A Sure</p> <p>11 Q Okay</p> <p>12 A That would be correct, yes</p> <p>13 MR NOCE Off the record</p> <p>14 (Discussion off the record)</p> <p>15 MR NOCE We will go back on the record</p> <p>16 now You tell me, Brian Are we back on?</p> <p>17 Q (By Mr Noce) While you were a student at UMSL,</p> <p>18 did you meet Robert Visnaw who is the plaintiff in</p> <p>19 this lawsuit?</p> <p>20 A Yes</p> <p>21 Q And how did you meet Rob?</p> <p>22 A Spanish class</p> <p>23 Q Do you recall what year you were in when you met</p> <p>24 him?</p> <p>25 A Oh maybe '89 '88 or '89 I'm not really quite</p>
Page 7	Page 9
<p>1 A You know, Classical Senior Academy was an advanced</p> <p>2 school An advanced program But I had a friend</p> <p>3 who that's where she was going to go and it just</p> <p>4 kind of seemed -- I wanted to change schools and</p> <p>5 get out of the public system</p> <p>6 Q When did you graduate from high school?</p> <p>7 A '87</p> <p>8 Q Where did you go to school after that?</p> <p>9 A UMSL</p> <p>10 Q What course of study did you follow at UMSL?</p> <p>11 A I majored in psychology</p> <p>12 Q And did you obtain a degree in that?</p> <p>13 A Yes</p> <p>14 Q When did you obtain your degree?</p> <p>15 A I think it was May of '93</p> <p>16 Q So you are high school class of '87?</p> <p>17 A Uh-huh</p> <p>18 Q Correct?</p> <p>19 A Correct</p> <p>20 Q And then you finished with your psychology degree</p> <p>21 in 1992 or '93?</p> <p>22 A It may have -- it was probably '92</p> <p>23 Q When you were attending high school and then</p> <p>24 college, were you living at home with your</p> <p>25 parents --</p>	<p>1 sure</p> <p>2 Q Were you freshman or sophomore or whatever?</p> <p>3 A Yeah Something like that</p> <p>4 Q I guess what I could say is --</p> <p>5 A I should have brought my transcript</p> <p>6 Q Was it a first year Spanish class or --</p> <p>7 A It was just the introductory I had had years and</p> <p>8 years of Spanish And so it was just kind of an</p> <p>9 easy A</p> <p>10 MR CRAIG I was going to say why</p> <p>11 didn't you test out? You just answered the</p> <p>12 question</p> <p>13 A And it could have been '89, because -- I'm sorry,</p> <p>14 I said we met in Spanish class We met in Italian</p> <p>15 class And then I took Spanish for an easy A</p> <p>16 Q (By Mr Noce) You know, what type of -- did you</p> <p>17 work after graduating from UMSL outside the home?</p> <p>18 A Yes</p> <p>19 Q What type of work have you done?</p> <p>20 A I was a nurse assistant at Missouri Baptist</p> <p>21 Medical Center for three years And then I worked</p> <p>22 for St. Louis Association for Retarded Citizens</p> <p>23 for three years And then for Disability</p> <p>24 Determinations for three years and I am currently</p> <p>25 with Social Security</p>

Page 10	Page 12
1 Q You are an employee of the Social Security	1 A Every Monday
2 Administration?	2 Q Every Monday okay That was because it was
3 A Correct	3 required of the curriculum?
4 Q What type of work do you do there?	4 A Correct
5 A Disability specialist	5 Q Aside from what was required of you in attending
6 Q Do you review disability applications and make	6 in St John's, had you ever attended a Catholic
7 determinations?	7 service on any other occasion?
8 A Yes	8 A Once or twice
9 Q You send them on to somebody and then they -- do	9 Q Maybe for a marriage or a funeral or something?
10 you make the final determination?	10 A My brother-in-law is Catholic, so, you know,
11 A Yes	11 occasionally when we would go visit
12 Q You live now in Kansas City, don't you?	12 Q Now, how long did you and Bob date Bob Visnaw?
13 A Yes	13 A A couple of months I don't know between four
14 Q How long have you lived in Kansas City?	14 and six Not very long
15 A About ten and a half years	15 Q Did you date long enough to get to actually know
16 Q And you are also a married woman?	16 his mom and his sisters --
17 A Correct	17 A Yes
18 Q How long have you been married to your husband who	18 Q -- people like that? And how was it that you got
19 is outside the door here?	19 to know them?
20 A Five years in December	20 A You mean just going over to the house?
21 Q I am going to get back now to the fact that you	21 Q Yeah How would you get to know them, you know,
22 met Bob Visnaw in college?	22 if it was going to the house or going out to
23 A Correct	23 dinner or whatever?
24 Q Is that how you refer to him, as Bob, or --	24 A Basically we would go over to his house
25 A Yes	25 occasionally I would go out to dinner
Page 11	Page 13
1 Q Did the two of you actually go out together?	1 occasionally with his mom and dad He was on the
2 A Yes	2 swim team with Umsell So when he would go out of
3 Q When you were going out with Bob, were you a	3 town occasionally I would just go hang out with
4 member of any organized religion growing up?	4 them They would invite me to dinner
5 A I was born and raised Pentecostal Very different	5 Q So you had a good relationship with his parents?
6 from Catholicism	6 A Yes
7 Q Born and raised Pentecostal Is that the church	7 Q Now, on occasion when you were going out with Bob,
8 your mom and dad attended as you were growing up?	8 did he -- did the two of you attend Catholic mass
9 A Yes	9 together?
10 Q Did you attend with them?	10 A I think twice
11 A Yes	11 Q What were those occasions?
12 Q And did you, by the time you were in college, were	12 A I think it was around Christmas
13 you still going to services with mom and dad on a	13 Q Do you recall what church you attended?
14 regular basis?	14 A The first one, and I don't remember the name, it
15 A I don't know if I would say regular I was still	15 was at like 270 and Olive
16 attending, but working, school	16 Q Is it like a --
17 Q Did you consider yourself to be a member of that	17 A It was a beautiful Catholic church
18 church?	18 Q Now 270 and Olive, would it be just west of 270?
19 A Yes	19 A Correct
20 Q And did that stay the same, say, all the way	20 Q On the south side or the left side as you got off?
21 through college?	21 A Correct, yes
22 A Yes	22 Q It was kind of a gray building?
23 Q Had you ever -- let's take out your attendance at	23 A Yes
24 St John's, because you may have had to go to	24 Q St Monica's, does that sound right to you?
25 services while -- maybe mass on occasion?	25 A That could be it

Page 14	Page 16
1 Q Because that is the church right there	1 he appear to be a practicing Catholic?
2 A That could be	2 A Yeah
3 Q And so you attended St. Monica's. Was there any	3 Q Did he ever express anything like that to you
4 reason for attending St. Monica's in particular?	4 that, you know I am a Catholic?
5 A We had been out to some friends of his house and	5 A Oh, sure. Yes.
6 they lived right around there. So it was, you	6 Q Did he ever say anything to you about his high
7 know, I think we went to like a 6:00 o'clock mass	7 school days at all?
8 or 7:00, whatever time masses are in the evening.	8 A No.
9 So we had left there and then just went for	9 Q Did he ever mention a Brother William Mueller at
10 service. But I don't remember why -- if that was	10 all or Mueller?
11 around Christmas. And then the next time we went	11 A If he did, I don't remember.
12 was on Christmas day. We attended my church and	12 Q I am going through my extensive notes here to see
13 then we went to mass. And I should remember the	13 if I have anything else. The two of you quit
14 name, it is up on Grand. Grand and like Utah.	14 seeing each other for reasons totally unrelated to
15 Q St. Pius V?	15 whatever is a part of this lawsuit?
16 A St. Pius, yes.	16 A Oh, correct.
17 Q With this kind of work you get to know everything	17 Q Just college kids and --
18 A And those were the only two times that I can think	18 A Yeah.
19 of.	19 Q Okay. Have you spoken to Bob Visnaw in the last
20 Q And whose idea was it to go to St. Monica's?	20 couple weeks?
21 A His.	21 A No.
22 Q Bob's. And then whose idea was it to attend	22 Q By phone at all?
23 Christmas mass at St. Pius?	23 A No.
24 A His. We agreed that we would go to mine and then	24 Q Our office called you and set this up?
25 his church.	25 A Correct.
Page 15	Page 17
1 Q So you attended the Pentecostal?	1 Q We simply asked you some questions and you
2 A Uh-huh.	2 answered them honestly and truthfully and we asked
3 Q True?	3 you if you would say it on oath?
4 A Correct.	4 A Correct.
5 Q Okay. And then services there at your church and	5 Q And since you broke up with Bob -- I know you saw
6 then you also attended church at St. Pius?	6 him outside here today. But before that, had you
7 A Correct. It was only about five or six blocks	7 seen him on any occasion since college days?
8 from my house.	8 A I don't think so, no.
9 Q This would have been during your freshman or	9 Q Have you had any contact with him?
10 sophomore or junior year of college?	10 A No.
11 A Correct.	11 Q Now when you did know him back in college days,
12 Q Can you narrow it down any more than that or no?	12 he was a member of the swim team at UMSL?
13 A You know, it's -- it was probably, maybe my	13 A Correct.
14 sophomore year. Because we met the very first	14 Q And taking a full load and going to college?
15 course of Italian. So it was probably my	15 A Uh-huh.
16 sophomore year.	16 Q True?
17 Q So that would have been 1989 or '90?	17 A Correct.
18 A '89, yeah.	18 Q Did he seem to be a good guy, somebody you wanted
19 Q When you went to St. Monica's, were Bob's parents	19 to be around at the time?
20 with you?	20 A Sure.
21 A No.	21 Q Pleasant?
22 Q When you went to St. Pius, were his parents with	22 A Sure. Yes.
23 you?	23 Q That's all I have. Thank you.
24 A No.	24 A Okay. You're welcome.
25 Q From what you observed about Bob at that time, did	25 MR CRAIG: Tracy, thank you. I have no

1 questions
2 THE VIDEOGRAPHER Stand by, please
3 Off the record
4 - - - -

7 I certify that I have read my testimony and request
No changes be made.

8 I certify that I have read my testimony and request
9 the above changes be made

12 TRACY SCHOFIELD
13 Subscribed and sworn to before me this
14 day of _____, 2007

15 My commission expires _____

19 _____
Notary Public

20 Visnaw vs Marianist
21 JAL 5-15-2007

22
23
24
25

1 CERTIFICATE
2
3 STATE OF MISSOURI)
4) SS
5 COUNTY OF JACKSON)

6 I JAMES A. LEACOCK Certified Court Reporter
7 within and for the State of Missouri do hereby certify
8 that pursuant to Notice to Take Deposition there came
9 before me

10 TRACY SCHOFIELD
11 who was by me first duly sworn to testify the whole
12 truth of her knowledge concerning this matter in
13 controversy aforesaid, that she was examined and her
14 examination then and there written in shorthand by me
15 and afterwards typed being correctly and accurately
16 set forth in the foregoing 18 pages and said
17 deposition is now herewith returned

18 I further certify that I am not counsel, attorney
19 or relative of either party or clerk or stenographer of
20 either party, or of the attorney of either party or
21 otherwise interested in the event of this suit

22 IN WITNESS WHEREOF I have hereunto set my hand
23 and affixed my Seal at my office in Independence,
24 Missouri this 29th day of May 2007

25 _____
James A. Leacock CCR
Certified Court Reporter #662

20
21
22
23
24
25

<p>A</p> <p>Academy 5 9,19 7 1 accurately 19 11 address 8 4 Administration 10 2 advanced 7 1,2 affixed 19 16 aforesaid 19 10 age 4 7 agreeable 4 22 agreed 2 3 14 24 answer 4 20 answered 9 11 17 2 appear 16 1 APPEARANCES 1 17 applications 10 6 Aside 12 5 asked 17 1,2 asking 6 12 assistant 9 20 association 3 4 9 22 assume 4 20 attend 5 8 11 10 13 8 14 22 attendance 11 23 attended 6 3,17,21 11 8 12 6 13 13 14 3,12 15 1,6 attending 7 23 11 16 12 5 14 4 attorney 19 13,14 audio 3 20 a.m 3 2</p> <hr/> <p>B</p> <p>back 4 15 8 15,16 10 21 17 11 Baptist 5 10 6 4,5,6 9 20 Basically 12 24 basis 11 14 beautiful 13 17 begins 3 8,12 behalf 1 16 3 18,24 4 8 Bennett 1 25 3 3 birth 4 25 blocks 15 7 Bob 10 22,24 11 3 12 12,12 13 7 15 25 16 19 17 5 Bob's 14 22 15 19 born 5 2 11 5,7</p>	<p>Boulevard 1 12,20 3 11 Brian 1 25 3 3 8 16 broke 17 5 Brother 16 9 brother-in-law 12 10 brought 9 5 building 13 22</p> <hr/> <p>C</p> <p>C 19 1,1 called 16 24 case 2 9 3 17 5 11 Catholic 6 6,14 12 6,10 13 8,17 16 1,4 Catholicism 11 6 Cause 1 5 CCR 1 13 19 19 Center 9 21 Certified 1 15 19 5 19 20 certify 18 7,8 19 6 19 13 change 7 4 changes 18 7,9 Christmas 13 12 14 11 12,23 church 11 7 18 13 13,17 14 1,12 14 25 15 5 6 Circuit 1 13 16 Citizens 9 22 city 1 12,20 3 11 5 6,7 10 12,14 class 7 16 8 22 9 6 9 14,15 Classical 5 9,19 7 1 clerk 19 13 closer 6 22 college 7 24 10 22 11 12,21 15 10 16 17 17 7 11,14 commission 18 15 concerning 19 9 consider 11 17 contact 17 9 controversy 19 10 copy 2 5,6 correct 5 13,23,25 6 8,20 7 18,19 8 8 8 12 10 3,17,23 12 4 13 19 21 15 4 7,11 16 16 16 25 17 4 13,17</p>	<p>corrections 2 8 correctly 19 11 counsel 3 22 19 13 county 1 13 17 5 6 19 4 couple 12 13 16 20 course 7 10 15 15 court 1 1,15 3 7,16 19 5,20 Craig 1 12,19,19 3 10,24,24 9 10 17 25 currently 9 24 curriculum 12 3</p> <hr/> <p>D</p> <p>D 2 13 dad 11 8,13 13 1 Dan 1 12,19,19 3 10,24 date 3 14 4 25 12 12,15 day 14 12 18 14 19 16 days 16 7 17 7,11 December 10 20 Defendant 1 8 4 8 defendants 1 16,21 3 19,21 degree 7 12,14,20 deposition 1 10,14 2 5,6 3 5,8,9,15 3 18,20 19 6,12 determination 10 10 determinations 9 24 10 7 device 3 21 different 11 5 dinner 12 23,25 13 4 disability 9 23 10 5 10 6 Discussion 8 14 Division 1 5 door 10 19 Dry 5 15,17 duly 19 9</p> <hr/> <p>E</p> <p>E 2 13 19 1,1 easy 9 9,15 education 6 24 either 19 13,14,14 employee 10 1 Esquire 1 14 3 4,8</p>	<p>evening 14 8 event 19 14 examination 2 15 4 9 19 10 examined 1 11 4 7 19 10 expires 18 15 express 16 3 extensive 16 12 extra 6 16</p> <hr/> <p>F</p> <p>F 19 1 fact 6 18 10 21 family 5 12 8 2 final 10 10 finished 7 20 first 9 6 13 14 15-14 19 9 five 10 20 15 7 follow 7 10 follows 4 8 foregoing 19 11 Forest 6 1 forth 19 11 four 12 13 freshman 9 2 15 9 friend 7 2 friends 14 5 full 17 14 funeral 12 9 further 19 13</p> <hr/> <p>G</p> <p>Gerald 1 22 getting 6 24 go 6 16,22 7 3,8 8 15 11 1,24 12 11,24,25 13 2 13 3 14 20,24 going 3 2 4 16,20 6 15 7 3 9 10 10 21 11 3,13 12 20,22,22 13 7 16 12 17 14 good 3 1 6 24 13 5 17 18 graduate 7 6 graduating 9 17 Grand 1 12,20 3 11 8 9 14 14,14 Gravois 6 5 gray 13 22 grow 5 4 growing 11 4,8 guess 8 9 9 4</p>	<p>guy 17 18</p> <hr/> <p>H</p> <p>half 10 15 hand 19 15 hang 13 3 HEPLERBROOM 1 22 hereunto 19 15 herewith 19 12 high 1 7 4 3,14,15 5 8,20,22 6 17 7 6 7 16,23 16 6 home 6 22 7 24 9 17 honestly 17 2 house 12 20,22,24 14 5 15 8 Humphrey 8 6,9 husband 10 18</p> <hr/> <p>I</p> <p>idea 14 20,22 Independence 19 16 instance 3 19 interested 19 14 introductory 9 7 invite 13 4 Italian 9 14 15 15</p> <hr/> <p>J</p> <p>JACKSON 19 4 JAL 18 21 James 1 13 19 5,19 Jerry 4 1,12 Jim 3 7 John 1 6 4 2,14 5 9 6 4,5,6,17,21 John's 11 24 12 6 junior 15 10 jury 4 24</p> <hr/> <p>K</p> <p>Kansas 1 12,20 3 11 10 12,14 kids 16 17 kind 7 4 9 8 13 22 14 17 knew 4 15 know 5 11 11 6 11 7 1 9 16 11 15 12 10,13,15,19 21 12 21 14 7,17 15 13 16 4 17 5 17 11</p>
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11 4,17 17 12	outside 9 17 10 19	reasons 16 14	Soldan 5 21,22	testimony 18 7,8
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IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS

STATE OF MISSOURI

ROBERT WILLIAM VISNAW,)	
)	
Plaintiff,)	
)	
vs	)	No 06CC-000008
)	
MARIANIST PROVINCE OF THE UNITED STATES, ST JOHN VIANNEY HIGH SCHOOL, INC , and BROTHER WILLIAM MUELLER,	)	Div No 15
)	
)	
Defendants)	

VIDEOTAPED DEPOSITION OF LAURA E MARGEL

May 19, 2007

Tacoma, Washington

432

1 APPEARANCES

2 For the Plaintiff:

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20 Also present: Ed Burke, videographer
21
22
23
24
25

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EXAMINATION INDEX

EXAMINATION BY:	PAGE NO.
Ms. Mueller	6

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE NO.
(No exhibits marked for identification.)		

1 BE IT REMEMBERED that on Saturday,
2 May 19, 2007, at 1320 Broadway Plaza, Tacoma,
3 Washington, at 9:14 a.m., before JOHN M.S. BOTELHO,
4 CCR, Notary Public in and for the State of
5 Washington, appeared LAURA E. MARGEL, the witness
6 herein;

7 WHEREUPON, the following
8 proceedings were had, to wit:

9
10 <<<<<< >>>>>>

11
12 THE VIDEOGRAPHER: Good morning
13 We are on the video record at 8:14 a.m My name is
14 Ed Burke, and I am a legal videographer in
15 association with Esquire Deposition Services, located
16 at 720 Olive Street, Suite 1610, St. Louis, Missouri.
17 The court reporter today is John Botelho of Esquire
18 Deposition Services.

19 Here begins the videotape deposition of Laura
20 Margel; is that correct?

21 THE WITNESS: "Margel."

22 THE VIDEOGRAPHER: Margel. Taking
23 place at the Sheraton Hotel in Tacoma at 1320
24 Broadway, Tacoma, Washington.

25 Today's date is May 19th, 2007. This deposition

1 is being taken in the matter of Robert Visnaw,
2 plaintiff, vs. William Mueller, et al , defendants,
3 in the Circuit Court of the County of St. Louis,
4 State of Missouri, Case No. 06CC-000008.

5 This deposition is being taken on behalf of
6 plaintiff -- or excuse me -- defendants, and the
7 party at whose instance this deposition is being
8 recorded on an audio-video recording device are the
9 defendants.

10 And will the counsel please state their names for
11 the record starting on my right

12 MS. MUELLER: My name is Amanda
13 Mueller. I'm here on behalf of defendants Vianney
14 high school and Marianist Province of the United
15 States.

16 MR. CRAIG: Dan Craig on behalf of
17 plaintiff Robert Visnaw.

18 THE VIDEOGRAPHER: And will the
19 court reporter now swear in the witness.

20
21 LAURA E MARGEL, having been first duly sworn
22 by the Notary, deposed and
23 testified as follows:
24

25 EXAMINATION

1 BY MS MUELLER:

2 Q Good morning, Ms Margel. My name is Amanda Mueller,
3 as you heard already. I represent the Marianist
4 Province of the United States and Vianney High School
5 in a lawsuit that has been filed out in St. Louis
6 County by Robert William Visnaw.

7 Could you state your full name for the record,
8 please?

9 A Laura Elizabeth Margel.

10 Q Ms Margel, have you ever had your deposition taken
11 before?

12 A Yes.

13 Q How long ago was that?

14 A 20 some-odd years ago.

15 Q Okay. Well, let's go over a few things then just so
16 we can refamiliarize you with the process. Today the
17 court reporter is going to be taking down everything
18 that I ask you and all of your responses, so if you
19 can make sure to speak loudly and clearly so he can
20 hear what you say clearly, that will be very helpful.

21 Also all of your answers need to be verbal in
22 nature, so shaking your head, you know, like yes or
23 no doesn't show up well on the written transcript of
24 this deposition. So if you can make sure you say
25 everything out loud, that would be good too.

1 Also it can be easy in the course of questions
2 and answers to see where I'm going with a question
3 and go ahead and try to answer me before the question
4 is done, just kind of a conversational thing, but
5 again that kind of comes out as a messy transcript.
6 So if you could wait until I'm done with my question
7 completely before you go ahead and start to answer,
8 that will be helpful, and I'll do the same for you.
9 I'll wait till you're -- I can tell you're totally
10 done before I proceed with the next question.

11 Finally, if there's anything I ask you today that
12 you don't understand, please ask me to clarify or let
13 me know if you need me to ask a different way or you
14 just don't understand what I'm asking you.
15 Otherwise, if you go ahead and answer the question,
16 we'll presume that you understood it as asked and
17 answered accordingly, okay?

18 A I understand.

19 Q What is your date of birth, Ms. Margel?

20 A March 28th, 1972.

21 Q And what's your current address?

22 A 4602 South 55th Street, No. 20, and that's Tacoma,
23 98409.

24 Q How long have you lived out here in Tacoma?

25 A I moved back from St. Louis to Tacoma, I -- January

1 of -- let's see I'm sorry. It's 2007, so it had to
2 have been January 2005 -- no, 2003.

3 Q And do you plan on staying out here permanently?

4 A Oh, yes.

5 Q And do you live here in Tacoma full-time?

6 A Yes.

7 Q What's your current occupation?

8 A I am -- I work in the operations department for a
9 financial firm. Operational trader basically.

10 Q How long have you been doing that?

11 A I've been in the same line of work for about twelve
12 years.

13 Q Have you worked for the same company that entire
14 time?

15 A No.

16 Q Okay.

17 A I've been with this company for a year. Previously I
18 was with another company for two years, and then I
19 was in St. Louis before that.

20 Q What do you do as an operations -- I guess in the
21 operations department for the financial service
22 company?

23 A I open accounts, I place orders, trades upon trades,
24 equities trades, mutual fund trades. I service all
25 existing accounts, being retail, retirement. And

1 then any of our reps that are within the office, if
2 they have anything, I guess I help them with any type
3 of account function that they need. I stay in -- up
4 to speed with all the compliance for the different
5 types of accounts and, you know, I -- I do a lot
6 every day, but I -- I -- I can't think of -- I think
7 that basically kind of covers everything

8 Q When you were in St. Louis, I think you said you've
9 been in this line of work twelve years, is that
10 correct?

11 A Along the same lines of work. I worked with another
12 firm in St. Louis. I worked with Paine Webber at
13 that time. It's merged. It's now UBS Global

14 Q And what's the name of your firm here in Tacoma?

15 A Bush, Polen & Associates. We are a subsidiary
16 company of Raymond James Financial Services

17 Q Do you have a college degree?

18 A I do not.

19 Q Do not, okay Can you give me just a brief nutshell
20 of your educational history? Where did you go to
21 high school?

22 A Capital High School, in Olympia, Washington.

23 Q And what year did you graduate?

24 A 1990.

25 Q And then after graduating from high school, did you

1 have any other additional education?

2 A I did take courses through the institution of --
3 Institute of Financial Education. Being in the
4 financial world, I basically took courses that
5 were -- college courses that just pertained to my
6 job.

7 Q Do you have any kind of specialized education for
8 purposes of the job you hold now other than what you
9 just described?

10 A I'm currently studying for the Series 7 exam, which
11 will cover the license to be an actual financial
12 advisor so I could go and suggest -- give financial
13 advice regarding NASD trading, things like that.

14 Q Now, you said that you went to high school in
15 Olympia, Washington. Are you originally from the
16 Washington or the Tacoma area?

17 A I did. I grew up here I lived here for 23 years,
18 22 years, moved to St. Louis two days before my 23rd
19 birthday. I grew up in Olympia, Washington

20 Q And what precipitated your move to St. Louis?

21 A I moved there with Robert.

22 Q When you say "Robert," are you referring to the
23 plaintiff in this case?

24 A Robert Visnaw, yes.

25 Q So you know Mr. Visnaw, correct?

1 A Yes, I do.

2 Q Okay. Tell me, how did you first make the
3 acquaintance of Mr. Visnaw?

4 A We met in a bar called Happy Days that is located in
5 Tacoma, Washington. I had gone up there with my
6 girlfriends, and I met him there.

7 Q You were having just a typical -- just a night out
8 with your friends?

9 A Actually, I worked two jobs at the time. I worked
10 for a bank, and then I also was bar-tending
11 part-time, so I rarely got to go out, so I was
12 designated driver for my girlfriends for -- well, to
13 drive them up there because they had already been out
14 in Olympia

15 We were young, 20, 22 at the time, so I drove
16 them up there and was not planning on staying, but
17 ended up meeting Mr. Visnaw. He actually made quite
18 an impression when I met him that evening, so I
19 stayed to drive my girlfriends home.

20 Q About how old were you? You said you were 22?

21 A I was 22. I had just turned 22 when I met him

22 Q So what was this, about 1995? Does that sound about
23 right?

24 A I turned -- yeah.

25 Q Okay.

1 A '93 --

2 Q I'm sorry. Go ahead.

3 A I believe -- lets see. I turned 20 in '92, so '93,
4 '94.

5 Q Do you have any idea how old Mr. Visnaw was?

6 A I believe he's a couple of years older than me. It's
7 been such a long time I don't quite remember.

8 Q So you met him that evening. Were you guys just
9 friends at first or did you begin dating? Can you
10 tell me a little bit about that?

11 A Bob actually -- Bob cut in -- when I walked past him,
12 acted like I knew him, and I -- which I meet a lot of
13 people. I bought into that right away and thought
14 that I had, and I could not remember where I -- I
15 knew him from, and I was really embarrassed.

16 Finally at the end -- I finally figured out that
17 I didn't know him, and he offered to buy me a drink,
18 take me out for dinner, and I turned him down. And
19 at the end of the evening when I was leaving, he
20 again asked if he could take me out, and I told him
21 we were going to a restaurant for breakfast, and if
22 he wanted to join us, then he was welcome to do so.

23 He had to take his friends back to Fort Lewis
24 because he was also designated driver, and I told him
25 if he made it back before we left, that we could talk

1 about it.

2 Q And you said that he was going to take his friends
3 back to Fort Lewis, right?

4 A Correct

5 Q What was your -- did Mr. Visnaw tell you what he did
6 at the time?

7 A I actually didn't realize that he -- that he had to
8 take them back to Fort Lewis. I understood that he
9 had to take them home. He told me that he was an
10 interpreter. I didn't realize that he was in the
11 Army until after our first date because I probably
12 wouldn't have gone out with him if I would have known
13 he was in the military.

14 Q Excuse me. Did he -- did you actually go to
15 breakfast the next morning?

16 A He did show -- he did take them back and he made it
17 back in time.

18 Q So at that point, I mean, did you start dating? What
19 happened next?

20 A We -- we ended up dating -- going out on a date and
21 ended up spending a lot of time together. We went
22 out on -- with friends, some of his friends from Fort
23 Lewis, and we spent a lot of time together basically
24 fairly quickly after that.

25 Q Why do you say you wouldn't have dated him if you

1 would have known he was in the Army?

2 A Well, most people know if you live close to a
3 military base, most people that are in the Army, they
4 don't end up staying here for extended periods of
5 time, and there's even been some people that have, I
6 guess, misrepresented themselves and have been
7 married elsewhere. Not that that has happened to me,
8 but I have seen that happen. I just wanted to avoid
9 anything.

10 Q So you started spending a lot of time together At
11 what point would you say -- did you at some point
12 enter into what you would consider to be, you know,
13 an exclusive dating relationship?

14 A I'd say a few -- a few weeks later. It was -- it's
15 just that I actually hadn't had time to date anybody
16 else, so I wasn't dating anybody else I just -- I
17 just decided that I wouldn't be dating anybody else.
18 I think that it probably was about a month later that
19 if I would have mounted a date with somebody else, I
20 probably would have been upset. We never, you know,
21 stated, "Okay, we're exclusive," but it was pretty
22 much implied. We knew that.

23 And I would say a couple months later, he was no
24 longer staying at Fort Lewis He stayed at the
25 apartment on his off days, so we were -- I don't

1 think there was much time to be anything but
2 exclusive.

3 Q About how long did you date -- just how long were you
4 just dating? And by that I'm meaning, did you
5 ever -- did your relationship ever progress beyond
6 just dating?

7 A Yes.

8 Q Tell me about that.

9 A I'd say, you know, it was a few months later, and Bob
10 and I just -- we spent all of our time together. We
11 got along very well. We just had a fun time
12 together. And I knew that there was a possibility of
13 him getting out of the military and -- or
14 re-enlisting, and it's about that time that we
15 started discussing whether or not -- if one of those
16 situations would come up, what we would do, if we
17 would stay together or we wouldn't. And we decided
18 that we would probably stay together.

19 Q Are you a member of any religious affiliation, Laura?

20 A Yes I am Catholic.

21 Q Okay. Do you know what religion Bob -- or Mr. Visnaw
22 was at the time that you were dating?

23 A Yes. He was Catholic. We actually discussed that
24 on -- on the very first night that we met.

25 Q So it was your understanding at the time that he

1 was -- he still considered himself to be Catholic,
2 right?

3 A Uh-huh.

4 Q Did you ever attend mass or any kind of religious
5 services together?

6 A Often.

7 Q Here in Washington?

8 A No, never in Washington. Always in St. Louis.

9 Q Did you ever meet Mr. Visnaw's family while you were
10 still living out here in Washington?

11 A While I was still living in Washington, no. I spoke
12 with his mother and got to know her over the phone.
13 About the time when we figured out that Bob was
14 actually going to be getting out of the military and
15 we had decided that we were going to be married and
16 I'd be moving back to St. Louis with him, I got to
17 know her very well over the phone because we knew
18 that I would be -- you know, we would both be staying
19 with her until we found a place to live and I found a
20 job there.

21 Q I believe you just testified that the topic of
22 Mr. Visnaw being Catholic came up very early on in
23 your conversations; is that right?

24 A Very first night I met him.

25 Q What did he say at that time?

1 A He was wearing a crucifix, and at the time I was not
2 Catholic, and so I asked him why he -- I don't even
3 know why this question came up, but I remember that
4 it was part of a Bible study class that I had taken
5 through Christian studies that said that a lot
6 of Christian -- you know, Christian religions do not
7 wear a crucifix because they did not want to show
8 the -- the death of Christ. They chose to represent
9 the rebirth of Him.

10 So I asked him why he wore a crucifix, and he
11 said that it was something he was very proud of and
12 that that's what he believed. And so, you know, at
13 that point I realized that it probably wasn't a
14 subject to joke about, but he did answer my
15 questions, you know, very strongly and clearly, you
16 know, on how he felt about it.

17 Q Did Bob -- well, while you were still living out in
18 Washington, did Bob ever tell you about where he'd
19 gone to high school or had he attended college at
20 your knowledge --

21 A Yes

22 Q -- at that time?

23 A He went to I believe University of Missouri St.
24 Louis. Part of the time he also -- he went over to
25 Madrid to study. Bob speaks many different

1 languages. I knew that he went to a private Catholic
2 school, and I think that Bob, you know, kind of told
3 me about the private Catholic schools, kind of
4 preparing me for St Louis, because in St Louis the
5 majority of the children go to private schools there.

6 That's pretty much unheard of here. It's
7 completely different here, but in St. Louis there's a
8 Catholic church on every street corner, so a lot of
9 the kids go to Catholic schools as they're growing
10 up.

11 Q Do you know if at the time when he was in Washington,
12 if he'd kept in touch with any of his teachers from
13 where he went to high school?

14 A No, not in Washington.

15 Q Did he ever mention any specific teachers from his
16 high school?

17 A He did.

18 Q Who did he mention?

19 A Brother Mueller was the only teacher that he'd ever
20 mentioned. This was probably -- I'm actually not
21 sure when he mentioned him for the first time. Bob
22 was very proud of, you know, his accomplishments in
23 high school He was a very good swimmer. Obviously
24 very good at foreign languages. And he did mention
25 Brother Mueller, that he was one of the teachers that

1 he enjoyed while he was in -- while he attended
2 Vianney.

3 He wasn't necessarily -- he -- he liked Vianney.
4 I don't know that -- if he had a choice, that he
5 would have necessarily attended Vianney though That
6 was kind of the impression that I had.

7 Q I believe you testified that at some point a decision
8 was made that you were going to move to St. Louis; is
9 that right?

10 A Yes

11 Q Okay. How did you arrive at that decision?

12 A Bob had gone on TDY, which I don't know exactly what
13 that stands for, but that is he was -- had gone over
14 to Korea for probably two months, three months. When
15 he came back, he had a decision to make on whether or
16 not he was going to re-enlist in the military or if
17 he was going to get out Bob, being a very good
18 soldier, had decided that he would like to re-enlist,
19 but being a Korean linguist, he would automatically
20 have to go to Korea for 40 weeks, and I remember
21 being very emotional about that.

22 I did not -- being very young, did not realize --
23 did not think that, you know, I wanted to be
24 separated from him for that long, and the only way a
25 person could ever -- you know, could ever accompany

1 him over to Korea I believe is something called,
2 like, a command sponsorship, something like that

3 So he did check with the military to see if he
4 could take a position in Japan where I could go with
5 him, but it was only an E-5 position. He was an E-6,
6 so they would not let him take the position. He
7 decided that he -- so he kind of hesitated on his
8 re-enlistment and then finally decided that, you
9 know, at the very last minute that maybe he would
10 re-enlist because he was a good soldier.

11 When he went back in to re-enlist, they had
12 misinformed him about his re-enlistment bonus and
13 basically had told him that if he was going to
14 re-enlist, that he would be re-enlisting without any
15 benefits other than just staying in the military, and
16 because it wasn't his error, he was a little --
17 actually he was very upset about that, so he decided
18 at that point to get his DD214, leave the military.
19 He did already have a job waiting in St Louis for
20 him at SeaCorp Mortgage and asked me to come back to
21 St. Louis with him.

22 I told him that there was no way that I was going
23 to leave my family and everything here unless I was
24 moving back there to get married. And we already
25 talked about marriage before that, so at that point I

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1 guess we became officially unofficially engaged.

2 There was never an exchange of rings, just because I
3 don't -- financially neither one of us were in that
4 kind of position and rather not go into debt for an
5 engagement ring.

6 Q So when did you -- what time was that that you became
7 engaged?

8 A We had decided before that that we would be together,
9 but I would say that that was probably December,
10 November/December.

11 Q Of '94, '95?

12 A No, no, it had to have been '93, '94 We moved back
13 right before my 23rd birthday, so it had to have been
14 the year -- the following December before we moved,
15 previous December.

16 Q Where did you move to in St. Louis?

17 A We moved to south -- South Canalou. Bankfield Court
18 is where his mom lives. We stayed with her until we
19 got -- we got an apartment in Chesterfield.

20 Q Did you ever meet Mr. Visnaw's father or had he
21 passed away by the time you were dating?

22 A He had passed away before.

23 Q Did he ever talk about his relationship with his
24 father?

25 A He did.

1 Q What did he say?

2 A He did not have a good relationship with his father,
3 and I think that there was a lot of regret. I -- I
4 didn't quite understand what the situation was. I
5 always felt that there was something more to it than
6 I -- than he was telling me because I just never
7 really added up why -- I'd heard from his mother that
8 William Visnaw, his father, was a wonderful man, but
9 that she -- her one regret was that he had -- he did
10 not treat her son very well towards the end They
11 did not have a very good relationship It was just
12 never clear what his father -- why his father had
13 problems with Bob.

14 Q When you moved to St. Louis, were you Catholic yet at
15 that point?

16 A No.

17 Q I think you testified earlier that you did attend
18 church with Mr Visnaw often once you came to St.
19 Louis. When did you begin attending church with him?

20 A Well, since we had decided that we were going to get
21 married, Bob's grandfather was still alive, and Bob's
22 whole family is Catholic. We decided that I would
23 need to go through the RCIA classes, which is a
24 conversion to Catholicism. You actually have to take
25 courses with the Catholic church. My family was

1 Catholic up to my parents, and then they chose not to
2 attend, so it really wasn't much of a jump for me to,
3 having my grandmother with me all through high
4 school, for me to convert.

5 We started going to not every weekend -- I'd love
6 to say that we were that devoted, but Assumption
7 Parish, which is right across the street from the --
8 or actually down the street from the neighborhood
9 where his mother lives, but to be honest, I really
10 didn't enjoy the priest there He was not a very
11 nice man and was not at all favorable for me
12 converting.

13 So we actually decided -- when we moved to
14 Chesterfield, we were close to St. Monica's Parish,
15 which is the parish where his parents were married,
16 and his grandfather had attended that church for
17 years. So we contacted that church and met with
18 Deacon Dalton and started -- we had a Pauline
19 Privilege taken care of because I had been married
20 before, which annulled my previous marriage And
21 then I started the RCIA classes, and Bob and I had
22 gone -- throughout we had gone to church, you know,
23 at Assumption or, you know, St. Monica's

24 Q When you attended church, did you observe him
25 participating fully in the mass? Did he take

1 communion?

2 A Yes.

3 Q Was Bob involved in your decision to convert to
4 Catholicism?

5 A Yes, it was important for Bob that we were married in
6 the Catholic church, but mainly for his grandfather
7 because that would have -- that was very important
8 for his grandfather, and his grandfather was very
9 tough on Bob. Being the only grandson, he was --
10 expected a lot from him. And, you know, his Mom was
11 also a Catholic, and that would have been important
12 for her. It would have been nice for her for us to
13 be married in the same church that she was married
14 in.

15 Q Was it clear to you though that it was important to
16 Bob as well?

17 A It was important to Bob, yes, that -- he wouldn't --
18 I don't know that he would have said, "We can't be
19 married if you do not convert," but I know that he
20 was happy that I was converting. He was happy that
21 we were going to be and we were going to try and
22 figure out a way to get married in St. Monica's
23 because usually you get married in the parish that
24 you live in, and we were not going to be able to live
25 in St. Monica's parish because it's a very wealthy

1 area.

2 So we lived close to it though, and since I was
3 taking the RCIA classes there, we were hoping that,
4 you know, that would help us out. So it was
5 important that -- that we got married in the Catholic
6 church. I don't know that he would have not married
7 me, but I think it was.

8 Q Who was your sponsor for RCIA?

9 A His grandfather.

10 Q Did he remain your sponsor -- well, strike that.

11 Have you been confirmed Catholic?

12 A I have

13 Q Okay. Did you finish the RCIA program there at St.
14 Monica?

15 A I did.

16 Q Was he your sponsor the entire time?

17 A Yes, he was. He did not attend the baptism. He was
18 not well.

19 Q When were you baptized or confirmed?

20 A That was ten, eleven years ago, at the Easter vigil,
21 so that is your first communion, confirmation,
22 baptism all at the same time.

23 Q So that was around '96, '97?

24 A It was a year after we moved there.

25 Q Were you still dating Bob at the time of your

1 confirmation?

2 A No.

3 Q Did he attend your RCIA program at all with you?

4 A He didn't -- I think he went to a couple classes with
5 me. He did attend the -- I did have to go through
6 counseling for the Pauline Privilege to annul me for
7 my previous marriage, and he did go with me to meet
8 with Deacon Dalton on my own. Actually those may
9 have been RCIA classes because some of mine -- they
10 were very flexible with me because of my job I
11 wasn't -- I also worked in the evenings.

12 I didn't -- I wasn't always available to come to
13 class, so one of the older deacons would give me
14 individual classes sometimes I know that Bob
15 attended a couple. He was there for my baptism,
16 first communion, confirmation at the Easter vigil
17 even though we were not dating.

18 Q Had you asked him to attend that?

19 A No. I was actually very surprised He was waiting
20 on the church steps when I got out of the car.

21 Q As far as your marital plans, who did you meet
22 with -- I'm sorry. I think you maybe already
23 testified to this. Who did you meet with at St.
24 Monica regarding getting married? Was that Deacon
25 Dalton?

1 A Regarding -- we -- we expressed to Deacon Dalton that
2 we had wanted to get married, and in order to do
3 that, since I'd been married before briefly, I had
4 to -- because the Catholic church -- even though I
5 was not Catholic, they recognized that as a binding
6 marriage, so they -- you have to go through an
7 annulment process. I did not have to go through the
8 full annulment because that would have been very
9 expensive and it would have taken a long time, and we
10 had planned on getting married within, you know, a
11 year or so. That's what our -- we had been talking
12 about that. So we were able to do something called a
13 Pauline Privilege, which -- do I need to explain
14 that?

15 Q No, no.

16 A Okay. So it's a shorter process. It does annul the
17 marriage, and the reason that we were doing that was
18 because Deacon Dalton understood that after I --
19 after I was confirmed, that we would probably be
20 making plans to get married in the church.

21 Q Earlier you gave some testimony regarding Mr. Visnaw
22 having mentioned a Brother Mueller -- Mueller; is
23 that right?

24 A Uh-huh.

25 Q When you live -- or after you moved to St. Louis, did

1 he ever tell you anything more about having attended
2 high school at Vianney?

3 A Not much. I knew -- I met Kevin Kelly, who was our
4 insurance agent. He went to Vianney. Another friend
5 of ours who's a firefighter, he had gone to Vianney.
6 So when they got together, you know, they would talk
7 about things. You know, I heard from Kevin, you
8 know, what a great athlete Bob was. You know, I'd
9 hear things here and there. I heard about his
10 ex-girlfriend Stephanie, who was a girlfriend that
11 he'd had through high school. He did mention Brother
12 Mueller, and you know, he didn't bring up a lot about
13 Vianney, but you know, it came up in passing and I --
14 you know, I knew where it was, and... (Pause)

15 Q Did he speak positively about it?

16 A He -- he was not negative about Vianney. He was kind
17 of -- he didn't want his kids to go to Vianney, but
18 he -- you know, he was fine having graduated from
19 there. Vianney isn't like -- in St. Louis you have a
20 status basically You know, the famous question is,
21 "Where did you go to -- where did you go to school?"
22 And that is kind of -- that outlines, you know,
23 whether or not you went to a very wealthy high school
24 and -- or whether you didn't. Vianney is kind of
25 mid-range I think that Bob would have had

1 aspirations for his children to go to a different
2 private school.

3 Q Okay. Did you ever -- I think you mentioned that he
4 talked about Brother Mueller or "Mueller"?

5 A Uh-huh.

6 Q Was it your understanding, was he still in contact
7 with Brother Mueller at all?

8 A It was actually surprising to me. I came home. Once
9 we had had our apartment out in Chesterfield, I
10 understood that he had gotten in contact with Brother
11 Mueller. I'm not sure if he contacted -- if Brother
12 Mueller had contacted him or if he contacted Brother
13 Mueller. I think that he had contacted Brother
14 Mueller, and he was coming over for dinner to our
15 apartment, so I had to cook, which was surprising
16 that he ever offered for me to cook for anybody, but
17 I had known who he was just through previous
18 conversations and conversations with his mother
19 about -- his mother said some nice things about
20 Brother Mueller.

21 Q What was the impression of the relationship between
22 the two of them?

23 A They were friends. Most like, you know, in high
24 school every once in a while you meet a great teacher
25 that, you know, you see sometimes afterwards and

1 they're -- it seemed like they were friends.

2 Q Did you ever hear him talking to him on the phone or
3 anything like that?

4 A I think that they did talk on the phone maybe once or
5 twice after that. I -- you know, it was a long time
6 ago. I really can't remember, but I think that after
7 that I don't remember that there was a lot of
8 contact, but I do remember meeting him when he came
9 over for dinner. We had dinner, and then I -- I
10 actually left afterwards. I know he didn't stay for
11 a long time afterwards because I came back I think
12 within an hour or two and he was gone.

13 Q I just want to take a step back. So was your
14 understanding or you believe that Mr. Visnaw invited
15 Brother Mueller over for dinner, right?

16 A I know that he invited him over for dinner, yes.

17 Q And he came to your apartment for dinner?

18 A Yes.

19 Q When he got to the apartment, did Mr. Visnaw greet
20 him?

21 A Yes.

22 Q Did it appear to be a friendly greeting?

23 A Oh, yeah.

24 Q Did they hug, shake hands? Can you give me a little
25 bit of a description about that?

1 A Yeah, I don't remember if they hugged, shook -- I
2 know that it was a warm greeting He'd always felt
3 badly for Brother Mueller. I think that he had to
4 leave the Order because -- it was explained to me
5 Brother Mueller had to leave the Order.

6 His mother was ill and he had to take on a job to
7 help support her, and in order to do that, he would
8 have had to have been granted dispensation from the
9 Catholic church to have income and not have to go to
10 the church And I don't think they were willing to
11 do that, so he had to leave the Order, and I think
12 Bob was -- Bob was very sorry that that happened to
13 him, so you know, they were -- they were friends.

14 Q Over the course of -- I'm sorry

15 A So it was a warm greeting.

16 Q Over the course of dinner that evening, did you
17 observe Mr. Visnaw and Mr Mueller having any kind of
18 conversation?

19 A Sure. We all talked around the dinner table. Bob
20 was a little nervous just -- that being -- that being
21 Bob because Bob was always a perfectionist. He
22 always wanted everyone to see him as being -- being
23 put together, and you know, he knew this was somebody
24 coming -- this was probably our first person ever to
25 come to our new apartment, you know, and he just got

1 out of the military, and I think he was trying to
2 update him on where he'd gone from high school, you
3 know.

4 Q After that evening, did Mr. Visnaw ever talk about
5 Mr Mueller any more?

6 A He made a conversation from time to time, but he
7 never came back over for dinner. We didn't stay
8 together much longer after that.

9 Q Was it your impression that Mr. Visnaw enjoyed that
10 evening?

11 A Yeah, I think he did. Yes, yes.

12 Q Did he tell you that?

13 A I think he thanked me for making dinner, which
14 because I was not very -- I'm still not a very good
15 cook, but I -- yes, I know he had enjoyed the
16 evening, you know He just -- I don't think that
17 Brother Mueller lived -- was local, so I don't think
18 that, you know, that's -- I think that was the reason
19 why it wasn't repeated.

20 Q You mentioned that I think the two of you weren't
21 together very much longer after that; is that
22 correct?

23 A Correct.

24 Q So I assume that means that at some time -- at some
25 point the two of you broke up, right?

1 A Yes.

2 Q When was that?

3 A It was before my birthday the following year. He --
4 I'm not even exactly sure why we got an apartment
5 together. Even while we were still living with his
6 mom, you know, once he moved to St. Louis, Bob
7 started to change from the person that I had met, and
8 eventually I just said, "I can't do this," and I
9 think it was a relief for him.

10 Q In the whole time that you lived in St. Louis that
11 you were dating Bob, did he still attend mass?

12 A To be clear, we did not attend mass weekly.

13 Q Sure.

14 A We -- he attended mass -- if I said, "Hey, I want to
15 go to church this weekend," we would go. If he had
16 some -- if, you know -- if -- if we went to church
17 with his grandfather or something, we would go. If
18 we went with his mom, you know, we would go. There
19 were different reasons, you know, that we would go to
20 mass and things like that. But yes, throughout the
21 time, he would go as long as we were together.

22 Q Sure. Did he ever appear reluctant to go to mass?

23 A I think we were both somewhat reluctant, you know, if
24 it was an early mass.

25 Q Sure

1 A But --

2 Q Outside of being tired though.

3 A No.

4 Q Okay When is the last time that you spoke to
5 Mr. Visnaw?

6 A Probably three months after -- oh, actually let me
7 change that. I saw him at his -- that I spoke to him
8 or that I saw him?

9 Q Well, we can break it down, I guess. When is the
10 last time -- last time that you spoke to him?

11 A A couple weeks ago.

12 Q And why was that?

13 A I contacted him to let him know that I had been
14 contacted regarding the case

15 Q And at that time, did you -- the two of you discuss
16 the case at all?

17 A Not really. We discussed the fact that -- I was very
18 clear with him that -- I was actually very surprised,
19 in fact, that he had listed me as, you know, somebody
20 to contact, and I just told him that, you know, I
21 would state everything as I remembered it. He was
22 fine with that

23 Q After the two of you broke up, did you talk to him
24 regularly at all?

25 A No Bob and I did not necessarily have a great --

1 when we split up, we chose not -- when we split up,
2 it was not necessarily unfriendly, but it was not
3 friendly. He was leaving quickly for Kansas City,
4 and I was fine with that. When they contacted me
5 about -- when they were doing his background check
6 for becoming a federal agent, I participated in that,
7 but I only saw him a few times afterwards.

8 When he came to the apartment, I asked him not to
9 come back anymore. I -- we were not getting along at
10 all, and I just thought it was best that we didn't
11 speak anymore. The last thing that I did, I wrote a
12 letter to him that said, "Please don't come by
13 Please don't call." I gave a copy of the letter to
14 his mother because we were still friends, and I said,
15 you know, "Look, I just don't want there to be any
16 miscommunication, any 'he said/she said.'" We were
17 just choosing not to be friends.

18 I did see him afterwards at his sister Gayle's
19 wedding, his sister Terry's wedding, and I think that
20 was the only other event that I saw him at, and he
21 was friendly, but just, you know, we were at an
22 impasse-ing just like we were acquaintances.

23 Q You don't hold any ill will towards him anymore, do
24 you?

25 A I -- no. No, I don't It's been a long time. I --

1 I was very upset with him when we first split up just
2 because I was very confused as to why he had me move
3 to St. Louis. Looking back on it, it probably was a
4 good move for me, you know, just to expand my
5 horizons, and -- but I don't, you know, actually I --
6 it was just something that was well in the past, you
7 know. I hadn't really thought about it for a long
8 time.

9 MS. MUELLER: I don't think I have
10 anything further, Ms. Margel. Thank you for coming
11 today.

12 MR. CRAIG. No.

13 THE VIDEOGRAPHER. One second. Off
14 record.

15 MS MUELLER: I need to give her
16 the sign-versus-waive thing You have the option,
17 Ms. Margel, to either read a transcript of your
18 deposition and make any kind of little -- not
19 substantive changes, but just kind of spelling or
20 word misstatement, mistranscription errors, or you
21 can waive signature if you think that the court
22 reporter has gotten everything down correctly today.
23 It's totally up to you.

24 THE WITNESS: I assume that
25 everything will be fine

1 MS. MUELLER: Most people waive, so
2 that's fine. Okay. Thank you very much.

3 THE VIDEOGRAPHER: Number of tapes
4 used in today's deposition was one This concludes
5 the deposition. We're going off record The time is
6 8:58 a.m

7 (Proceedings concluded at
8 9.58 a m.)

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IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS
STATE OF MISSOURI

ROBERT WILLIAM VISNAW,)
)
)
 Plaintiff,)
) Case No 06CC-000008
 vs)
) Division No 15
 MARIANIST PROVINCE OF THE)
 UNITED STATES, ST JOHN)
 VIANNEY HIGH SCHOOL, INC.,)
 and BROTHER WILLIAM MUELLER,)
)
 Defendants)

DEPOSITION OF ANN MARIE VISNAW

Taken on behalf of the Defendants

May 22, 2007

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1 IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS
 2 STATE OF MISSOURI
 3
 4)
 ROBERT WILLIAM VISNAW,
)
 5 Plaintiff)
) Case No 06CC-000008
 6 vs)
) Division No 15
 7 MARIANIST PROVINCE OF THE)
 8 UNIFIED STATES, ST JOHN)
 VIANNEY HIGH SCHOOL, INC)
 9 and BROTHER WILLIAM MUELLER,
)
)
 10 Defendants)
 11
 12
 13
 14 DEPOSITION OF ANN MARIE VISNAW, produced,
 15 sworn, and examined on behalf of the Defendants on
 16 May 22 2007 between the hours of 9 00 in the
 17 morning and 10 00 in the morning of that day, at
 18 Hepler, Broom MacDonald, Hebrank, True & Noce, LLC
 19 800 Market, Suite 2300, St Louis MO 63101, before
 20 JACQUELINE A PINGSTERHAUS a Certified Court
 21 Reporter and a Notary Public within and for the
 22 State of Missouri
 23
 24
 25

Page 3

1 A P P E A R A N C E S
 2
 3 The Plaintiff was represented by Mr
 4 Daniel Craig, 1125 Grand Blvd, Suite 1400, Kansas
 5 City, MO 64106
 6
 7 The Defendants were represented by Mr
 8 Justin L Assouad Hepler Broom MacDonald
 9 Hebrank True & Noce, LLC, 800 Market St, Suite
 10 2300, St Louis, MO 63101
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1 IT IS HEREBY STIPULATED AND AGREED by and
 2 between Counsel for the Plaintiff and Counsel for
 3 the Defendants, that this deposition may be taken
 4 in shorthand by JACQUELINE A PINGSTERHAUS,
 5 Certified Court Reporter and Notary Public, and
 6 afterwards transcribed into typewriting, and the
 7 signature of the Witness is NOT waived by
 8 agreement of Counsel and the Witness
 9
 10 o-o-o
 11
 12 ANN MARIE VISNAW
 13 of lawful age, having first duly sworn to
 14 testify the truth, the whole truth, and nothing
 15 but the truth in this case aforesaid, deposes and
 16 says in reply to oral interrogatories propounded
 17 as follows, to wit
 18
 19 DIRECT EXAMINATION
 20 BY MR ASSOUAD
 21 Q Good morning ma'am Could you state
 22 and spell your full name for the record
 23 A Ann M Visnaw A-N-N Initial M
 24 Visnaw, V - as in Victor --I-S N A-W
 25 Q M' is Marie, correct?

1 A Correct
 2 Q And where do you live Mrs Visnaw?
 3 A At 11480 Bay route Court, Apartment
 4 102, St Louis, Missouri, 63126
 5 Q Have you ever given a deposition
 6 before?
 7 A No, sir
 8 Q Okay I'll just be very brief with
 9 some ground rules The reason you're here today is
 10 because obviously your son's lawsuit, and I'm here
 11 to just sort of ask you background information see
 12 what you know what you talked to him about that
 13 kind of thing If there is anything I ask you you
 14 don't understand, can you ask me to repeat it or
 15 rephrase it, okay?
 16 A Yes, sir
 17 Q That's the other thing, you have to
 18 make sure you say it out loud You can't shake or
 19 nod your head And if you answer one of my
 20 questions, I'm going to assume you understood what
 21 I was asking Is that okay?
 22 A Yes, sir
 23 Q Okay, very good Now you are an
 24 accountant I understand?
 25 A Yes, sir

1 Q Maloney and Jackson, is that where you
 2 work?
 3 A Yes sir
 4 Q And that's at South County?
 5 A Yes, sir
 6 Q What's the address there?
 7 A 11422 Gravois Road
 8 Q It's in South County?
 9 A Yes, Suite 102 zip code is 63126
 10 Q How long have you worked at Maloney and
 11 Jackson?
 12 A Twenty years
 13 Q A long time Do you have an
 14 accountant's degree?
 15 A Associates Degree
 16 Q In accounting?
 17 A Yes sir
 18 Q Where's that from?
 19 A St Louis Community College at Meremac
 20 Q Tell me how long you have lived at
 21 11480 Bay Route Court
 22 A I moved in there July of 2006
 23 Q And before that where were you living?
 24 A 4825 Bankfield Court, St Louis,
 25 Missouri 63128

1 Q How long were at the Bankfield Court
 2 address?
 3 A Since 1980, so 26 years
 4 Q And that's obviously where your son Bob
 5 lived when he was going to school at Vianney,
 6 right?
 7 A Yes, sir
 8 Q Actually Bob lived there a little bit
 9 after he graduated from Vianney, didn't he?
 10 A Yes
 11 Q He lived there while he was in college
 12 for part of the time, right?
 13 A He went to the University of Missouri
 14 for one semester, and then he moved back home and
 15 went to University of Missouri in St Louis and
 16 graduated from there
 17 Q So after he came back from Columbia, he
 18 lived at your address on Bankfield Court the whole
 19 time until he graduated from college
 20 A Six months, he went to Spain
 21 Q That's right I forgot about that
 22 Other than this Spain trip and other than being in
 23 Columbia, he lived at home with you that entire
 24 time in college?
 25 A Yes, sir

1 Q And even after he graduated from
 2 college Bob lived at home for awhile didn't he?
 3 A When he went to work until he went to
 4 work at City Corp and then he joined the Army
 5 Q But before he left for the Army?
 6 A He lived at our house
 7 Q That was for how long?
 8 A To be truthful, I really don't know
 9 when he joined the Army I don't know how long it
 10 was, sir
 11 Q How about just a ballpark Do you
 12 think about a year or around two years? I don't
 13 need an exact number
 14 A I think it would be closer to a year
 15 than two years
 16 Q Did you talk to anyone in preparation
 17 to today's deposition?
 18 A No, other than Dan and I talked, but
 19 that was it
 20 Q Did you talk to your son?
 21 A All Bob told me was to answer their
 22 questions, Mom, and don't get flustered because I
 23 do have a heart condition, and I think that's what
 24 he is worried about
 25 Q Have you ever talked about Bob's case

Page 10

1 at all with him?

2 A No All he has said is that they have

3 had depositions and that he's talked to Dan But

4 Bobbie has not said a thing

5 Q About the lawsuit or anything involving

6 the lawsuit?

7 A No

8 Q Tell me what you talked to Dan Craig

9 about

10 A This morning - I talked to him

11 yesterday because I called him and he told me where

12 to meet him This morning I talked to him and he

13 just told me to answer your questions 'yes or no

14 and if I truly did not remember say I do not

15 remember and to make sure that I talked and did not

16 shake my head Practically everything you said

17 Q Those are good rules Anything else

18 you talked about with Mr Craig?

19 A All he said was that he had just gotten

20 back into town He was gone for the weekend He

21 had taken a deposition in Washington with Laura and

22 that depositions were also taken from my

23 daughter-in-law Brandy and from Tracy Dye

24 Q You know Laura don't you, the girl

25 that s out in Washington?

Page 11

1 A Oh, yes

2 Q You know her very well when she was

3 dating --

4 A She and Bobbie lived with me for awhile

5 when they first moved back from Washington

6 Q She is a good person, isn't she?

7 A Very good

8 Q One thing you have to make sure Mrs

9 Visnaw, it's very easy, but try to let me get the

10 question out otherwise the court reporter has a

11 terrible time taking it down It's hard to do

12 right now Now, tell me when you first found out

13 about Bob's lawsuit

14 A About his lawsuit?

15 Q To be truthful, I really don't know I

16 do know that I got a letter from Vianney in 2005

17 stating in the letter they never even mentioned

18 anything other than there was something going on

19 and as a mother of a student of Vianney did I have

20 any idea I called Bobbie and I said, Bobbie what

21 is going on? He said, mom what are they talking

22 about? I said, I don't know That was on a Monday

23 or Tuesday, and that Saturday there was an article

24 in the paper about Brother Mueller I called

25 Bobbie up, said according to this article it has

Page 12

1 something to do with Brother Mueller, but I don't

2 believe it He says I don't either And Bobbie

3 had already contacted Dan before I ever knew there

4 was going to be a lawsuit or that I ever knew that

5 he was involved in any of this

6 Q So when the newspaper article first

7 came out about Mr Mueller, Bob's comment to you

8 was that I don't believe the allegations against

9 Mueller, right?

10 A And so was mine I mean I read it and

11 I called him right up and I said, Bob, it's got to

12 do with Brother Mueller, I don't believe it and he

13 said Brother Mueller? I don't either

14 Q Do you remember Brother Mueller from

15 Vianney?

16 A Oh, yeah

17 Q Did you ever meet the man?

18 A Oh, yes

19 Q How many times do you think you met

20 him?

21 A I probably talked to him five, ten

22 times

23 Q And that was just when you were up at

24 school picking up your son What was the occasion

25 when you would go up there?

Page 13

1 A Different like parent/teacher meetings

2 or school activities, etcetera

3 Q You were involved in the Parent/Teacher

4 Association or whatever it's called?

5 A My husband and I went to all the

6 different functions the school had, and I believe

7 he used to come to watch Bobbie dive and I think I

8 saw him there

9 Q As you sit here today, do you recall

10 any subjects of discussion you may have had with

11 Mr Mueller back in the early 80s?

12 A No

13 Q Were you ever -- in these five to ten

14 times you talked to Mr Mueller, was your son Bob

15 present with you at any of these times?

16 A Usually not because if it was at a

17 diving meet, Bobbie would be around the pool No

18 usually

19 Q But was your contact with Mr Mueller

20 to a hi Mrs Visnaw, how are you,' that kind of

21 thing? It wasn't anything of substance that you

22 recall?

23 A No, nothing of substance No

24 Q And there was nothing unusual that

25 sticks out in your mind on these occasions that you

1 talked or met with Mr Mueller back in the early
2 80s?
3 A No, nothing
4 Q Can you recall any conversations that
5 Bob had with you about Brother Mueller Mr
6 Mueller, back in the early '80s when he was
7 attending Vianney?
8 A Not really
9 Q In other words, do you remember Bob
10 ever commenting about Mr Mueller at all when he
11 was going to Vianney?
12 A All I know is that he was his science
13 teacher and that's all about -
14 Q But you don't remember Bob saying, oh,
15 I really like this teacher or really dislike this
16 teacher, etcetera, etcetera? You don't remember
17 any comments like that?
18 A No
19 Q You don't remember any comments about
20 Bob meeting with Mr Mueller at school at any point
21 while he was in Vianney?
22 A No
23 Q No, that's correct, right?
24 A No He never did mention it to me
25 I'm sorry

1 Q Sometimes you get double negatives and
2 it's easier to say correct All right, so
3 initially Bob has this conversation with you after
4 the alumni letter comes to your house Tell me
5 when you first found out about your son Bob's
6 allegations against Mr Mueller It must've been
7 after the alumni letter
8 A Oh, yes When he went to a
9 psychologist or something and he said, Mom, he told
10 me once Mom I think I'm involved in this And I
11 said how do you know? And he says I've been
12 seeking help And to be truthful sir, that's all I
13 know about it My children are very, very very
14 protective of me because of my heart condition
15 Q And you probably don't remember the
16 exact day or week Can you give just your best
17 estimate? Are we talking 2006 at least you think
18 you had this discussion with him where he said
19 Mom I think I'm involved in this
20 A Yeah, I'm sure
21 Q It was last year sometime?
22 A Yes, it wasn't when the letter first
23 came or anything like that
24 Q Can you say whether it was summer or
25 spring, winter of 2006? If you can give me your

1 best estimate
2 A It was probably around the spring but
3 even that I'm not totally sure of
4 Q So sometime in approximately the spring
5 of 2006 Bobbie calls you and says Mom, I think I'm
6 involved in these Mueller allegations, something to
7 that affect
8 A I believe I called him and in the
9 process of talking I said, Bobbie you seem a little
10 bit down And he says, I think I'm involved in
11 Brother Mueller I'm getting help, please don't
12 worry about me everything will be fine And as I
13 said, that is all he has ever said to me
14 Q Bobbie has never said anything more
15 specific other than what you just said?
16 A No, no
17 Q And have you ever asked Bob to give you
18 more specific information?
19 A No, sir I have not
20 Q Have you talked to anyone else other
21 than Bob about these Mueller allegations?
22 A I have talked to his wife Brandy
23 Q Tell me when you first talked to
24 Brandy
25 A Shortly after Bobbie told me he was

1 getting help I asked Brandy about it and her words
2 were he's been a little bit down and he decided he
3 wanted to find out what was truly going on, why he
4 felt the way he felt and he went to some -- I don't
5 even know if it was a psychiatrist psychologist I
6 don't know
7 Q Anything else you remember from that
8 conversation with Brandy?
9 A All I do know is that I said, Brandy, I
10 don't know what's going on, and she said you don't
11 need to know And I said, once again, my son is
12 protecting me because of my heart
13 Q At that point you didn't want to
14 inquire any further after Brandy said you don't
15 need to know?
16 A Sir, I know with my kids it doesn't do
17 any good to ask questions
18 Q But this is Brandy, this is not one of
19 your kids
20 A Brandy wouldn't tell
21 Q And you didn't want to know
22 A No No, I sure didn't
23 Q Do you remember any conversation with
24 Bob or Brandy about whether Bob had forgotten what
25 had happened in terms of these allegations with Mr

1 Mueller?
 2 A No, I don't recall
 3 Q So as you sit here today you can't say
 4 whether Bob always remembered this or forgot these
 5 allocations at some point You just don't know
 6 You're not in the position to say, correct?
 7 A Correct
 8 Q I wanted to ask you about Bob's church
 9 attendance He lived with you a long time so you'd
 10 be a person who'd know about that, I would assume
 11 When he was at Vianney obviously he was going to
 12 church on a regular basis I assume, right?
 13 A Yes sir
 14 Q And that was at Assumption?
 15 A Yes, sir
 16 Q Every Sunday mass?
 17 A Close to, every Sunday mass, yes
 18 Q And then the occasional mass at Vianney
 19 High School I assume, right?
 20 A Yes
 21 Q So his church attendance while he was
 22 in High School was on a regular basis?
 23 A Yes
 24 Q He gets out of school, he goes up to
 25 Columbia Do you know if Bob was going to church

1 up in Columbia?
 2 A No, I don't
 3 Q You weren't living there so you just
 4 don't know, right?
 5 A Right
 6 Q And then he comes back to St Louis and
 7 goes to UMSL Can you tell me whether Bob was
 8 going to church on a regular basis while he was at
 9 UMSL?
 10 A No sir he did not
 11 Q To your knowledge, did Bob go to mass
 12 at all while he was living at home with you and
 13 going to UMSL?
 14 A He never went to mass with me My
 15 knowledge, no, I do not know if he did or not
 16 Q You don't know whether Bob ever
 17 attended mass while he was at UMSL?
 18 A No I do not No
 19 Q Then how about after he gets out of
 20 UMSL and graduates and he is working at City Corp?
 21 Do you know whether Bob ever attended mass while he
 22 was at City Corp?
 23 A The only time I do know that he went a
 24 couple of times with Tracy, and I do know that when
 25 Laura became Catholic he attended that mass even

1 though they had already broken up because my father
 2 stood up for her and Bobbie and I went together to
 3 that mass And he also went to mass when his
 4 father died
 5 Q What were the circumstances around
 6 Laura deciding to become Catholic? Did Bob have
 7 any input with that decision?
 8 A No, they had already broke up and she
 9 was getting ready to marry Steve and he was
 10 Catholic and she decided to turn Catholic
 11 Q Whose idea was it for Bob to attend
 12 that mass when Laura became a Catholic?
 13 A His own
 14 Q Bob's idea, right?
 15 A Yes
 16 Q So other than Bob attending that mass
 17 when Laura was converted to Catholicism and Bob
 18 going to the funeral when his father died at mass,
 19 you're not aware of Bob attending any other
 20 Catholic masses after he got out of Vianney High
 21 School Is that true?
 22 A I'm sure he attended my mother's
 23 funeral mass and he attended my father's funeral
 24 mass but other than that, sir, I do not know
 25 MR CRAIG Are you all right? We

1 can take a break
 2 A No
 3 Q (By Mr Assouad) I won't keep you very
 4 long
 5 A No I'm fine
 6 Q Did Bob ever express to you any
 7 concerns or problems with Assumption Church?
 8 A No Now see, Bobbie only went there
 9 one year He went there his eighth grade year
 10 because we had moved from Memphis, Tennessee and he
 11 only attended one year at Assumption
 12 Q Oh yeah, I guess that's right I
 13 forgot What parish were you in after Assumption?
 14 A No, that's the parish we are still in
 15 Q All right help me out here then
 16 A We lived in Memphis, Tennessee
 17 Q I remember that's when the Steak and
 18 Shake transferred you guys
 19 A Back here to St Louis and we went to
 20 Assumption parish and Bobbie was going to into the
 21 eighth grade, so he only attended one year at
 22 Assumption Grade School then he went on to Vianney
 23 Q But what church was he going to when he
 24 was in Vianney?
 25 A Assumption

1 Q You're talking about the school?
 2 A Yes
 3 Q No, I understand that but there's
 4 Assumption Church that you and Bobbie were going
 5 to But in terms of the church, forget about the
 6 school for a minute Bob never expressed any
 7 concerns or issues he had with the church?
 8 A Correct
 9 Q Did Bob ever express to you why he
 10 stopped going to Catholic mass?
 11 A No
 12 Q And you never asked him?
 13 A I tried to get him to go I tried to
 14 get all my kids to go, but at this time is when my
 15 husband started getting sick and to be truthful
 16 with you, sir I didn't even go
 17 Q But when you were trying to get Bob to
 18 go to mass he never expressed to you why he didn't
 19 want to go Is that true?
 20 A No, never
 21 Q You stopped going for a brief period
 22 while your husband was sick in the late '80s
 23 A Yes Actually my husband had his first
 24 heart attack in 1974
 25 Q Oh man Do you know if Bob practices

1 any faith today?
 2 A No he does not
 3 Q And you haven't had any discussions
 4 with him about that issue have you?
 5 A No
 6 Q But you're still a practicing Catholic,
 7 correct?
 8 A Semi
 9 Q Do you still go to Assumption?
 10 A Yes, sir
 11 Q Do you go every Sunday?
 12 A No
 13 Q Semi means, what are you an Easter and
 14 Christmas kind of Catholic now or -
 15 A When I feel good enough to go, I go
 16 Q I'm forgetting about your heart
 17 condition
 18 A Like I haven't gone in awhile because
 19 being an accountant, we work 12 hours a day and on
 20 Saturdays come Sunday I was too worn out to even
 21 go
 22 Q So the only reason you would miss mass
 23 in recent years is because of your health
 24 condition?
 25 A Correct

1 Q It doesn't have to do with Bob's
 2 allegations in this lawsuit true?
 3 A True
 4 Q Are you aware of any contact that Bob
 5 had with Mr Mueller after he left Vianney?
 6 A The only thing I knew is that Bobbie
 7 received a letter stating that the reason he left
 8 Vianney was to take care of his sick mother, and
 9 then he received another letter stating that he had
 10 left the order because the order would not give him
 11 enough time to take care of his mother and he was
 12 kind of ticked off at the order so he just left
 13 Other than that I don't know if he ever had any
 14 contact or what But I do know he received those
 15 letters because I even made the statement I can't
 16 believe they wouldn't give you time off to take
 17 care of your sick mother
 18 Q You made that statement to Bob?
 19 A To Bobbie
 20 Q So the only contact that you're aware
 21 of Bob and Mr Mueller after Bob graduated from
 22 school was these two letters that you just
 23 described?
 24 A I do know also but I was not present,
 25 that Laura and Bobbie when they moved into their

1 own apartment, had Brother Mueller over for a
 2 dinner But all Laura ever said is that it was
 3 very nice, that he seemed to enjoy seeing one of
 4 his old teachers Other than that I have no idea
 5 Q When did you first find out about that
 6 dinner with Mueller at the apartment where Bob and
 7 Laura lived?
 8 A I don't even know when the dinner was,
 9 but she had told me that he was invited over and
 10 the next day afterwards she said everything went
 11 fine, they had a nice time and other than that I
 12 couldn't tell you the date
 13 Q Was it right around the time that they
 14 had the dinner or was it something more recent that
 15 you found out about that?
 16 A Oh, no, it was when they had the
 17 dinner I knew they were having it
 18 Q You had some conversation with Laura
 19 about that dinner where Laura said it was kind of
 20 nice for Bob to see his old teacher, right?
 21 A Correct
 22 Q And do you remember talking to Bob
 23 about that dinner right around the time that
 24 Mueller came over for dinner with Laura and Bob?
 25 A No

1 Q It was just Laura that you had the
2 conversation with?
3 A Yes
4 Q And have you since talked to Bob about
5 that dinner that he had with Mr Mueller?
6 A Nope - no, sir
7 Q And I know that you don't recall the
8 exact time frame I don't expect you to, but this
9 dinner that Bob had with Mueller and Laura, do you
10 think it was late '80s or early '90s somewhere
11 around there?
12 A It had to be in the late - Bill died in
13 1991 It had to be like 1994, 1995
14 Q That's when he was together with Laura?
15 A Yes, yes
16 Q And as far as you know through your
17 conversations with Laura, Bob had a good time when
18 he met with Mr Mueller in 1994, 1995 for dinner?
19 A She got the impression he did I mean
20 there was nothing said otherwise
21 Q Other than that you told me about the
22 mass that Bob went to when Laura became a Catholic
23 Do you know whether Bob ever attended mass with any
24 of his ex girlfriends Tracy or Laura or any of the
25 other ones?

1 Q When the letter came?
2 A Other than that, he never mentioned
3 him
4 Q You're talking about the letter where
5 Mueller said he was leaving the order, right?
6 A Yes The reason why he left Vianney
7 was to take care of his sick mother and then he
8 received another letter stating he left the order
9 because the marines wouldn't let him have enough
10 time when his mother needed him
11 Q Okay, understood And those letters
12 do you think they came somewhere in the mid 1980s?
13 A Probably towards - around 1988 about
14 two or three years after Bob had graduated
15 Q And when those letters came, you don't
16 remember Bob making any other comments about Mr
17 Mueller other than what you just said?
18 A No, I do not recall
19 Q And obviously you never personally saw
20 Mueller after Bob graduated from Vianney?
21 A No sir, I never did
22 Q Did you ever hear anything about Mr
23 Mueller coming to St Louis for one of Bob's
24 classmates' weddings?
25 A No

1 A I do know he went several times with
2 Tracy but that's - I don't know if him and Laura
3 attended mass after they moved out of my house or
4 not
5 Q The several times he went to mass with
6 Tracy, was that Bob's idea or Tracy's idea?
7 A I have no idea sir I do know Tracy
8 is not Catholic and they went to a Catholic mass
9 Q Aside from the dinner and aside from
10 the two letters you already told me about, do you
11 know of any other contact Bob had with Mueller
12 after he left Vianney?
13 A No sir
14 Q Do you know whether Bob ever talked
15 with Mueller on the phone after Bob graduated?
16 A No sir
17 Q You don't know?
18 A No sir, I do not
19 Q After Bob graduated from Vianney and up
20 until the time the letter came to your house, the
21 letter that was sent out to all the alumni, do you
22 remember Bob ever mentioning Mueller's name?
23 A Nothing other than to say Mom, here's
24 the reason Brother Mueller left Vianney And he
25 showed me the letters

1 Q Tell me about Bob's relationship with
2 his dad before his dad died Did they have a
3 somewhat rocky relationship over the years?
4 A Yes, sir, they did
5 Q Were they on good terms right before
6 your husband died? Was it in 1991?
7 A Yes, they were
8 Q They had a rocky relationship during
9 the '80s, I guess after Bob graduated from Vianney?
10 A They had -- let me see, 1999, go back
11 to 1990, 1988 It was like when Bobbie was like
12 still in the army It was like his last two years
13 of school at University of Missouri, St Louis and
14 that's when his father was sick so much of the time
15 and what his father had was hereditary And he was
16 in the hospital for quite awhile and Bobbie refused
17 to go see him And he once told me, he says Mom
18 one of these days it's going to be me and I do not
19 want to see what I am going to have to go through
20 And that caused friction because Bill did not want
21 to accept that
22 Q Do you take it that it has caused Bob
23 some concern the fact that he worries about getting
24 that heart condition that his dad died from?
25 A I think it's in the back of his mind,

1 but Bobbie goes to the doctor and his heart is
2 fine

3 Q But you think it's always there and he
4 thinks about it the fact that he may develop some
5 kind of heart condition?

6 A Oh probably I have no idea I
7 couldn't answer that

8 Q But has he ever expressed a concern
9 about that?

10 A No The only time he did is when his
11 dad was in the hospital hooked up to a machine

12 Q Do you remember Bob taking a trip with
13 his dad out to California back in 1991, I think it
14 was?

15 A It was right before his father died

16 Q And do you remember that trip they
17 took?

18 A Yes Bobbie was stationed out there in
19 Monterey and he had left his car at home He came
20 to get his car and Bill had a brother who lived in
21 San Juan Capistrano or somewhere out there and Bill
22 drove out there with Bobbie to help him drive the
23 car out and then flew back home

24 Q Do you remember Bob talking about that
25 trip at all?

1 A The only thing Bobbie ever said about
2 that trip was my silly father drove the car He
3 didn't have it in the fifth gear or something and
4 he wasted gas

5 Q Has Bobbie ever reported any problems
6 he's had at work since this lawsuit was filed or
7 since these allegations came out?

8 A From his work?

9 Q Yeah

10 A No, sir He has not said anything to
11 me about that

12 Q Has Bobbie ever reported to you any
13 problems with his marriage since this lawsuit was
14 filed?

15 A All he's ever said is that Brandy says
16 there's times I get very crabby

17 Q Brandy said that about Brandy or Brandy
18 says that about Bob?

19 A Brandy says that about Bob

20 Q About Bob?

21 A Bobbie said Brandy tells me every once
22 in awhile I do get a little bit crabby

23 Q My wife says that too

24 A My husband never said that about me

25 MR CRAIG Obviously he internalized it

1 Q (By Mr Assoud) But other than
2 Brandy saying Bob gets cranky every now and then,
3 you have not heard about any problems with their
4 marriage since this lawsuit was filed other than
5 what you just said?

6 A Oh, no They've already had another
7 baby I guess since it's been filed To be truthful
8 sir, I don't even know when it was filed And
9 Alexis won't be a year old until August

10 Q I'll represent to you it was right
11 around January 2006 when the suit was filed So
12 other than what you just said about Brandy
13 reporting Bob getting cranky every now and then,
14 you haven't heard of any problems they've had at
15 home?

16 A No, sir, I have not

17 Q As far as you are concerned, you don't
18 know any of the details of this lawsuit, so as far
19 as you're concerned, this lawsuit has not affected
20 your relationship with Bob in any way, true?

21 A True

22 Q Did you read any of the newspaper
23 articles other than that first Post Dispatch
24 article that came out in 2005 that you already told
25 me about?

1 A No, correct I have not read any

2 Q And at the first article are you
3 talking about - Does the name Bryan Bacon ring a
4 bell to you?

5 A I think the very first article just
6 said something about Vianney and Brother Mueller
7 and that a law suit had been brought against him
8 but not -

9 Q You don't remember the name of the guy
10 that was -

11 A No, I don't think it was even in there,
12 sir

13 Q Have you ever had any discussions with
14 anyone from Vianney about Bob's lawsuit?

15 A No, sir, I have not

16 Q Or any of the Mueller allegations?

17 A No, sir, I have not

18 Q You know you told me about this
19 psychologist that Bob started going to see Was it
20 last year, that's right? Do you know if Bob ever
21 sought counseling or mental health treatment before
22 this lawsuit was filed?

23 A No, I do not know

24 Q Is there any kind of family history for
25 depression on either side, on your side or on his

1 dad's side?
 2 A There is right now, and it's me
 3 Q I'm not going to get into that, but
 4 there is some history at least from your side of
 5 the family with depression?
 6 A Well, I'll tell you about it because I
 7 think it's important I had a daughter that passed
 8 away two years ago and I have been going to a grief
 9 counselor and the doctors for sometime put me on
 10 depression pills But up until that time, no
 11 Q Other than that treatment you sought
 12 do you know of any other family history either on
 13 your side or Bob's dad's side for any kind of
 14 mental health or depression issues?
 15 A No, there is none
 16 Q And to your knowledge, Bob never sought
 17 any treatment or mental health related issues or
 18 counseling or depression before this lawsuit was
 19 filed?
 20 A Correct
 21 Q Have you told me about all the
 22 conversations you've overheard with Bob and anyone
 23 else in connection to these Mueller allegations?
 24 A I have not overheard any
 25 Q How often do you see Bob now? Bob and

1 I want you to just try to remember and think back
 2 to Bob's senior year of High School at Vianney and
 3 tell me if there's anything that you remember that
 4 sticks out in your mind about changes in Bob's
 5 behavior that you thought might've been unusual at
 6 the time
 7 A Actually I thought that was his
 8 happiest time in Vianney because he became state
 9 diving champion and it was his last year and he had
 10 won a scholarship to Mizzou
 11 Q And things were going great for him?
 12 A It seemed like to me
 13 Q You didn't notice any kind of mood
 14 changes or some kind of signs of depression or
 15 anxiety Anything like that you didn't notice
 16 anything like that during Bob's senior year?
 17 A No, sir
 18 Q Did Bob tell you whether these Mueller
 19 allegations somehow affected his relationship with
 20 his dad?
 21 A No, he never did say
 22 Q Did Bob ever tell you whether these
 23 Mueller allegations somehow affected his GPA at
 24 Vianney, his grades?
 25 A No sir, he did not

1 the grandkids?
 2 A Probably about four or five times a
 3 year, and we talk on the phone at least once a week
 4 or once every two weeks
 5 Q Do they always come down here to St
 6 Louis or do you go up to Kansas City?
 7 A I go up to Kansas City, several times I
 8 have been up there but they mostly come down here
 9 Q From what you've seen does Bob seem to
 10 get along with the kids just great?
 11 A His children?
 12 Q Yeah
 13 A He's the worst father in the world He
 14 spoils them so bad Yes, he does get along with
 15 them
 16 Q You haven't observed any problems with
 17 Bob and the kids
 18 A Oh, no
 19 Q And Bob hasn't expressed to you any
 20 concerns about or issues he has with terms of
 21 parenting or raising the kids?
 22 A Oh, no
 23 Q No, that's correct
 24 A Correct I'm sorry Just kick me
 25 Q No you're fine I'm just about done

1 Q I want to thank you Mrs Visnaw for
 2 coming in
 3 A Oh, you're welcome
 4 Q There's something that we have to tell
 5 you about waiving signature and all that means is
 6 that the court reporter has taken down everything
 7 you said accurately I'll tell you that most
 8 people just waive signature If you don't she
 9 sends you the transcript, you have to read over
 10 everything and sign it, but it's totally up to you
 11 I would tell you that if I was in your shoes, I
 12 would waive it
 13 A Should I sign it?
 14 BY MR CRAIG Why don't you send it
 15 to me and I'll forward it to her and we'll sign it
 16
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SIGNATURE PAGE

ANN MARIA VISNAW

Subscribed and sworn before me on this

day of _____, 2006

My commission expires _____

(Notary Public)

1 SHEET(S) and also have her sign down at the bottom of
2 the CORRECTION SHEET where it says Deponent
3 After she is through reading over the deposition,
4 have her sign the ORIGINAL SIGNATURE PAGE, Page 38
5 Her signature MUST BE notarized before the ORIGINAL
6 SIGNATURE PAGE is returned
7 I would appreciate if you could see to it that the
8 CORRECTION SHEET(S) and the ORIGINAL SIGNATURE PAGE
9 are returned to me by no later than June 30, 2007 If
10 you have any questions please feel free to call me at
11 314-621-4408, and I'll be glad to help in any way I
12 can

Sincerely,

Jacqueline Pingsterhaus, CCR

cc Mr Justin Assouad

May 22 2007
ATTN Mr Daniel Craig
1125 Grand Blvd, Suite 1400
Kansas City MO 63105

IN RE ROBERT WILLIAM VISNAW VS MARIANISI
PROVINCE OF THE UNITED STATES ST JOHN VIANNEY HIGH
SCHOOL INC and BROTHER WILLIAM MUELLER

(Signature Page of ANN MARIA VISNAW)

This letter is incorporated as Page 39 and 40 of
the deposition of ANN MARIE VISNAW that she gave in
the above styled cause of action As per request she
is to read over the deposition instead of waiving that
right Please have her read over your copy of the
transcript which I have enclosed If she has any
corrections, please have her make them on the
CORRECTIONS SHEET(S) that I have also enclosed For
each CORRECTION SHEET she marks on have her sign her
name down at the bottom where it says Deponent If
she does not have any corrections then have her mark
NO CORRECTIONS diagonally across one of the CORRECTION

NOTARIAL CERTIFICATE
STATE OF MISSOURI)
) SS
CITY OF ST LOUIS)

I JACQUELINE A PINGSTERHAUS a Certified
Court Reporter and duly commissioned Notary Public

within and for the State of Missouri do hereby
certify that there came before me at Hepler

Broom MacDonald Hebrank True & Noce LLC 800
Market Suite 2300 St Louis MO 63101

ANN MARIE VISNAW

Who was by me first duly sworn to testify to
the truth and nothing but the truth of all
knowledge touching and concerning the matters in
controversy in this cause that the witness was
thereupon carefully examined under oath and said
examination was reduced to writing by me and
that the signature of the witness was NOT waived
by agreement of witness and all parties and that

this deposition is a true and correct record of
the testimony given by the witness

I further certify that I am neither
attorney nor counsel for nor related nor
employed by any of the parties to the action in
which this deposition is taken further that I
am not a relative or employee of any attorney or
counsel employed by the parties hereto or
financially interested in this action

IN WITNESS WHEREOF I have hereunto set my
hand and seal this 22ND day of May 2007

My commission expires March 12 2010

1 IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS
2 STATE OF MISSOURI

3)
4 ROBERT WILLIAM VISNAW)
5)
6 Plaintiff)
7) Case No 06CC 000008
vs)
8) Division No 15
9 MARIANIST PROVINCE OF THE)
UNILED STATES ST JOHN)
VIANNEY HIGH SCHOOL INC)
and BROTHER WILLIAM MUELLER)
10 Defendants)

11
12
13 CERTIFICATE OF OFFICER AND
STATEMENT OF TESTIMONY CHARGES
(Rule 57.03 (b) (2) (a) & Sec 492.590 RSMO 1983)

14 DEPOSITION OF ANN MARIE VISNAW
15 taken on behalf of the Defendants
16 May 22 2007

17 Name and address of person having custody of
18 the original transcript Mr Justin Assouad
Hepler Bloom MacDonald Hebrank True & Noce
19 LLC 800 Market Suite 2300 St Louis MO 63101

20 TAXED IN FAVOR OF Hepler Bloom MacDonald
21 Hebrank True & Noce LLC 800 Market Suite 2300
St Louis MO 63101

22 43 pages of original & copy \$154 80
23 Attendance of Reporter and Jurat \$ 31 00
24 TOTAL \$185 80
25

1 TAXED IN FAVOR OF Daniel Craig
2 43 pages copy \$ 68 80
3 TOTAL \$ 68 80

4 Upon delivery of transcripts the above charges
5 had not yet been paid It is anticipate that all
6 charges will be paid in the normal course of
7 business

8 KRIEGSHAUSER REPORTING & VIDEO
319 North Fourth Street Suite 608
9 St Louis MO 63102

10 IN WITNESS WHEREOF I have hereunto set my hand
and
11 and seal on this 22 day of May, 2007
My commission expires March 12 2010

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DEPO OF FATHER THOMAS DOYLE 2/12/07 KLUEMPERS, et al. V. MARIANST PROV.

IN THE CIRCUIT COURT OF THE CITY OF ST LOUIS
STATE OF MISSOURI
TIMOTHY KLUEMPERS and)
MATTHEW GIEGLING,)
Plaintiffs,)
) 052-11454)
) Div 18)
vs)
ARCHDIOCESE OF ST LOUIS,)
ST MARY'S HIGH SCHOOL,)
MARIANIST PROVINCE OF)
THE UNITED STATES and)
BROTHER WILLIAM MUELLER)
Defendants)

IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS
STATE OF MISSOURI
ROBERT WILLIAM VISNAW,)
Plaintiff,)
) 06CC-000008)
) Div 15)
vs)
MARIANIST PROVINCES OF,)
THE UNITED STATES,)
ST JOHN VIANNNEY HIGH)
SCHOOL, INC , and BROTHER)
WILLIAM MUELLER,)
Defendants)
DEPOSITION OF FATHER THOMAS DOYLE
Taken on behalf of the
Defendant Province of the United States
February 12, 2007

in the morning and three o'clock in the afternoon of

that day at the Law Firm of Hepler Broom,

MacDonald, Hebrank, True & Noce, LLC, 800 Market

Street Suite 2300 St Louis, MO 63102, MO,

before BO KRIEGSHAUSER a Registered Professional

Reporter and a Notary Public Within and for the

State of Missouri

IN THE CIRCUIT COURT OF THE CITY OF ST LOUIS
STATE OF MISSOURI
TIMOTHY KLUEMPERS and)
MATTHEW GIEGLING,)
Plaintiffs,)
) 052-11454)
) Div 18)
vs)
ARCHDIOCESE OF ST LOUIS,)
ST MARY'S HIGH SCHOOL,)
MARIANIST PROVINCE OF)
THE UNITED STATES and)
BROTHER WILLIAM MUELLER)
Defendants)

IN THE CIRCUIT COURT OF THE COUNTY OF ST LOUIS
STATE OF MISSOURI
ROBERT WILLIAM VISNAW,)
Plaintiff,)
) 06CC-0000808)
) Div 15)
vs)
MARIANIST PROVINCES OF,)
THE UNITED STATES,)
ST JOHN VIANNNEY HIGH)
SCHOOL, INC , and BROTHER)
WILLIAM MUELLER)
Defendants)
DEPOSITION OF FATHER THOMAS DOYLE,
produced, sworn, and examined on behalf of the
Defendant Marianist Province of the United States on
February 12, 2007, between the hours of nine o'clock

A P P E A R A N C E S

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FOR THE DEFENDANT MARIANIST PROVINCE OF
THE UNITED STATES
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FOR THE DEFENDANT CATHOLIC HIGH SCHOOL ASSOCIATION OF THE
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7

1 Q And you understand that you have been endorsed
 2 as an expert in the Visnaw and Kluempers Giegling cases
 3 I assume, right?
 4 A Yes, I do
 5 Q And you're coming here from the Virginia area I
 6 understand, right?
 7 A Yes
 8 Q You brought your entire file with you today?
 9 A Yes I did
 10 Q Okay This is your complete file for Visnaw and
 11 Kluempers Giegling?
 12 A Everything I have, including the cover letters
 13 from Mr. Craig are in that file
 14 Q Okay
 15 A I take that back No, I lied They're right
 16 here I didn't realize I had more here This is the
 17 whole file These are just isolated
 18 Q Okay Bear with me a minute
 19 A Sure
 20 (Pause)
 21
 22 A I apologize for not giving you all that at once
 23 It didn't even occur to me that it was sitting here
 24 Q Not a problem It doesn't look like -- we'll
 25 copy this at a break That's fine

6

1 [Defendant's Exhibit A was marked]
 2
 3 o-O-o
 4
 5 IT IS HEREBY STIPULATED AND AGREED by and
 6 between Counsel for the Plaintiffs and Counsel for the
 7 Defendants that this deposition may be taken in shorthand
 8 by BO KRIEGSHAUSER, a Registered Professional Reporter,
 9 Certified Shorthand Reporter, and Notary Public, and
 10 afterwards transcribed into typewriting, and the signature
 11 of the Witness is not waived by agreement of Counsel and
 12 consent of the Witness
 13
 14 o-O-o
 15
 16 FATHER THOMAS DOYLE,
 17 of lawful age, produced, sworn, and examined on behalf of
 18 the Defendant Marianist Province of the United States,
 19 deposes and says
 20
 21 EXAMINATION
 22 QUESTIONS BY MR. ASSOUAD
 23 Q Good morning, Father Can you state your full
 24 name for the record, please?
 25 A Thomas Doyle

8

1 A Okay
 2 Q I'll tell you what what we've previously marked
 3 as Defendant's Exhibit A can you describe what that is?
 4 A These are notes that I have taken in the course
 5 of reading the depositions
 6 Q Okay
 7 A And that's all Just my own notes to help me
 8 keep things straight
 9 Q Are there -- Do any of these notes contain
 10 analysis or it's just sort of summary of what you've read
 11 in your deposition?
 12 A It's a summary of what I've read, and I believe
 13 at the end some of the notes contain, I guess,
 14 observations, not really analysis Just opinions or
 15 questions
 16 Q That's what I'm getting at Did you ever
 17 prepare written opinions for either the Visnaw -
 18 A No, I was not instructed -- I'm sorry
 19 Q Father did you ever prepare put down in
 20 writing any written opinions in the Visnaw or Kluempers
 21 case?
 22 A In these list of handwritten notes there are
 23 some notes that I would use for my opinions and they're at
 24 the very end They would be these here that go from 1
 25 through 7 But I did not - my understanding was I was

17

1 A No
 2 Q These cases, I should say
 3 A No, nothing
 4 Q I just want to run through briefly, your
 5 educational background
 6 A Okay
 7 Q Why don't you give me the executive summary the
 8 overview, if you would
 9 A Of the educational background?
 10 Q Yeah, your educational background
 11 A I have master's degrees in philosophy, theology,
 12 Canon Law, political science, and church administration
 13 I have a doctorate in Canon Law, and I also have a -- it's
 14 not a degree, but it's a certificate from the Naval School
 15 of Health Sciences in addictions therapy. I'm a certified
 16 addictions therapist.
 17 Q What does it take to become a certified
 18 addiction therapist?
 19 A Well, you have to complete a required number of
 20 hours of academic work at an approved school, studying,
 21 you know, various aspects of addiction and counseling
 22 techniques and so on. And then it's required that there
 23 be -- I believe it's, when I did it, 6,000 supervised
 24 hours of practical work in counseling and
 25 addictions-related work at the end of which you could

18

1 apply to take the set of certification exams. And then
 2 there are four exams that you have to take, case
 3 presentation and exam and ethics, another oral exam and a
 4 written test.
 5 Q And when did you receive your certification as
 6 an addiction therapist?
 7 A 2001, I believe it was.
 8 Q What is the name of the governing body that
 9 would give you a certification in addiction therapy?
 10 A It's got a long acronym. It's International
 11 Association of Alcohol and Drug Counselors. I believe I
 12 have to look again to see what it is. I know I took the
 13 exams in Reno, Nevada, of all places.
 14 Q Probably a good spot to take that exam.
 15 A We took them at the Circus Circus casino lounge,
 16 and I remember asking, 'What are we doing here?' And they
 17 do the English-speaking ones at a different place every
 18 year. It was supposed to have been in Scotland and they
 19 ended up in Reno because of the cost. They got a really
 20 good break staying at the hotel, so that's where we were.
 21 Q And you said the required number of academic
 22 hours to receive certification. How many hours do you need
 23 to get that?
 24 A I believe it was 450 academic hours. And I
 25 don't know how that was broken down into like credit

19

1 hours. Sometimes like one credit equals six contact hours
 2 or three. And I don't remember exactly how it works for
 3 this one.
 4 Q Is there a particular kind of undergraduate or
 5 master's degree you need to get to become a certified
 6 addictions therapist?
 7 A No. You can get -- there are degreed programs
 8 in addiction therapies and alcohol studies. Rutgers has
 9 an outstanding program. Several other universities do as
 10 well. Rutgers is the one that comes to mind because it's
 11 kind of the best.
 12 But you don't have to have an academic degree to
 13 become certified, but you have to have completed some
 14 the required academic work in an approved school.
 15 Q In conjunction with your certification as an
 16 addiction therapist, did you receive any medical or
 17 psychological or psychiatric training?
 18 A Yes.
 19 Q Can you describe that for me?
 20 A In conjunction with the training, you do go
 21 through a significant amount of training in psychiatric -
 22 areas of psychology, psychiatry, primarily in order to be
 23 able to determine if there is other issues going on other
 24 than addiction, alcoholism, drug addiction, gambling
 25 addiction. You can't practice as a psychologist, but you

20

1 need to know --
 2 Q Right.
 3 A -- especially in the areas of what are called
 4 the personality disorders, because oftentimes with
 5 addictions they're interwoven or some of the -- for
 6 example, many of the symptoms for an alcoholic are also
 7 portrayed by people with bipolar disease in the early
 8 years of -- before it's diagnosed, like teenagers,
 9 oftentimes, or young adults will have a lot of the
 10 symptomatology of an alcoholic when in fact they may be
 11 suffering from bipolar disease or manic depressive
 12 psychosis.
 13 Q Where did you receive those studies that you're
 14 talking about in relation?
 15 A All of that I received at two places, at the
 16 University of Oklahoma while I was stationed in Tinker Air
 17 Force Base in Oklahoma City, but then the main place where
 18 I got the diploma from was the Naval School of Health
 19 Sciences in San Diego.
 20 Q So, if I went and looked at your school records
 21 from the Naval School of Health Sciences, how many credit
 22 hours would it show you received in conjunction with
 23 your
 24 A Probably I think three hundred there is what
 25 they gave us from that one. Maybe 400. I take that back.

21

1 400
 2 Q And of that 400 how many courses dealt with
 3 psychiatry or psychology? I should how many courses
 4 dealt with psychology-related subjects?
 5 A Well essentially all of it because, you know
 6 alcoholism addictions are included in the DSM as valid
 7 disorders So, they in themselves are, you know, if
 8 you're studying to be a psychologist or psychiatrist,
 9 usually there are some instruction given in the
 10 addictions So there would be some
 11 But as far as specialized courses, we had some
 12 courses in the personality disorders in dealing with
 13 people with personality disorders, your own reactions to
 14 them and understanding and doing preliminary diagnosis so
 15 you can understand or see the symptomology of certain --
 16 Q But were the courses taught by psychology
 17 professors?
 18 A Some of them They were all taught by -- I
 19 mean -- I can't remember exactly
 20 Q Were they -- did you take -- how many courses
 21 did you take within the School of Psychology, the
 22 Department of Psychology at the Naval School of --
 23 A They weren't in the department -- it was all in
 24 the School of Alcohol Studies
 25 Q School of Alcohol Studies?

22

1 A Yeah
 2 Q Okay
 3 A All of the courses were particularly geared to
 4 that end
 5 Q So what kind of formal degree could you receive
 6 then after undergoing certain number of credit hours
 7 through this Naval School of Health Sciences?
 8 A Well, they do offer -- they offer a doctor of
 9 medicine It's a medical school And their main campus
 10 is in Bethesda, Maryland
 11 Q But were you trying to pursue a formal degree
 12 other than your certification in addiction therapist?
 13 A No If I did choose to go through a degreed
 14 program, I could go back and I would receive credit for
 15 all of this and add that on and then whatever I had to do
 16 to complete it depending on the school I choose to go to
 17 Q Okay Do you have any formal degree in
 18 psychology?
 19 A No
 20 Q You obviously have no degree in medicine,
 21 correct, Father?
 22 A No, I don't
 23 Q What does your -- the fact that you're a
 24 certified addiction therapist what does that enable you
 25 to do in the state of Virginia?

23

1 A Counsel people with addictions
 2 Q And have you done so?
 3 A Yes
 4 Q Since 2002?
 5 A Yes
 6 Q And how many people on an annual basis do you
 7 counsel with addictions since --
 8 A On an annual basis? I would have to go and
 9 count them I couldn't tell you offhand, because I've
 10 done -- with families I've worked with families who have
 11 addiction within the family, with children of alcoholics,
 12 children with addictions themselves and then actual
 13 alcoholics I've done a lot of work with gamblers as
 14 well
 15 Q Can you give me a ballpark estimate, though?
 16 A Fifty to a hundred, ballpark
 17 Q Per year?
 18 A Yeah
 19 Q Okay Page 2 of your CV we have marked as
 20 Defendant's Exhibit D That lays out all of your formal
 21 degrees you have received, correct?
 22 A I believe so, yes
 23 Q Now, you're a member of the Dominican Order,
 24 Father, correct?
 25 A That's correct

24

1 Q Are you in community?
 2 A No I live alone
 3 Q Why aren't you in community?
 4 A Because I chose to live alone
 5 Q When did you -- did you live in community at one
 6 point?
 7 A Yes
 8 Q When did you stop living in community?
 9 A When I went into the Air Force in 1990
 10 Q Is there a particular reason, though, you chose
 11 to separate yourself?
 12 A When I went into the Air Force, I had to
 13 Q Okay
 14 A And since then, because of my experience in
 15 living in the Air Force I chose to live on my own I
 16 prefer to do that
 17 Q And then what provincial -- who's your
 18 provincial within the Dominican Order?
 19 A His name is Michael Mascari
 20 Q How do you spell that last name?
 21 A M A-S-C A-R I
 22 Q Father Michael Mascari?
 23 A Yeah
 24 Q And his office is where?
 25 A Chicago

25

1 Q And have you had any discussions with Father
 2 Mascari about your decision to not live in community?
 3 A He gave me permission to do so
 4 Q When did he do so?
 5 A 2000 -- well when I left the Air Force, 2004
 6 Q And you took your simple vows within the
 7 Dominican Order in what year?
 8 A I think it was 1965
 9 Q And then when did you take your permanent vows?
 10 A Three years later, so that would have been '68
 11 Q Why don't you go through and just give me a
 12 brief chronological overview of where you -- after taking
 13 your permanent vows I don't need in detail, but just a
 14 summary overview of where you landed and where you your
 15 various positions from '68 to the present
 16 A Well, after I took solemn vows I was still in
 17 school and I was in DuBuque Iowa at our seminary of
 18 theology and I remained there until 1971 After I
 19 finished there, my first assignment as a priest was in
 20 River Forrest Illinois at a parish in a fairly large
 21 suburban community
 22 And in 1974 I started working for the
 23 Archdiocese of Chicago doing work with divorced people
 24 because I had become interested in that And I went away
 25 for doctoral studies in '75 and completed them in '78

26

1 Then I went back to work in the Archdiocese of Chicago and
 2 remained there until 1981 when I went to work at the
 3 Vatican Embassy in Washington, D C
 4 I left there in 1986 and went to work for the
 5 archdiocese for the military services, but I also joined
 6 the military as a reserve chaplain and I went on active
 7 duty in 1990 and went off active duty in 2004
 8 Q What were the circumstances surrounding you
 9 going off active duty?
 10 A August 3rd 2004 I hit the age of 60 That was
 11 the circumstance
 12 Q You retired from the military in '04?
 13 A Yeah
 14 Q And what was your exact title back with the
 15 Archdiocese of Chicago in the '70s?
 16 A At first I was what they called an advocate I
 17 worked in the tribunal and assisting people who were
 18 getting annulments And then when I got my doctorate,
 19 they appointed me a judge and so I was a judge
 20 I also functioned as what they call a defender
 21 of the bond on some cases Those are all ecclesiastical
 22 titles
 23 Q What does that mean?
 24 A Defender of a bond, is when an annulment
 25 process is going, he's the defender of marriage He's

27

1 kind of like - not the prosecuting attorney He reviews
 2 the acts of the case to make sure that it's all done with
 3 integrity and it's not a sham
 4 Q In '81 to '86, you were in Washington D C at
 5 the Vatican Embassy?
 6 A That's right
 7 Q And what was your title?
 8 A The title there was secretary We all had the
 9 same title All everybody except the ambassador, whose
 10 title was nuncio --
 11 Q Right
 12 A - which means ambassador
 13 Q So, nuncio would have been a member of the
 14 Diplomatic Corps to the Holy See -
 15 A Yeah He was a member of the Diplomatic Corps
 16 of the Holy See, and there were three or four other
 17 members of the Diplomatic Corps who would be assigned
 18 there by the Diplomatic Corps Then there were what we
 19 call local staff, and I was one of them
 20 Q So, you were not a member of the Diplomatic
 21 Corps in the '80s?
 22 A No
 23 Q And what that essentially means, you did not
 24 report directly to the Vatican of the Holy See?
 25 A No I just reported to my immediate boss

28

1 Archbishop Lagan Well, the other guys did, too
 2 Everyone reported to him That's the way the system
 3 works And then he reported to the Vatican
 4 Q What were your job duties though, as the
 5 secretary from '81 to '86?
 6 A My primary duties were to manage the program or
 7 the process whereby bishops were selected, transferred,
 8 retired and dioceses were created It's a confidential
 9 process that the Catholic Church uses, and I did all of
 10 the administrative work that goes into that
 11 But I also was the staff Canon lawyer So I
 12 handled a lot of Canon Law issues, filed reports, issues
 13 that came up Whatever he assigned me to do I did it if
 14 I could do it
 15 Q So, you wore two hats? You were a staff Canon
 16 lawyer and you also were involved in administrative aspect
 17 of things, handling transfers of priests so forth?
 18 A The job descriptions were not that neatly
 19 divided That was one of the main ones I did was handling
 20 the bishop transfers, appointments and so forth But
 21 because I had a doctorate in Canon Law, I also handled
 22 those issues as well But I don't think it would be
 23 accurate to say I wore two hats I'm just a staff member
 24 Q Okay
 25 A He could have he would have just said to me

29

1 one day, "From now on you're going to handle all the
 2 dinner parties," and I would have had to do that
 3 Q Bishop Laghi?
 4 A L-A-G H-I. That was his name at that time.
 5 It's still his name, but that's who it was at the time.
 6 Q But then who did you report to then from the
 7 Dominican during that period of time?
 8 A Well, I lived at a Dominican monastery in
 9 Washington, D.C.
 10 Q Right.
 11 A So, I reported to the prior who was the lower
 12 superior, but basically to my own provincial back in
 13 Chicago.
 14 Q Okay. You said you filed reports as a staff
 15 Canon lawyer. Were these memos or what type of reports
 16 are we talking about?
 17 A Well, if he had a question and he wanted it done
 18 up in memo form, I would do it. If he wanted a full
 19 report on some issue, I would do a full report. If he
 20 wanted a report prepared for the Vatican on some issue, I
 21 prepared that. It depended on what the issue was. And it
 22 was a broad range.
 23 Q Any of these reports deal with sexual abuse or
 24 sexual contact with minors by clergy?
 25 A Yes.

30

1 Q Okay. Did you keep copies of any of those
 2 reports that you generated specifically with respect to
 3 sexual contact of minors, sexual abuse of minors by clergy
 4 back in the early '80s?
 5 A I probably have copies of some of the paperwork
 6 that I generated at the time, but some of the major
 7 reports, no. At the time I had no idea where this was all
 8 going.
 9 Q Okay. So -- so how many reports do you think
 10 you kept?
 11 A That's a good question.
 12 Q I guess the next question is, where are they, I
 13 suppose.
 14 A I may have some of them at home. I mean they
 15 would be like memos, status reports of certain issues that
 16 were going on. But the major reports I didn't keep.
 17 Q You -- you destroyed after.
 18 A No, I left them there.
 19 Q Oh, I see. And so you --
 20 A You'll never get them. You'll never get them.
 21 Q You don't know where they are, but you left them
 22 in your -- whatever your office was back in D.C.?
 23 A Well, I can tell you where they are. They're
 24 both -- they're in two places. They're in the archives of
 25 the embassy itself, which is in the basement. And even

31

1 Jesus Christ can't get in there and get access to that
 2 stuff. And the other originals are probably somewhere in
 3 the Vatican. That's where they were intended to go.
 4 Q What do you think you have at home in regards to
 5 your files -- your reports as a staff Canon lawyer?
 6 A I have to go back and look. I can't recall
 7 offhand. I haven't even looked in those files in years.
 8 Q Do you recall what subject areas those reports
 9 you have at home cover?
 10 A The total subject, everything?
 11 Q Do you recall specifically the memos that you
 12 think you have at home, the reports? Do you recall
 13 specifically --
 14 A About --
 15 Q I'm sorry. In regard to sexual contact with
 16 minors, sexual abuse of minors.
 17 A No, I can't.
 18 Q Okay. You don't have any specific recollection
 19 of what reports, if any, would touch upon sexual abuse of
 20 minors or sexual contact of minors from your reports?
 21 A I'd have to go back and look again.
 22 Q Okay.
 23 A That's 20-some years ago.
 24 Q So, most of these reports then, they were not
 25 sent, of course, directly to the Vatican, they were sent

32

1 to your bishop at the time?
 2 A They were sent to Archbishop Laghi, who was not
 3 my bishop. He was the boss.
 4 Q Yeah, right. Right.
 5 A I know what you mean.
 6 Q Yeah. All right. And then what would
 7 Archbishop Laghi do with your reports that you would send
 8 to him?
 9 A Well, some of them were just memos that he
 10 wanted to be brought up to date on certain aspects of the
 11 issue. If a call came in, report came from the diocese, a
 12 bishop or someone, I'd write up a memo and give it to him.
 13 Q Were you sort of like a research associate, we
 14 call in a law firm you have associate that would do
 15 research projects and you know, we have associates that
 16 prepare written memorandum, is that kind of what you did?
 17 A I did that a lot, yeah.
 18 Q Okay.
 19 A On a number of other issues than this one. I
 20 mean, he could come up with something and say "I want
 21 information on this, give me a report." So I'd research
 22 it and give him a report.
 23 Q All right. What field of expertise are you
 24 relying for in your opinion in this case?
 25 A Two areas, I guess. One would be the internal

33

1 structure of the Roman Catholic Church and the dynamics
2 that exist within religious Orders. Overview would be
3 Canon Law. And the other would be my experience in
4 dealing with sexual abuse by the clergy over a 23 year
5 period. In the area there I'd say to be more specific
6 would be the spiritual and emotional impact on victims
7 particularly the spiritual impact.

8 Q I guess I was looking for something a little
9 more specific in the -- as, for example, medicine,
10 psychiatry. We have engineering experts --

11 A Canon Law

12 Q So, your field of expertise is Canon Law?

13 A Yeah. That's pretty specific. And that
14 involves the internal structuring of the institutional
15 Catholic Church and all aspects of it.

16 Q Understood. Other than the -- well, we started
17 to talk earlier about your addiction courses that you took
18 at the Naval School of Health Sciences. Have you told me
19 the extent of any and all medical training you have
20 received?

21 A Well, I received CPR. I'm a certified rescue
22 diver. I guess I've got a certain amount of medical
23 training to do that.

24 Q Yeah.

25 A That has nothing to do with this.

34

1 Q Yeah. I don't care about that.

2 A Yeah.

3 Q Have you received any formal medical training?

4 A No, I haven't.

5 Q Have you only had one full-time assignment as a
6 parish priest?

7 A Yes, actually, I have.

8 Q And that was back in Illinois you told me about
9 in the early '70s?

10 A Yeah, River Forest, Illinois, which is a suburb
11 of Chicago.

12 Q How long were you the priest there?

13 A '71 to '74. I was full time in those -- that
14 period and then I remained as a part time doing part time
15 work there and doing part-time work downtown until 1981.

16 Q What experience do you have working with members
17 of the Marianist Order?

18 A Over the years, I believe a couple of
19 assignments I've had, I think there was a member -- a
20 priest who was a Marianist priest who worked in the
21 Archdiocese of Chicago as a Canon lawyer when I was there.
22 I think he was. But I've not had any other direct contact
23 with the Order. I have met members here and there, but
24 that's all.

25 Q What was the name of that priest that you

35

1 A His name was John Paul, and I may be wrong about
2 that the religious Order, but something tells me he was a
3 Marianist. And this goes back to the '70s, so my
4 memory -- I can't remember what I had for breakfast, so I
5 can't --

6 Q Sure.

7 A -- go back that far.

8 Q Do you think he's alive still?

9 A I don't know. That's a good question.

10 Q This is a Marianist priest, Father John Paul?

11 A I think he was a priest.

12 Q Okay.

13 A I know he was a priest, but I'm not certain if
14 he was a member of the Marianists.

15 Q What interaction would you have had with John
16 Paul?

17 A We just had a professional relationship. He was
18 a Canon lawyer who worked at the Tribunal of the
19 Archdiocese of Chicago. I believe he worked full time
20 and he also had an appointment at one of their seminaries.
21 I'm not sure what he did there.

22 Q Did you ever collaborate with John Paul, though?
23 I mean how would --

24 A Yeah, we collaborated a lot on, you know,
25 different cases we were working on -- issues of that nature

36

1 it the office, but that's all.

2 Q All right. Did you have -- was he a part of
3 your team as a Canon lawyer back in the '70s?

4 A He was part of the staff.

5 Q The staff?

6 A Yeah.

7 Q All right. So, you would work together from
8 time to time on research projects, I assume?

9 A No, just collaborating on -- we used to -- we
10 interacted on a daily basis in the same office and we --
11 we all had lunch together. We discussed matters of
12 jurisprudence --

13 Q Okay.

14 A -- resolving certain types of cases. You know,
15 he would have questions. I would ask questions of him and
16 vice versa. And that's all.

17 Q Okay. During the course of your time though
18 did any issues involving the Marianist Order come up in
19 your research or in your job duties as a Canon lawyer back
20 in the '70s?

21 A I can't recall. I don't believe so.

22 Q All right. Other than John Paul, do you recall
23 working with any Marianist priest or brothers in the
24 course of your professional career?

25 A No. And I'm not even sure he was one

1 Q That's true That's fair
 2 A Something -- something tells me that there was
 3 something to do with Mary in the name of his outfit
 4 Q All right So, you wouldn't swear that even
 5 John Paul was a -
 6 A No, I wouldn't swear to it
 7 Q Putting aside John Paul then, you can't testify
 8 under oath that you've ever worked in a professional
 9 capacity with any member of the Marianist Order?
 10 A No I haven't
 11 Q Have you ever worshipped with Marianists?
 12 A Have I ever what?
 13 Q Have you ever worshipped together with a
 14 Marianist?
 15 A Not that I know of
 16 Q Okay Tell me the extent of your teaching in
 17 your professional career, if any
 18 A I taught when I was in Chicago as a parish
 19 priest I was occasionally asked to teach like specific
 20 classes at the local high school It was a girl's high
 21 school I'd just go and give them an hour's class on
 22 something, I don't even remember what they were
 23 Most of the teaching I've done has been on a
 24 university college level I taught at Catholic
 25 Theological Union in Chicago for I think two or three

1 years as an adjunct professor, whatever the title was I
 2 don't recall and I taught Canon Law And I taught the
 3 years I lived in Washington, D C , I believe every
 4 semester I taught a course at Catholic University of
 5 America in the Department of Canon Law I may be wrong on
 6 the numbers It may not have been every semester but I
 7 did teach several courses
 8 Q Can you give me the dates that you taught at the
 9 Chicago -
 10 A That was between -- Chicago? That would have
 11 been between 1978, '79
 12 Q And the Catholic University?
 13 A Well, I was there between 1981 and the academic
 14 year of '85 and '86 And I believe the last course I
 15 taught would have been the fall semester of '85
 16 Q And you were part time or adjunct at both
 17 places?
 18 A Adjunct that's right
 19 Q So, you may have taught one or two courses a
 20 semester?
 21 A That's right That's all
 22 Q And when you -- you taught Canon Law to what
 23 type of students then?
 24 A Graduate students
 25 Q Yeah All right In any of these Canon Law

1 courses did you ever touch upon the issue of sexual abuse
 2 of minors or sexual contact of minors with respect to
 3 clergy?
 4 A I do recall
 5 Q Or religious Let me put that in there, also
 6 A Okay At Catholic University, in one of those
 7 courses, I gave several lectures on some of the Canon Law
 8 connections or ramifications of sexual abuse of children
 9 by the clergy
 10 Q Can you be more specific, Father?
 11 A No Because I don't remember exactly what was
 12 in the content I'd have to go back - if I even have the
 13 notes from the lectures
 14 Q Did you say Catholic University or Chicago?
 15 A Catholic University of America
 16 Q And it would have been in the context of which
 17 Canon Law course?
 18 A I believe I was giving a course on procedural
 19 law and one of the courses was a course on law for
 20 religious Orders, and I gave some talks on special
 21 problems and difficulties that would arise that would
 22 require special canonical expertise, and I used this
 23 because at the time the issue had just emerged as a public
 24 issue in '85, '84 and '85
 25 Q That's the time frame we're talking about?

1 A Yes
 2 Q What written publication, textbook, et cetera,
 3 would you have referred to in conjunction with that course
 4 material you just referenced?
 5 A The Code of Canon Law
 6 Q You don't think you would have any written
 7 materials from that classes you just talked about still in
 8 your possession?
 9 A I may -- generally -- I used to save all the
 10 notes that I did, because I'd have them typed up in
 11 outline form And I would have to go back and look in my
 12 files I may well have saved all of that, but I can't
 13 promise you anything
 14 Q It may be back home?
 15 A Well it's not with me, that's for sure
 16 Q Yeah
 17 A If it's anywhere, it's in my files back home
 18 Q How would I describe my request for those types
 19 of documents in a way that you would understand if you
 20 were to go looking for the course materials?
 21 A Course notes dealing with clergy sexual abuse
 22 that would be the best way
 23 Q And was that just a one-time lecture then that
 24 you would touch upon this subject that we're talking about
 25 in Catholic University, or did this discussion with the

1 students transpire over several weeks or months?
 2 A It wasn't several weeks or months, and I can't
 3 recall if it was a one-time lecture or if there were maybe
 4 two or three lectures connected with it. There may have
 5 been.
 6 Q Have you told me the extent of all of your
 7 teaching experience?
 8 A Formal, yes.
 9 Q Okay. How about informal?
 10 A Well, the only other experience I've had in
 11 instructing anything was over the years while I was
 12 serving in the Air Force. I regularly gave lectures to
 13 officers or enlisted on a number of topics.
 14 Q As a chaplain?
 15 A As a chaplain.
 16 Q What would you give me an overview what would
 17 you talk about?
 18 A One of the things I commonly talked about was
 19 confidential and privileged communications in the
 20 military. One other area that I regularly spoke about was
 21 dealing with alcohol problems.
 22 Q When you say "confidential and privileged
 23 communications" what specifically are you talking about?
 24 A The application of the UCMJ, the Uniform Code of
 25 Military Justice, especially with regards to the

1 chaplains.
 2 Q Conversations with chaplains?
 3 A Conversations with chaplains.
 4 Q I see.
 5 A What were confidential, what was privileged and
 6 what wasn't?
 7 Q Father, you're a member of the Dominican Order
 8 obviously, right?
 9 A Yes.
 10 Q Can you explain what significant differences
 11 distinguish the Marianist Order from your Order, Dominican
 12 Order?
 13 A Yeah. The Dominicans are an Order. The
 14 Marianists - or the Marianists.
 15 Q Right.
 16 A I shouldn't sound that stupid, because I know --
 17 there are two -- are a, what used to be known as a
 18 congregation. Significant difference is the Dominicans
 19 take solemn vows at the end of the probationary period,
 20 the Marianists take perpetual simple vows. There are some
 21 legal ramifications in both of those.
 22 I believe that their major -- they are an Order
 23 that is comprised of brothers and priests. I believe in
 24 their tradition they've always had authoritative roles
 25 open to brothers. The Dominicans did not. In other

1 words, brothers could be elected provincial --
 2 Q Right.
 3 A -- local superior. In the Dominicans the
 4 brothers still cannot be elected provincial or prior or
 5 head of the Order.
 6 Both live in community.
 7 Q Right.
 8 A Both do a significant amount of educational
 9 work. However, I believe the Marianists have it much more
 10 as a specialty, especially with high schools, than the
 11 Dominicans do. We have in the world maybe a handful of
 12 high schools that we staff and teach at.
 13 Both orders, Dominicans and the Marianists, are
 14 subject to the general norms of the Code of Canon Law.
 15 Their internal constitutions and their internal
 16 regulations are subject to the approval of the Vatican and
 17 must conform to the overall norms of the Codes of Canon
 18 Law.
 19 Q Are there any hierarchal or jurisdictional
 20 issues that distinguish the Marianists from the
 21 Dominicans?
 22 A Well, I just mentioned one of them is key in
 23 that in the Dominicans a superior must be capable of
 24 having full jurisdiction, and according to Canon Law you
 25 need to be a cleric, a priest, to have full jurisdiction.

1 In the Marianists, they don't have this restriction. They
 2 can have men who are provincials.
 3 Now, there is nothing practically speaking in
 4 the Dominicans that couldn't prevent us from enacting that
 5 kind of a law, but our Order never integrated and had
 6 brothers as an integral part of the Order as the
 7 Marianists do. They have them as a major part. In fact,
 8 it seems to me that most of the membership is made up
 9 of brothers as opposed to priests.
 10 Q Where did you learn that?
 11 A It's just an impression that I've gotten over
 12 the years just in hearing and talking about different
 13 religious Orders and how they used and integrated the role
 14 of brothers. And I recall someone saying -- there is no
 15 concrete knowledge that they use them in a much more
 16 sophisticated way than the Dominicans did.
 17 Q Have you ever worked on a case as an expert
 18 involving a Marianist religious member, be it a brother or
 19 a priest?
 20 A I don't recall. I would say no. I probably
 21 would remember if I had.
 22 Q Okay. You don't think you ever had occasion
 23 then as an expert to research or dig in detail regarding
 24 aspects of the Marianist Order?
 25 A No.

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1 action if any, was taken by Hackenworth?
 2 A All it indicates is that he forbid him to do it,
 3 Page 39 He was asked if he was removed from the school
 4 or sent for psychological care, I believe is the word that
 5 was used, and the answer was negative on both
 6 Q Okay Hackenworth forbid Mueller from
 7 conducting the trust experiments?
 8 A That's correct
 9 Q Right? In the '70s?
 10 So, your Opinion No 4 that there appeared to be
 11 no action taken - strike that
 12 Hackenworth did respond then back in the '70s
 13 A Yes
 14 Q to the allegations that Glodek mentioned in
 15 his deposition testimony?
 16 A That's right
 17 Q All right Let's go -- let's skip ahead to No
 18 6 'Brothers had to have been aware of the high position
 19 of esteem and respect that they were held -- that were
 20 held by students and adults as well " What is the basis
 21 for that opinion?
 22 A That opinion basically, it's -- as I said, these
 23 are my notes my opinions where I had asked - if you said
 24 "I want a formal statement," I would probably refine it
 25 significantly

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1 But this goes to my opinion that the brothers
 2 and the superiors, they're not just the brothers but the
 3 priests as well should have been aware of the impact of
 4 some of Brother Mueller's - Brother Mueller's actions on
 5 some of these young men Giving them ether, in the case
 6 of Suda loosening up his pants In the case of - I
 7 believe it's Visnaw, there was some actual sexual contact,
 8 he was coming to
 9 They should have been aware of the fact that in
 10 the Catholic culture it's commonly known that members of
 11 religious Orders, be they priests or brothers, are held in
 12 a position of very high esteem They're held in a
 13 position of great respect and a tremendous amount of trust
 14 is requested and required of lay people and students in
 15 the brothers or the priests
 16 So, when this is violated, one can presume that
 17 the superiors understand the fact that a violation of this
 18 trust is going to have a significant impact on the persons
 19 who are involved in the violation, on young students, on
 20 their parents even on those who become aware of this
 21 Q What research studies, et cetera, have you done
 22 that would touch upon the subject you just referenced, the
 23 impact of violation of trust that you just talked about?
 24 A I have written - I published at least three or
 25 four articles on the concept of -- the term I use is

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1 "reverential fear " Another term I've used is called
 2 'religious duress,' and the impact of the church's
 3 teaching on the role of priests and religious both
 4 religious men and women and the response of lay people to
 5 this teaching
 6 Q Are those publications in your CV?
 7 A Yes
 8 Q Can you give me a number and reference?
 9 A Sure 41, Roman Catholic Clericalism Religious
 10 Duress and Clergy Sexual Abuse 42, Catholic Clergy,
 11 Sexual Abuse Meets the Civil Law 43 Canon Law, Failure
 12 From Above And 44 Clericalism Enabler of Clergy Sexual
 13 Abuse I have another one that is - I don't even know if
 14 it's out yet It's a part of an Anthology that deals with
 15 this very subject It's a chapter in a book
 16 Q What's the name of the book?
 17 A That's a good question I don't recall offhand
 18 I'm not very good at names It's - I think it's called
 19 'Preventing Clergy Sexual Abuse That was the working
 20 title but I don't know what the final title is
 21 Q No 6 says "Brothers had to have been aware of
 22 the high position of esteem, et cetera "
 23 A Yes
 24 Q What does "brothers" reference?
 25 A "Brothers" reference the religious superiors,

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1 brothers or the priests Those are those in any
 2 authoritative even the members of the community, the
 3 brothers themselves Brother Mueller, his contemporaries
 4 and his colleagues or those in authority
 5 Q So, the term "brothers" includes priests, you're
 6 saying?
 7 A Any members of the religious community, yes
 8 Brother or priest
 9 Q All right Any member of the Marianist
 10 religious community is that what you're --
 11 A Any community The Marianists, Dominicans,
 12 Jesuits, it would not matter
 13 Q So, this opinion is just a general opinion of
 14 yours, doesn't cover any community within the Catholic
 15 Church?
 16 A That's right
 17 Q And you don't distinguish between a Marianist
 18 brother or a Dominican brother or a Jesuit brother? That
 19 opinion would hold for any Order?
 20 A That's correct
 21 Q There is no difference in the level of esteem
 22 that you referenced or respect with regard to a priest or
 23 a brother?
 24 A There might be a difference between -- between a
 25 priest and a brother in that a priest's role and his

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1 mission is significantly different than that of a brother
2 A priest is ordained, he can say mass and do that kind of
3 thing

4 But basically as a religious, as a consecrated
5 person, as one set apart, in general lay people
6 oftentimes intermingle the two and have the -- they see
7 them as, you know, special emissaries of God, as
8 representatives of the Lord, as men set apart because they
9 take vows they dress differently, they live in community
10 and they are to be accorded a very high degree of respect

11 Q Do you believe that Catholic Church members,
12 generally speaking, hold priests to a higher level of
13 esteem and respect than brothers within religious Orders?

14 A I can't answer that

15 Q So, your opinion that the brothers had to have
16 been aware of the high position of esteem and respect
17 which you attribute to the entire Roman Catholic Church
18 and all orders within the Catholic Church, right?

19 A Yes, that's correct

20 Q But you can't respond whether it's a
21 distinguishing level of respect or esteem for brothers
22 within a particular Order as opposed to priests?

23 A Some areas, some people may have more respect
24 for priests than for brothers. In some communities there
25 are brothers present more so than in others. In the small

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1 community I grew up, there were no brothers in that
2 community. In other communities, they are there, they
3 teach, they're very well established in the community

4 Q How about the St. Louis community?

5 A I believe here that there are -- the brothers do
6 have a number of schools here, as far as I know. I don't
7 know for sure. I would have to take a look at a
8 directory. I know the Christian Brothers have a school
9 here at least

10 Q Can you testify as to what level of esteem and
11 respect Roman Catholics in the St. Louis community hold
12 for brothers and/or priests?

13 A No. I would have to do a study. But I would say
14 in general they hold them in high respect. Or
15 traditionally they have. I don't know about now

16 Q No. 7 talks about how Mr. Mueller was with the
17 Paracletes for eight months, he was discharged in August
18 of '84. In March Sharp wrote him, referring to Mueller
19 and months before his discharge

20 A Yes

21 Q What's the basis of that opinion?

22 A First off, it states in the documentation that
23 Father Fleming after he received complaints about Brother
24 Mueller in 1983, removed him from his position. And I
25 believe it was -- wait a minute now. St. Mary's in

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1 St. Louis. He was here. And he sent him to the Paraclete
2 Fathers where he was -- I'm not sure, I believe it was from
3 December of 1983 until August of 1984

4 Q Where do you gle in those dates?

5 A I don't have a notation here exactly where I got
6 the dates. It's somewhere in the deposition in the
7 documentation

8 Q Okay

9 A But as I said, everything I have here I didn't
10 have references to it. You got to take my word on it.
11 But that's when he was there, apparently. There is no
12 report or paperwork from the Paracletes, which I found
13 very unusual

14 Q What opinions are you going to -- or do you
15 anticipate offering with regard to Mueller's stay at
16 the -- with the Paracletes in '83-'84?

17 A My opinion would be there, first, that he did in
18 fact undergo an assessment and an evaluation by the
19 Paracletes prior to the treatment plan implementation, and
20 the treatment plan obviously included residential
21 treatment until at least August of 1984

22 Q What specific information do you have as to what
23 treatment Mueller received at the Para -- with the
24 Paracletes in '83 and '84?

25 A I have none, because there are no reports

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1 available

2 Q By the way, what's the name of the facility
3 where Mueller stayed?

4 A I believe he was at Vicoely, which is the name
5 of their main facility at that time which was in Jemez
6 Springs, New Mexico

7 Q So, there are no records from Mueller's stay at
8 Jemez Springs in '83-'84, right, that you're aware of?

9 A I found none, and in his deposition testimony
10 Father Fleming stated that there are none

11 Q So, you're not going to offer any testimony at
12 trial as to what treatment Mueller received or may not
13 have received at Jemez Springs in '83, '84?

14 A The only thing I can possibly offer is what I
15 know to have been the general form of treatment at Jemez
16 Springs in that time period but not what Mueller received
17 in particular

18 Q And what is the source of your general knowledge
19 of the treatment that was rendered in that time frame?

20 A First off, the publications offered by the
21 Paraclete Order themselves describing what the treatment
22 was for men sent there for the two major types of
23 illnesses or issues that they dealt with which were
24 alcohol and substance abuse, and sexual issues. And in
25 their publications and descriptive documentation that they

CURRICULUM VITAE

Thomas Patrick Michael Doyle

Thomas Doyle was born August 3, 1944 in Sheboygan WI, the son of Michael Doyle and Doris Mellenthien. He was baptized Patrick Michael Doyle. He is the eldest of three children. He attended primary and secondary school in Ogdensburg NY and Cornwall, Ontario. In August, 1964 he entered the Dominican novitiate at Winona MN and was given the religious name of Thomas. He pronounced simple vows in 1965 and solemn vows on August 16, 1968.

Graduate studies in philosophy and theology took place at Aquinas Institute of Philosophy, River Forest IL and Aquinas Institute of Theology, Dubuque IA respectively. He pursued graduate studies in Political Science at the University of Wisconsin and graduate studies in Canon Law at the Gregorian University, Rome, Catholic University of America, the University of Ottawa and St. Paul's University, Ottawa. He was ordained a Catholic priest in the Dominican Order on May 16, 1970 in Dubuque, IA. Although he has had only one assignment as a full-time parish priest in civilian parishes, he has consistently worked in parishes on a part-time basis since the time of ordination to the priesthood.

After completing graduate work in theology and several months of clinical pastoral training, he was assigned as an associate pastor in River Forest IL. In 1974 he was appointed an advocate for the Metropolitan Tribunal of the Archdiocese of Chicago. In 1978 he was appointed a judge in the same tribunal. In 1981 he was asked to serve as secretary-canonist at the Vatican embassy in Washington D.C., a post which he held until early, 1986. On June 16, 1986 he was commissioned a reserve officer in the U.S. Air Force. His reserve Air Force assignments were at Dover AFB, Dover DE and Andrews AFB, Maryland. Air Force training took place at Lackland AFB, Texas and Maxwell AFB in Alabama. His active duty assignments have been at Grissom AFB, IN, Hurlburt Field, FL, Lajes Field, Azores, Tinker AFB, OK and Ramstein AB, Germany and Seymour Johnson AFB, North Carolina.

He has had extensive teaching experience in Canon law as a visiting lecturer at Catholic University of America and the Chicago Theological Union. He has also been a lecturer at the Matrimonial Tribunal Institutes of Catholic University of America and Mundelein Seminary as well as at the Institute for Spirituality in River Forest IL.

As a member of the Canon Law Society of America he served one term as member of the board of governors and three terms as chairman of the Marriage Research Committee. He was asked by the society to be the author of the section on marriage in the commentary prepared on the revised Code of Canon Law. He was also asked by the Commission for the Authentic Interpretation of the Code of Canon Law of the Holy See to prepare the footnotes on marriage for the annotated edition of the Code of Canon Law.

Fr. Doyle has given lectures and seminars on various aspects of Church Law throughout the United States, Canada, Australia and New Zealand. These have included topics in the areas of matrimonial jurisprudence, procedural law, penal law, religious law, property law as well as the theology of marriage among others. In 1986 he was the featured lecturer at the annual convention of the Canon Law Society of Australia and New Zealand.

In late 1984 he became involved with the issue of sexual abuse of children by Catholic clergy while serving at the Vatican Embassy. Since that time he has developed an expertise in the canonical and pastoral dimensions of this problem. He has worked with victims of abuse and their families, priests accused of abuse, bishops and superiors of religious institutes on this issue. He has developed policies and procedures for dealing with cases of sexual abuse by the clergy for dioceses and religious orders in the United States, Canada, Australia and New Zealand. In the capacity as an expert in this area, he has delivered lectures and seminars for clergy and lay groups throughout the U.S. And also in Ireland, Australia and New Zealand. He has spoken to the State legislatures of Pennsylvania, Ohio, Colorado, California and Maryland on child protective legislation. He has also served and continues to serve as a consultant/court expert in cases of alleged sexual abuse by the clergy throughout the United States, Canada, Ireland, Israel and the United Kingdom. He has served as a consultant and expert witness to

grand juries in several jurisdictions in the U S He has been a consultant to State and Federal legislative officials concerning changes in the law that would benefit victims of sexual abuse

In recognition of his advocacy work for the victims of Catholic clergy sexual abuse Father Doyle received the Cavallo Award for Moral Courage in 1992, the Priest of Integrity Award from Voice of the Faithful in 2002 and the Isaac Hecker Award from the Paulist Fathers in 2003 In June of 2003 he was issued an official commendation from the Dominican Fathers for his "prophetic work in drawing attention to clergy sexual abuse and for advocating the rights of victims and abusers " In July 2005 he was awarded the "Community Champion Award" by the Civil Justice Foundation of the Association of Trial Lawyers of America

ACADEMIC CREDENTIALS

- B.A.** **Philosophy**, Aquinas Institute of Philosophy, River Forest, IL , 1966
- M.A** **Philosophy**, Aquinas Institute of Philosophy, River Forest, IL, 1968
Dissertation "Organized Religion in Marxist-Leninist Philosophy "
- M A.** **Political Science**, University of Wisconsin, Madison, 1971,
Dissertation "Vladimir Lenin's Theory of Social Revolution "
- M.A.** **Theology**, Aquinas Institute of Theology, Dubuque, Iowa, 1971, Dissertation "Liberation
Theology in the Context of Social Needs in South America "
- M Ch.A.** **Administration**, Catholic University of America, Washington, D C , 1976
- M A** **Canon Law**, University of Ottawa, Ottawa, Ontario, 1977
Dissertation "The Canonical and Legal Foundation of the Dominican Order in Canada."
- J.C L.** **Pontifical Licentiate in Canon Law.** St Paul University, Ottawa, 1977
- J C D.** **Pontifical Doctorate in Canon Law.** Catholic University of America, Washington, D.C.,
1978 Dissertation. "Marital Fidelity in the Canonical Tradition of the Catholic
Church."
- Diploma.** Squadron officers School, Air University, May, 1996
- Diploma** United States Navy Drug and Alcohol Counselor School, October, 2000
- Diploma** Air Command and Staff College, Air University, July 5, 2002

ASSIGNMENTS AND POSITIONS HELD

- 2003-04 USAF, Seymour Johnson AFB, North Carolina
- 2001-03 USAF, Ramstein AB, Germany
- 1997 -01 USAF, Tinker AFB, Oklahoma
- 1995 -97 USAF, Lajes Field, Azores
- 1993 -95 USAF, Hurlburt Field, Florida
- 1990 -93 USAF, Grissom AFB, Indiana
- 1991-93 Tribunal Judge Diocese of Lafayette in Indiana

1993-95 Tribunal Judge, Diocese of Pensacola-Tallahassee and Archdiocese for the Military Services, U S A

1986-90 Tribunal Judge and Special Assistant to the Archbishop, Archdiocese for the Military Services, U S A

1986-90 Tribunal Judge, Diocese of Scranton, PA

1981-86 Secretary-Canonist, Vatican Embassy, Washington, D C

1981-86 Visiting Lecturer in Canon Law, Catholic University of America, Washington, D C

1979-86 Faculty Member, Midwest tribunal Institute, Mundelein Seminary, Mundelein, IL

1978-86 Faculty Member, Tribunal Institute of the Catholic University of America, Washington, D C

1979-81 Visiting Lecturer in Canon Law, Catholic Theological Union, Chicago IL

1978-81 Tribunal Judge, Archdiocese of Chicago, IL

1974-78 Advocate and Defender of the Bond, Tribunal, Archdiocese of Chicago, IL

1978-85 Faculty member, Institute of Spirituality, River Forest IL

1971-74 Associate Pastor, St Vincent Ferrer Parish, River Forest IL

1970-71 Graduate Student , Aquinas Institute of Theology, Dubuque, Iowa

1966-70 Theological studies, Aquinas Institute of Theology

OTHER POSITIONS HELD

1983-85 Consultant to the Canonical Affairs Committee of the National Conference of Catholic Bishops

1978-81 Member, Board of Governors, Canon Law Society of America

1979-86 Chairman, Marriage research Committee, Canon law Society of America

1979-86 Editor, Marriage Studies, Washington D C

1982-88 Weekly columnist, Arlington Catholic Herald

1988-90 Consultant to the Canonical Affairs Committee of the National Conference of Catholic Bishops

1986 Director of the Institute of Spirituality, River Forest, IL

1971 Clinical Pastoral Training, Minnesota State Prison

PUBLICATIONS: BOOKS

- 1 Comrades in Revolution. Dayton Pflaum Press, 1969
- 2 The Understanding of the "Bonum Fidei" in the Church's Canonical Tradition Washington, D C Catholic University of America, 1978
- 3 Rights and Responsibilities in the Church New York Pueblo Press, 1983
- 4 The Homilist's Guide to Scripture, Theology and Canon Law (With John Burke, O P), New York Pueblo Press, 1987
- 5 The Code of Canon Law A Commentary Leesburg VA Catholic Home Study Institute, 1988
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22. "The Catholic Church and Marital Breakdown " The New Catholic World, February, 1986
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- 44 "Clericalism-Enabler of Clergy Sexual Abuse " Pastoral Psychology 54(2006) 189-213

PROFESSIONAL MEMBERSHIPS

Canon law Society of Great Britain and Ireland
 Canon law Society of Australia and New Zealand
 Canadian Canon law Society
 Societe Internationale de Droit Canonique
 Professional Association of Dive Instructors
 National Association of Alcohol and Drug Counselors

MILITARY AWARDS AND DECORATIONS

National Defense Medal (2x)
 NATO Service Medal
 Kosovo Campaign Medal
 Armed Forces Service Medal (2x)
 Armed Forces Expeditionary Medal (2x)
 Humanitarian Service Medal
 Military Outstanding Volunteer Service Medal
 Air Force Achievement Medal (2x)
 US Army Achievement Medal
 Air Force Commendation Medal (3x)
 Meritorious Service Medal (3x)
 "Most Distinguished Graduate," US Navy Drug and Alcohol Counselor School

AWARDS

1992 Cavallo Award for Moral Courage in Government and Business

- 2002 "Priest of Integrity Award," Voice of the Faithful
- 2003 Isaac Hecker Award for Achievements in Social Justice
- 2005 Community Champion Award, Civil Justice Foundation of the Association of Trial Lawyer of America

MISCELLANEOUS

Member, Order of the Desert Legion (US Army)

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IN THE MATTER OF.

Timothy Kluempers, et al
vs.
Marianist Province of the
United States, et al

Cause No 052-11454 Div 18 and 06CC-000008 Div 15

Deposition of Harold L. Suda, Jr.
2/13/2007

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Full GLOSSARY included with this DepoScript

(1) Timothy Kluempers and Matthew Gregling
 (2) Plaintiffs
 (3) vs
 (4) Archdiocese of St. Louis et al
 (5) Defendants
 (6)
 (7) and
 (8)
 (9) Robert Wm. Visnaw
 (10) Plaintiff
 (11) vs
 (12) Marianist Province of the United States, et al
 (13) Defendants
 (14)
 (15)
 (16) Video Deposition of
 (17) Harold L. Suda, Jr.
 (18)
 (19)
 (20) February 13, 2007
 (21)
 (22)
 (23)
 (24)
 (25)

(1) IN THE CIRCUIT COURT
 (2) OF THE COUNTY OF ST. LOUIS
 (3) STATE OF MISSOURI
 (4)

(5) Robert William Visnaw
 (6)
 (7) Plaintiff
 (8) vs
 (9)

(10) Marianist Province of the United States
 (11) St. John Vianney High School, Inc. and
 (12) Brother William Mueller
 (13)

(14) Defendants

(15) IT IS STIPULATED AND AGREED by and
 (16) between counsel for Plaintiffs and counsel for
 (17) Defendants that the videotaped deposition of Harold
 (18) L. Suda, Jr. may be taken for discovery purposes on
 (19) behalf of the Plaintiff pursuant to and in
 (20) accordance with the provisions and rules pertaining
 (21) to such depositions at the offices of Hepler Broom,
 (22) 800 Market Street, Suite 2300, in the City of St.
 (23) Louis, State of Missouri on the 13th day of
 (24) February, 2007 before Mary L. Peppenhorst Missouri
 (25)

(1) IN THE CIRCUIT COURT
 (2) OF THE 22ND JUDICIAL CIRCUIT
 (3) CITY OF ST. LOUIS, MISSOURI
 (4)
 (5) Timothy Kluempers,
 (6)
 (7) Plaintiff
 (8)
 (9) vs 052 11454 Div 18
 (10)
 (11) Archdiocese of St. Louis, St. Mary's
 (12) High School, Marianist Province of the
 (13) United States and Brother William Mueller
 (14) Defendants
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(1) Certified Court Reporter (No. 545), Illinois
 (2) Certified Shorthand Reporter (II #084 003856)
 (3) Registered Professional Reporter (#804416) and
 (4) Notary Public
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 (23)
 (24) ALSO PRESENT: Steve Johnston, Legal Videographer
 (25) Gore Perry Reporting

(01) VIDEOGRAPHER: We are on the record at 9:07.
 (02) Today's date is February 13th, 2007. We are at the
 (03) law offices of Hepler Broom. The address is 800
 (04) Market Street, St. Louis, Missouri. My name is
 (05) Steve Johnston, legal videographer, along with Mary
 (06) Peppenhorst, certified court reporter, here today
 (07) for the deposition of Harold Suda to be taken in the
 (08) case of Klemperers versus Archdiocese of St. Louis and
 (09) Visiow versus Marianist Province of the United
 (10) States currently pending in the Circuit Court, 22nd
 (11) Judicial Circuit, City of St. Louis, State of
 (12) Missouri, case number 052-11454, Division 18. At
 (13) this time, would council identify themselves for the
 (14) record, please?
 (15) MR. CRAIG: Dan Craig on behalf of
 (16) plaintiff.
 (17) MR. NOCE: Gerry Noce for St. John Vianney
 (18) High School and the Marianist Province of the United
 (19) States.
 (20) MR. GOLDENHERSH: Edward Goldenhersh for the
 (21) Catholic High School Association of the Archdiocese
 (22) of St. Louis, a Missouri non-profit corporation.
 (23) THE VIDEOGRAPHER: Thank you. Would the
 (24) court reporter please swear in the witness.
 (25) HAROLD L. SUDA, JR.

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(01) of lawfully being first duly sworn to
 (02) testify the truth, the whole truth, and nothing but
 (03) the truth in the case aforesaid, deposes and says in
 (04) reply to oral interrogatories propounded as follows:
 (05) to wit:
 (06) EXAMINATION
 (07) Examination By Mr. Craig
 (08) Q: Good morning.
 (09) A: Morning.
 (10) Q: Would you state your name for the record,
 (11) please?
 (12) A: My name is Harold L. Suda, Jr.
 (13) Q: Okay, Mr. Suda, have you ever had your
 (14) deposition taken before?
 (15) A: No.
 (16) Q: Okay. There's just a few ground rules. I'm
 (17) going to ask you a series of questions and I need
 (18) you to give verbal responses so the court reporter
 (19) can take it down, okay?
 (20) A: Okay.
 (21) Q: Another thing is in normal conversation a
 (22) lot of times we talk over each other. So it will be
 (23) very difficult for the court reporter to take that
 (24) down. So if you'll do a good job of keeping me
 (25) from finishing my question, I'll try to do a good job of

101 letting you finish your answer okay?
 102 A Sure
 103 Q Okay Thanks If you don't understand a
 104 question let me know I'll try to rephrase it, all
 105 right?
 106 A Okay
 107 Q And from time to time throughout this
 108 process some of the other lawyers might state
 109 objections That is for the record Unless you're
 110 specifically directed not to answer a question, you
 111 still have to answer it okay?
 112 A Okay
 113 Q Okay Thank you You understand that you
 114 have been subpoenaed to provide a deposition in this
 115 case involving William Mueller?
 116 A Yes
 117 Q And you understand you're under oath to tell
 118 the truth?
 119 A Yes
 120 (Whereupon Deposition Exhibit Number 1
 121 marked for identification and the
 122 testimony resumes as follows)
 123 Q (By Mr. Craig) Okay I have previously
 124 handed you what has been marked as Exhibit 1 Have
 125 you had the opportunity to read and review this

101 needed to - I guess if we can help these guys out
 102 or whatever you know it was time to do something
 103 Q So you did in fact then I guess speak with
 104 the Kirkwood Police?
 105 A Yes, I did
 106 Q Were you under the impression there was any
 107 sort of criminal investigation going on?
 108 A I believe so, yes I mean I knew there was
 109 a couple cases, one in Colorado and one in
 110 St. Louis I guess going on or pending
 111 Q Okay Were you under the impression that
 112 you needed to be as honest and forthright as
 113 possible with the Kirkwood police officer?
 114 A Yes
 115 Q Okay And when you spoke with the Kirkwood
 116 police officer were you as honest and forthright as
 117 you possibly could be?
 118 A Yes
 119 Q Okay Thank you Sir could you please
 120 tell the jury where you attended high school?
 121 A St. John Vianney high school from 1965 to
 122 '69
 123 Q Okay And Vianney High School here in
 124 St. Louis?
 125 A Yes I'm sorry In St. Louis Missouri

101 document?
 102 A Yes
 103 Q And it's apparently a narrative report
 104 generated by the Kirkwood Police Department
 105 concerning an interview between them and you that
 106 occurred on October 5th 2005 is that correct?
 107 A That's correct
 108 Q Okay Do you recall being interviewed by
 109 the Kirkwood Police Department on October 5th 2005?
 110 A Yes
 111 Q Okay Can you just explain to me how that
 112 interview came about from your understanding of
 113 things?
 114 A Came about because I guess I called in to
 115 the Kirkwood Police Department after seeing the
 116 article in the paper about Brother Mueller
 117 Q Okay You had seen something in the paper
 118 about
 119 A There had been a couple articles This was
 120 the second one where you know
 121 Q Why did you call the police department?
 122 A That's a good question I don't know I've
 123 been silent for 40 years but my wife and I who's
 124 the first person I ever told about it sat down and
 125 talked about it and kind of made a decision that

101 Q Technically it's Kirkwood
 102 A Kirkwood, Missouri Still St. Louis
 103 Kirkwood Drive Still St. Louis
 104 Q Thank you And I think you said the years
 105 you attended Vianney were 1965 to 1969?
 106 A Yes That's correct
 107 Q Would that then have been all four years of
 108 your high school?
 109 A All four years
 110 Q Okay And so did you essentially attend
 111 Vianney from the age of 14 to 18?
 112 A Correct
 113 Q And what is your date of birth for the
 114 record?
 115 A 11/20/20
 116 Q Okay And did you graduate from Vianney?
 117 A Yes I did
 118 Q Okay Since graduation have you had any
 119 involvement with Vianney high school or the Vianney
 120 community
 121 A Yes I'm still quite involved with the high
 122 school through the Alumni Association and different
 123 functions
 124 Q Okay So it's fair to say you've been
 125 pretty active with Vianney high school and the

101 Vianney community since you graduated in 1969?

102 A That's correct.

103 Q Okay. It would also be fair to say you

104 don't you do not have any personal animosity

105 toward Vianney, correct?

106 A No.

107 Q In fact, it's probably fair to say you're a

108 bit uncomfortable about testifying in this case

109 since it involves claims against Vianney and the

110 Marianist Order, correct?

111 A Correct. Yes.

112 Q As I understand it, one of your brothers is

113 a member of the Marianist Order?

114 A Yes. My oldest brother is. Still is. Has

115 been one for I think over 35 years.

116 Q Okay. And, but you understand that these

117 claims are being brought by a former Vianney student

118 who alleges abuse by a Marianist Brother named

119 William Mueller?

120 A Correct.

121 Q And are you also aware that many individuals

122 have come forward from 1960s, 1970s and 1980s

123 claiming to have been abused by Brother Mueller?

124 MR NOCE: Object. Object to the form of

125 the question. You can mislead though.

101 A Yes, it was.

102 Q And what about the teachers there? Were they

103 also members of the Marianist Order?

104 A Probably at that time two thirds of the

105 teachers were brothers and priests.

106 Q Okay. While you attended Vianney, did you

107 have the same principal during the entire time

108 frame?

109 A No, I did not.

110 Q What principals do you recall having at

111 Vianney while you attended there?

112 A Brother Fred Wisebrook and then later on

113 Brother William Chunning.

114 Q Do you know how that

115 A I'm not sure. I think it was like sophomore

116 year Brother Fred was replaced with Brother

117 Chunning.

118 Q Do you know how you spell his name?

119 A Chunning?

120 Q Yeah.

121 A I believe it was oh gosh,

122 C H U N N I N G, I believe. Got it in the yearbook.

123 Q Chunning?

124 A Chunning.

125 Q Chunning?

101 A Yes.

102 MR CRAIG: And one thing I want to ask you

103 guys, since we're videotaping this, I intend on

104 using it at trial. We're obviously going to have to

105 edit out the objections and so if you're talking

106 over me or you're talking over the witness, we can't

107 do that.

108 MR NOCE: I agree.

109 MR CRAIG: Just little more. Be a little

110 more vigilant, I suppose, on that if you don't mind.

111 Q (By Mr. Craig) Okay. I'd like to direct

112 your attention, Mr. Suda, to the time you attended

113 Vianney high school from 1965 to 1969, okay?

114 A Okay.

115 Q Thank you. Vianney, at that time was and

116 still is a private Catholic high school, is that

117 correct?

118 A Correct.

119 Q Okay. And do you know what the relationship

120 was at the time you were at Vianney between the

121 Marianist Order and the school?

122 A Basically, that they ran the school, yes.

123 Q Were the administration positions such as

124 principal and vice principal occupied by members of

125 the Marianist Order?

101 A Chunning.

102 Q So when you attended Vianney high school

103 obviously there was always a principal there,

104 correct?

105 A Correct.

106 Q And it would either have been Wisebrook or

107 Chunning?

108 A Right. Correct.

109 Q Okay. And they were both members of the

110 Marianist Order?

111 A Correct.

112 Q Okay. And while you were at Vianney from

113 1965 to 1969, was there always a vice principal as

114 well or assistant principal?

115 A Correct.

116 Q Do you recall the names of those gentlemen?

117 A It was the same person, Brother Jerry

118 Bommer. It's B O M M E R, I think.

119 Q And was Brother Bommer also a member of the

120 Marianist Order?

121 A Yes.

122 Q Okay. And when you attended Vianney from

123 1965 to 1969, was there an individual there by the

124 name of William Mueller?

125 A Yes, there was.

101 Q Okay. And what was your understanding of
102 who William Mueller was at that time?
103 A He was a Brother Mari... who basically took
104 care of... did hand. I guess taught music.
105 Q So he was a Marianist Brother correct?
106 A Marianist Brother.
107 Q And he was a teacher at Vianney?
108 A Teacher correct.
109 Q Did you view him then as someone in a
110 position of authority at Vianney?
111 A Yes.
112 Q Okay. And while you were at Vianney did you
113 personally happen to have any encounters with
114 Brother Mueller that you would deem as out of the
115 ordinary?
116 A Yes. I did.
117 Q Do you recall in terms of actual numbers how
118 many such encounters that you had with Brother
119 Mueller?
120 A Thinking back, I would say probably I think
121 it was three total to the best of my recollection.
122 Q Okay.
123 A Well, I had many - how would I say, I
124 saw Brother Mueller all the time. We weren't what I
125 call I guess friends, but as far as the standpoint

11 of odd age, basically three times.
112 Q Yeah. That's what I was going to say. This
113 is.
114 A Can I preface how this came about. I mean
115 or not how I got to know Brother Mueller?
116 Q Sure. Sure. Go ahead.
117 A I mean my two older brothers were at
118 Vianney and I was always - when I was in 6th, 7th
119 and 8th grade I was out there going to games doing
120 different things. Brother Mueller I think by 7th
121 grade or 8th grade came to Vianney and he was always
122 kind of the protected guy, always looking out for
123 the little guys because he didn't want - same way
124 at Vianney protecting the freshman because didn't
125 want the juniors, seniors picking on them, you know.
126 So that was always kind of his role. So the upper
127 classmen kind of didn't like Brother Mueller, but
128 the younger classmen kind of did because he was kind
129 of always looking out for them.
130 So I got to know Brother Mueller by going to
131 the games, seeing him at the games and just meeting
132 him. I don't know how many like I did a lot of the other
133 brothers because my oldest brother was in the
134 Novitiate becoming a Brother. So all of them would
135 ask you know, they'd always say how was your

111 Brother doing. I saw your Brother. So I got to know
112 a lot of the Brothers in addition to Brother
113 Mueller.
114 Q So Brother Mueller more or less assumed the
115 role of a protector of the younger students at
116 Vianney?
117 A Yes.
118 Q And so you obviously even knew him prior to
119 even starting at Vianney high school?
120 A Correct.
121 Q Okay. And let's just try to narrow it down
122 into the three encounters you mentioned that you
123 would consider to be out of the ordinary, okay?
124 A Correct.
125 Q And is that a fair way I guess to describe
126 it is out of the ordinary or unusual?
127 A Yes. At the time I guess I didn't think
128 anything of it, but later on came to realize yes
129 very much out of the ordinary.
130 Q Okay. And in terms of the dates of these
131 three encounters can you just recall the general
132 time frame that each of these three encounters would
133 have occurred?
134 A I guess that's the toughest thing trying to
135 think back when exactly they were. The first one

111 the first one was probably. I'm pretty sure it was
112 in the winter of my freshman year after having
113 practice. I played basketball and ran track. This
114 was probably I think after basketball, if I'm not
115 mistaken. Either that or I was around hanging
116 around cause my oldest brother played varsity
117 basketball so I was around the gym.
118 Brother Mueller at the time had talked about
119 working on his masters or doctorate or something and
120 wanted - was trying to do some research and some
121 studies on different things and asked if I would
122 help him out in this respect.
123 Q Okay. I was going to say we'll get into
124 sort of the dynamics of all that. What I'm really
125 trying to get a hand on right now is sort of the
126 general time frames that these three encounters
127 would have occurred. The first you say was around
128 the winter time of your freshman year?
129 A Yeah. I would say. I'm trying to think
130 November, December and then probably January and
131 then again in probably March, April, something like
132 that. To the best of my recollection I mean.
133 Q Is it fair to say then that the three
134 encounters you had with Brother Mueller would have
135 occurred during more or less the winter 1965 into

101 the spring of 1966 time frame?

102 A Correct. Wouldn't it be '64 to '65 though?

103 Q Didn't you start in high school in '65?

104 MR NOCC: '65-'66 would be your freshman

105 year?

106 A Whatever it is, my freshman year.

107 Q (By Mr. Craig) Yeah, I think you went

108 '65-'66, '66-'67, '67-'68?

109 A You're right.

110 Q '68-'69?

111 A -- correct.

112 Q I always have to do that too.

113 A I'm not sure when I started out.

114 Q So it would have been the late 1965 into

115 spring 1966 time frame?

116 A Correct.

117 Q Okay. And so it's fair to say that these

118 three encounters with Brother Mueller then would

119 have occurred while you were either 14 or 15 years

120 of age?

121 A Yes, yeah.

122 Q And all these encounters with Brother

123 Mueller would have occurred during your freshman

124 year?

125 A All during freshman year, yes.

101 something over my mouth and I presume it was Ether

102 gave me some Ether to put me to sleep.

103 Q Okay. Going back a little bit, you said that

104 he had said some things to you about a degree or

105 something?

106 A He had been talking about working on his

107 I can't remember now if it was his masters or his

108 doctorate in psychology and he had to do some

109 research and study and needed to have some

110 different, you know, different people do some things

111 so that he could do some, this was working towards

112 his thesis and he needed to have some studies done.

113 Q And when he told you that and requested your

114 assistance, what was your impression at that time?

115 A I didn't really think anything of it. You

116 know, I mean, I was very trusting of him, I guess, and

117 all of the Brothers. Unfortunately, a lot of us

118 were in those days.

119 Q That's what I was going to say, was it your

120 impression that he was being sincere?

121 A Oh, of course.

122 Q Was it your impression that you were in

123 fact going to be assisting him with some legitimate

124 experiment?

125 A Correct.

101 Q And did all three of these encounters with

102 Brother Mueller occur on the premises of Vinnex

103 high school?

104 A Yes, it did.

105 Q Okay. Now I want to turn your attention to

106 the first encounter that you had with Brother

107 Mueller, okay?

108 A (Witness nods).

109 Q That would have occurred in the, you

110 believe the winter, possibly November-December 1965

111 time frame?

112 A Correct.

113 Q Okay. And now getting to how this occurred,

114 can you explain how the first encounter was

115 initiated from your observations?

116 A I guess a couple things asked me if I was

117 had time to do things, you know, like a couple

118 times. First time I didn't. This time I had some

119 time cause I was waiting for my brother. He said

120 let's go in the band room. Went in the band room

121 and he locked the door. You know, asked if I

122 trusted him which I said, yeah, of course, I did.

123 He asked me to lay down on the table and then put a

124 I guess he put something to cover my eyes with a

125 little blindfold and said, you know, and then put

101 Q And I think you did say you trusted him?

102 A Yes.

103 Q And as a Catholic, you were raised to trust

104 religious authority figures, weren't you?

105 A Yes.

106 Q And then can you, I guess, explain a little

107 bit how this encounter transpired? You say he took

108 you into a room?

109 A Into the band room. The band room was off

110 the gym and he pretty much totally controlled that.

111 He was the band leader. He was all, he was

112 that was just his area. It was a separate room

113 where the band would meet, of course, and play. And

114 then he just, inside there was a large area with

115 chairs set up to play and there was a couple smaller

116 offices in there.

117 Q And I think you said he locked the door?

118 A Yes, he locked the door.

119 Q Were you alone in there with him?

120 A Yes, just he and I.

121 Q Okay. And you say he had, he had you lay

122 down on a table?

123 A Yes.

124 Q And then you said he covered

125 A Covered my eyes and asked if you know if I

101 trusted him, I think I said yes I do. Then you
102 know put something over like a rag over my mouth
103 and then to the best of my knowledge at that time I
104 guess I thought it was Ether or whatever.

105 Q You recall Go ahead.

106 A Only through the smell. He never really
107 said what it was and proceeded to give me the Ether
108 which I'm sure I want to sleep at that time. Not
109 sure for how long. I would say approximately I
110 don't know ten fifteen minutes at the most. I
111 don't know. I don't really remember.

112 Q It's hard to remember?

113 A It's hard to remember, yeah.

114 Q So do you recall then when you came to
115 consciousness?

116 A I remember waking up and thinking nothing
117 was strange. You know, I was still seemed just
118 like I was before. You know still dressed. My
119 clothes were still - seemed like you know but
120 I'm sure I was groggy you know.

121 Q Do you recall any conversations after you
122 had come to consciousness?

123 A Not really you know. He just thanked me
124 for helping him with you know doing the study.
125 He was asked you know I guess trying to ask me

101 1960 time frame?

102 A Correct.

103 Q Okay. And again can you explain how that
104 the second encounter was initiated from your
105 observations?

106 A Similar type situation. He just said we
107 needed you know we done it once we needed to do
108 it at least another time to try to get some type of
109 basis you know for the study. He had to do it
110 more than once. So I agreed to it.

111 Q And I take it -- well, what was your was
112 if your impression he was being sincere at that
113 time?

114 A Oh yes, very much so.

115 Q And did you still trust him at that time?

116 A Yes. Uh huh.

117 Q And then can you explain how the second
118 encounter transpired?

119 A The second encounter was very similar to the
120 first in that you know, going to the band room
121 lock the door. I do remember he tried to put me out
122 and for some reason, I don't know I was - it
123 wasn't I was I guess becoming nauseated or
124 getting sick and it didn't work because I
125 couldn't you know he couldn't put me to sleep.

101 questions while I was out of something. I don't
102 know. I don't really remember the text afterwards.

103 Q Okay. And did that pretty much then end the
104 first?

105 A That pretty much ended the first, yes.

106 Q And after that first encounter with Brother
107 Mueller and before the second encounter did you tell
108 anyone about that first encounter?

109 A No. I did not.

110 Q Was there a reason why you didn't?

111 A I think I know he asked me not to say
112 anything. Plus I don't know. Just thought it was
113 strange. Didn't you know didn't mention it
114 anything to anyone, no.

115 Q He had asked you not to tell anyone?

116 A Yes. He said kept insisting it was a
117 secret had to be on the QT had to be a secret type
118 study. It was a secret study. Didn't want anybody
119 you know, to know.

120 Q And you believe you had assisted him in a
121 legitimate experiment?

122 A Correct.

123 Q Okay. I'd like to now move on to the second
124 encounter you had with Brother Mueller. Would that
125 have occurred then you believe late 1960 or early

101 I was getting sick so we stopped and that was the
102 end of that session.

103 Q Were you alone with him that time?

104 A Yes.

105 Q Okay. Did he have you lay down on the table
106 like last?

107 A Yes same thing.

108 Q Okay. But the second time for some reason
109 you weren't able to become unconscious?

110 A Correct. I wasn't - I was getting I
111 guess sick from the Ether or whatever it was he was
112 using.

113 Q Okay. Do you recall any conversations
114 how what transpired as far as when you were in
115 there in the room together?

116 A No. He didn't really say much. He just
117 said try to relax, try to put you, you know try to
118 put you sleep, but it just didn't didn't work.

119 Q That pretty much ended the

120 A That ended the that pretty much ended
121 that session and I left.

122 Q Okay. And then after the second encounter
123 with Brother Mueller and before the third encounter
124 did you happen to mention to anyone about the first
125 or the second encounter?

101 A No I did not
 102 Q Okay At that time did you still believe
 103 you were assisting him in a legitimate experiment?
 104 A Oh sure At the time he would you know
 105 and run into him and seeing him although I didn't
 106 see him a lot because we - I didn't do band and
 107 didn't how do I say? Didn't see him during
 108 like other Brothers you'd see regularly didn't see
 109 him cause he was in a different part of the school
 110 but he appeared like we mentioned you know But
 111 things were fine you know thanks for helping me
 112 with the study that type of thing
 113 (Whereupon an off the record
 114 discussion was held and the
 115 testimony resumes as follows)
 116 Q (By Mr. Craig) All right Mr. Suda I
 117 want to move on to the third and final encounter
 118 that you had with Brother Mueller That would have
 119 occurred then in the March or April 1966 time frame?
 120 A Correct
 121 Q Okay By that time you're 15 years old?
 122 A Yes
 123 Q Okay And again can you explain how this
 124 third encounter was initiated from your
 125 observations?

101 when I like that back I should back up a
 102 little When I awoke he was he was kind of
 103 loosening my pants trying to let me you know
 104 saying he was trying to let me breathe you know,
 105 get some air cause he knew I was getting sick I
 106 guess And other than that, that was pretty much
 107 it And then he - you know the session ended
 108 after I sat up and tried to, you know, collect
 109 myself and then I left
 110 Q Okay And so in this third and final
 111 encounter you recall being rendered unconscious,
 112 right?
 113 A Yes I would say yes For how long, I
 114 don't know
 115 Q Right And when you - when you came to you
 116 recall being sick to your stomach?
 117 A Yes
 118 Q And you actually vomited?
 119 A Yes
 120 Q And were your pants loose or unbuttoned or
 121 was he in the process of doing that or what do you
 122 recall from that?
 123 A I think I recall he was reaching over and
 124 how - loosening the belt and, you know, the pants
 125 so that you can so that you can breathe and get

101 A It was initiated similar to the first two in
 102 that he wanted to do try another time to work on
 103 the the study and needed to try to I guess put
 104 me out to see what you know whatever he was doing
 105 Q Was it your impression that he was being
 106 sincere?
 107 A Correct
 108 Q Did you still trust him at that time?
 109 A Yes
 110 Q Okay And then can you explain how that
 111 third and final encounter transpired?
 112 A It transpired very similar to the other two
 113 We went into the band room He locked the door I
 114 got on the table covered my eyes and then he tried
 115 to use the Ether again And he mentioned that I
 116 think because of last time we had trouble using he
 117 was going to try using a little more so and at
 118 that time I guess it did work I don't know for how
 119 long I was out
 120 When I came too which I'm not sure how long
 121 it was whether it was a couple minutes five
 122 minutes or ten minutes I started I got sick to
 123 my stomach and started vomiting throwing up He
 124 had a he did have a bucket I think it was
 125 probably a trash can that I got sick into and then

101 air
 102 Q You recall that as you were coming to?
 103 A Yes
 104 Q Okay Did he say anything to you with
 105 regard to why he was doing that?
 106 A Well he said yes so I could get some air
 107 and feel better That it's not uncommon to I
 108 guess get a little nauseous or sick with Ether
 109 Q What did he - What did his demeanor appear
 110 to be like to you at that time?
 111 A He didn't seem I don't think overly - I
 112 mean, I guess he was a little concerned, but he
 113 didn't seem overly concerned about what was going
 114 on
 115 Q Okay Now at any point in time after of
 116 this third and final encounter with Brother Mueller
 117 and while you were still a student at Vianney did
 118 you tell anyone in the Vianney administration about
 119 these encounters?
 120 A Not - not not initially but I would say
 121 in the time frame of a week, ten days after the last
 122 one I was always talking to you know the
 123 Brothers were always coming up and talking to you
 124 and I happened to be talking to Brother Fred
 125 Wisbrock the principal He was asking how things

101 were going as they always did how's school how's
102 this how's my brother And not sure how we got to
103 it he I guess asked what I was doing and what was
104 going on and I mentioned that I had been helping
105 Brother Mueller with some you know, working on his
106 program to get his you know to get his masters
107 I mean he just asked he just asked kind of asked
108 what And I just said well he was working on I
109 was doing some work on helping him with it and that
110 was pretty much all I remember about the
111 conversation and he dropped it from there Brother
112 Chunning

113 Q Okay Go ahead

114 A Brother Wisebrook did I mean I'm sorry
115 Not Brother Chunning

116 Q It was Brother Wisebrook?

117 A Brother Wisebrook yes

118 Q Okay And he would have been the principal
119 at the time?

120 A Yes He was the principal

121 Q Okay And so as you recollect it would have
122 been Brother Wisebrook that you had had this
123 conversation with?

124 A Correct

125 Q Okay And as far as when this conversation

101 would have occurred you believe it was a week to ten
102 days after your third encounter with Brother
103 Mueller?

104 A Correct Somewhere in that time frame yes

105 Q So is it fair to say it probably would have
106 been roughly March or April of 1966?

107 A Yes

108 Q Okay

109 A And it seemed after that last encounter
110 Brother Mueller was more how do I say aloof I
111 didn't - I still didn't see him a lot, but I
112 don't know if he was avoiding me or I didn't see him
113 and then best of my recollection three four weeks
114 five weeks after that Brother Mueller was gone if
115 I'm not mistaken before the school year was over
116 and I never saw him again

117 Q Okay And as far as your conversation with
118 Brother Wisebrook when you had stated that you had
119 been assisting Brother Mueller with research on his
120 degree or something?

121 A Helping him yeah, doing some I can't
122 remember how it was phrased but I was helping
123 Brother Mueller work on his doctorate or masters in
124 psychology

125 Q Did you inform Brother Wisebrook that in

101 fact Brother Mueller had given you some Ether as
102 well?

103 A No I did not mention that

104 Q Okay I know you have before you Exhibit I
105 Would that happen to refresh your recollection of
106 possibly having told Brother Wisebrook

107 MR NOCE Good ahead

108 Q (By Mr Craig) that you may have told
109 Brother Wisebrook that Brother Mueller had given you
110 Ether

111 MR NOCE And before you answer Mr Suda
112 I object to the form of the question because it's
113 been asked and answered

114 MR CRAIG I asked him if that document
115 refreshes his recollection

116 MR NOCE No You asked him - Well, this
117 is a prefatory I guess to asking him whether he's
118 going to testify with regard to ether He's already
119 said that he did not make that statement to Brother
120 Wisebrook, but subject to that that's my objection

121 Q (By Mr Craig) My question you've had an
122 opportunity to review Exhibit I Mr Suda correct?

123 A Correct

124 Q Okay My simple question is does this
125 happen to refresh your recollection as to whether or

101 not you mentioned to Brother Wisebrook that as part
102 of your assistance to Brother Mueller he had given
103 you Ether?

104 A To be perfectly honest I know we talked
105 about the incident but I truly do not remember I
106 may have but I really I can't I couldn't
107 swear that I mentioned the Ether part of it We did
108 talk about helping him out, but I really - I know I
109 did say it there, but I really in thinking about
110 it - like I say it goes back 42 years, can't
111 remember if I mentioned the Ether or not Truly
112 can't

113 Q At bear minimum you mentioned to Brother
114 Wisebrook that you were helping Father Mueller with
115 these with some experiments or research for his
116 degree right?

117 A Correct

118 Q And it's possible you mentioned the Ether
119 you can't recall at this time is that correct?

120 MR NOCE Object to form of the question
121 Asking for possibilities speculation You can
122 answer

123 A I can't your question again was?

124 Q (By Mr Craig) Was At this point it's
125 possible that you had mentioned that Brother Mueller

10 had given you either but you just can't really
 11 recall at this time?
 12 MR NOCE Same objection
 13 A It's possible but I'm totally I'm not
 14 sure Couldn't say with a hundred percent
 15 certainty
 16 Q (By Mr. Craig) Do you recall telling the
 17 Kirkwood police officer that Brother Mueller had
 18 given you either?
 19 A I guess I did I don't remember that
 20 either but I guess I did mention it It's in here
 21 and I'm sure he wrote it down correctly so
 22 Q And when you gave the information you gave
 23 to Brother Wisebrook about Brother Mueller in March
 24 or April of 1966 what was his response to you?
 25 MR NOCE Object to the form as to hearsay
 26 but you can answer subject to that
 27 A To the best of my recollection he didn't
 28 seem shocked or I didn't see any concern I mean
 29 you know he didn't express on his face any type of
 30 you know how would you say didn't see -- not
 31 much different than his normal, you know
 32 MR NOCE Dan I would move to strike the
 33 response as being non responsive You asked him
 34 what what Brother said and he, Mr. Suda stated

10 recollection no
 11 Q Did Brother Wisebrook tell you not to be
 12 alone with Brother Mueller?
 13 A No
 14 Q Did Brother Mueller or did Brother Wisebrook
 15 tell you to cease assisting Brother Mueller in these
 16 experiments?
 17 A Not to my recollection no
 18 Q Were you ever asked ever again by anyone in
 19 the Vinney administration about the encounters you
 20 had with Brother Mueller?
 21 A No I was not
 22 Q Okay And I think we stated or you stated
 23 that this discussion with Brother Wisebrook would
 24 have been in March or April of 1966 is that
 25 correct?
 26 A To the best of my knowledge yes
 27 Q And I think you testified that you believe
 28 shortly thereafter Brother Mueller disappeared from
 29 Vinney?
 30 A Yes He was just kind of gone, I'm almost
 31 positive before the school year was over Kind of
 32 strange that you know he was just gone
 33 Q That's what I was going to ask you Do you
 34 recall him actually being gone before the school

10 what he observed about him but not what he said
 11 So I object to it for that and I move that it be
 12 stricken for that reason
 13 Q (By Mr. Craig) Did Brother Wisebrook ask
 14 you for more take details about the encounter or
 15 about your research?
 16 A Not not to my knowledge no
 17 Q Did Brother Wisebrook ask you if Brother
 18 Mueller had touched you in any way?
 19 A No he did not
 20 Q Did Brother Wisebrook ask you if you had
 21 actually been rendered unconscious?
 22 A No he did not
 23 Q Did Brother Wisebrook tell you that you
 24 should not have assisted Brother Mueller?
 25 A No he did not
 26 Q Did Brother Wisebrook tell you that Brother
 27 Mueller was not in fact studying for any degrees?
 28 A No he did not
 29 Q Did Brother Wisebrook tell you that
 30 Mueller's alleged research was bogus?
 31 A No he did not
 32 Q Did Brother Wisebrook tell you to avoid
 33 Brother Mueller?
 34 A No not to my knowledge Not to my

10 year ended?
 11 A Yes I'm sure somebody could I would think
 12 find you know find that you know find out
 13 Q And then I take it when the school year
 14 ended you had just finished your freshman year at
 15 Vinney right?
 16 A Correct
 17 Q And then did you start back up in the fall
 18 of 1966 at Vinney?
 19 A Yes
 20 Q That would be your sophomore year?
 21 A Sophomore year
 22 Q And when you started back up at Vinney in
 23 the fall of 1966 was Brother Mueller teaching at
 24 Vinney?
 25 A No he was not
 26 Q Were you ever informed as to where his
 27 whereabouts were at that time?
 28 A Not at that time Later on I come to find
 29 out I think he went I heard he was transferred to
 30 Colorado I think Denver Colorado I believe
 31 Q Were you ever informed as to why he was no
 32 longer at Vinney?
 33 A No
 34 Q Did you ever see or speak to Brother Mueller

101 again?

102 A Never did

103 MR CRAIG Mr Suda I want to thank you

104 for coming down here on behalf of my clients I

105 don't have any further questions

106 EXAMINATION

107 Examination By Mr Noce

108 Q I have a few questions for you Mr Suda Do

109 you know after you spoke with Brother Wisebrook what

110 he did as a result or in response to your report?

111 A No I No I have no idea

112 Q Okay And as I understand it the report

113 that you made to the Kirkwood police was after you

114 had seen in the paper some reports possibly by Mr

115 Bacon or somebody else?

116 A Correct

117 Q Have you ever spoken with Brian Bacon?

118 A No I have not

119 Q Okay And did you ever speak before October

120 of 2005 to anybody about these three incidents you

121 had back in 1965 other than Brother Wisebrook?

122 A Only to my wife a couple weeks before I

123 talked to the Kirkwood police

124 Q Okay And the Kirkwood police report and

125 what you've told us here today is pretty consistent

101 kind of stuff on the shoulders (indicating) but

102 none of anything in the in a sexual nature, no not

103 in any meetings

104 Q Other You've had the one interview with

105 the Kirkwood police officer have you had any follow

106 up with the police since then

107 A No I've not

108 Q And as I I've is trying to take some notes

109 of what you were describing and what you what you

110 were describing for us was what you considered then

111 and consider now to be unusual incidents involving

112 William Mueller?

113 A Yes

114 Q Three of them And as a result of these

115 three incidents you were not physically injured at

116 all other than becoming ill for a period short

117 period of time as a result of the Ether?

118 A That's correct

119 Q Okay You didn't sustain or require You

120 didn't sustain any injury that required any medical

121 attention?

122 A No

123 Q You've never had any kind of medical

124 attention as a result of any of this have you sir?

125 A No

101 with what you recall of the incidents?

102 A Correct

103 Q And would it be fair to say that you were

104 not sexually abused by William Mueller as far as you

105 can recall? He never touched you that you know of?

106 A To the best of my knowledge I'd have to say

107 no but

108 Q Okay And have you spoken with anyone whose

109 ever told you that at any time they were sexually

110 abused or touched by William Mueller?

111 A No I've never talked to anyone other like

112 I said before about this

113 Q And your recollection and memory of these

114 events I understand that there was a time that you

115 were made unconscious but other than for that

116 period you recall everything that occurred?

117 A Oh yes

118 Q You didn't -- You didn't have any kind of a

119 repressed recollection or anything about these

120 incidents at all?

121 A You mean the incident when I was put out or

122 just the general meetings?

123 Q The general meetings

124 A No He was always never touched or tried

125 to grab I mean on the shoulders he would do that

101 Q Or a need for counseling or anything like

102 that?

103 A No

104 Q Okay And at the time of the incidents all

105 the way up to the time that you spoke to Brother

106 Wisebrook at least you actually thought you were

107 involved in some kind of I think Mr Craig mentioned

108 a legitimate experiment?

109 A That's correct

110 Q And when you reported it to Brother

111 Wisebrook and noted that Mueller was gone Mueller

112 or Mueller I don't know how he pronounced it you

113 still thought it was a legitimate experiment?

114 A Yes

115 Q Okay And in hindsight now you know

116 in 2003 when the newspapers started reporting these

117 things of Brian Bacon and other people filing

118 lawsuits that there was no legitimate experiment?

119 A Correct But I knew about it long I guess

120 before that cause I think when he was principal at

121 St Mary's there was some things because of I

122 heard rumors because of things that happened at

123 St Mary's when he was principal there

124 Q Okay

125 A But at that time I know I did not come

101 forward did not say anything to anyone.
 102 Q All right. So you were aware you've
 103 lived in St. Louis all your life?
 104 A Yes. I have except four years I went away to
 105 college but other than that yes.
 106 Q Okay. All right. And you would have been a
 107 69 graduate of Vinniv and then Mueller was back at
 108 St. Mary's in the early eighties?
 109 A I believe so yes.
 110 Q Okay. And you heard something from somebody
 111 about him being
 112 A I don't know whether it was in the paper or
 113 that he was just - I remember - I can't remember
 114 how it was when it came about whether it was in the
 115 paper or whether someone mentioned that he was
 116 released from his duties from my Brother who's
 117 you know, I can't remember how it came about but
 118 did hear that he was - had problems at St. Mary's
 119 and was relieved of his duties there also.
 120 Q Did you find out later that he was after
 121 that sent back to Vinniv? Were you aware of that
 122 for a short period of time in the mid eighties?
 123 A I don't think so.
 124 Q Okay. Were you active in the Alumni
 125 Association. I mean did your kids go to Vinniv?

101 A I have a son graduated in '98 yes. But
 102 during that period I would say during the eighties I
 103 wasn't as involved. I became more involved in the
 104 nineties probably.
 105 Q With your son going there?
 106 A Yes. I got back involved with him.
 107 Q Okay. And are you on the board now?
 108 A No. I'm on some different committees for
 109 the new putting a new wing on the gym, that type
 110 of stuff. And I'm on the Alumni Board but not on
 111 the school on the actual school board. I've been
 112 asked a couple of times but I travel too much and
 113 it's difficult.
 114 Q So as I understand what you realized in the
 115 early eighties was that these probably weren't
 116 legitimate experiments?
 117 A Correct.
 118 Q And that bothered you obviously?
 119 A Yes it did.
 120 Q And that's really why when you heard about
 121 Bacon's report and him going on TV and printing in
 122 the newspaper you thought that maybe you would give
 123 your information like you testified to today to the
 124 police?
 125 A That's correct.

101 MR. NOCE That's all I have. Thanks Mr.
 102 Suda.
 103 EXAMINATION
 104 Examination By Mr. Goldenhersh
 105 Q Mr. Suda I'll have a just a few
 106 questions for you. What do you do for a living
 107 sir?
 108 A I'm a - Right now I'm actually a
 109 manufacturer actually I work for a company
 110 They sell area rugs. Company is called Dalyn
 111 D A L Y N. I travel four states territory manager.
 112 Q And where did you attend college?
 113 A Went to Loias College in Dubuque Iowa.
 114 Q Okay. Your brother who is a Marianist what
 115 is his name?
 116 A Thomas Suda. He's a non he's a non
 117 teaching Brother. He's always been what they call a
 118 working Brother. He's always traveled the world
 119 country remodeled redecorating churches worked
 120 with Brother Mel Meyer for years.
 121 Q Oh okay. I represent the Catholic High
 122 School Association of the Archdiocese in St. Louis.
 123 The head of that non-profit corporation is the Arch
 124 Bishop so I'm here on his behalf. I just have a few
 125 questions for you. I won't take much of your time.

101 The police report before you which is
 102 Exhibit I was that your first public discussion of
 103 your three episodes with Brother Mueller since
 104 having that discussion with Principal Wisebrook?
 105 A Correct other than I talked to my wife
 106 about it.
 107 Q Right. I don't consider that public.
 108 A First public yes. That's correct.
 109 Q So it's fair to say that except for talking
 110 with Principal Wisebrook in 1966 you kept all this
 111 information to yourself until the 2004 2005 time
 112 frame?
 113 A Correct.
 114 Q And in 2004 2005 was the first time you
 115 discussed it with your wife?
 116 A Yes.
 117 Q Okay. And thereafter when you saw things in
 118 the newspapers you felt it was incumbent upon you to
 119 report what happened to the police and you went to
 120 the police?
 121 A That's correct.
 122 Q Okay. So it's fair to say that in let me
 123 give you a time frame. The Marianist appointed
 124 Mr. Mueller he's no longer a Brother so I'll refer
 125 to him as Mister. They appointed Mr. Mueller is the

101 assistant principal at St. Mary's high school which
102 is owned and operated by the Catholic High School
103 Association. It's an Archdiocese of the school.
104 They appointed him as assistant principal in the
105 fall semester of 1982. So it would have been late
106 August, early September.

107 At any time prior to his appointment at
108 St. Mary's high school in the fall of 1982 did you
109 ever go to the Archdiocese or to the Catholic High
110 School Association and report to them your episodes
111 with Brother Mueller?

112 A: No, I did not.

113 Q: Did you ever have discussions with your
114 parents while I don't know if your parents are
115 alive or not?

116 A: No, they're both living.

117 Q: They're both living? Did you ever have
118 discussions with your parents about Brother Mueller?

119 A: No, I did not.

120 Q: Did you ever have discussions with your
121 Brother Thomas Suda about Brother Mueller?

122 A: No, I did not.

123 Q: Okay. And you think the only discussions
124 you had would have been with Brother Wischbrock and
125 possibly Brother Jerome Baumer.

101 ways, sir. Just whatever you recall.

102 A: I'm trying to think. I guess I don't
103 know. I think it might have been an article in the
104 paper and also through different things. You run
105 into graduates of different schools. That kind of
106 talk, of course, gets around that Brother Mueller is
107 relieved of his duties because of, how would you say,
108 it's sexual or things he shouldn't have been doing
109 with the young men.

110 Q: Inappropriate?

111 A: Inappropriate behavior with young men which
112 didn't surprise me at all. I guess at that time I
113 thought how could they keep you know, put him
114 back in schools.

115 Q: All right. You said though that you also
116 I think you said in the early 1980s when responding
117 (sic) responding to Jerry's question that you
118 learned that these were not legitimate experiments
119 or you came to that belief?

120 A: Yes.

121 Q: Okay. How did you come to that belief let's
122 say after November of 1983 that what he was doing
123 was not part of any kind of legitimate research or
124 experiments?

125 A: I don't know. I guess I probably didn't

101 A: Not Brother Baumer in thinking about it, no.

102 Q: Okay. So that may be inaccurate in this
103 police report?

104 A: Yes. Nothing else. Brother Baumer is not
105 yes.

106 Q: And the other thing which may be inaccurate
107 in the police report is whether or not you told them
108 that you had been given Fisher by Brother by
109 Mr. Mueller?

110 A: Can you say that again?

111 Q: Yeah. One thing - The other thing which
112 may be inaccurate, trusting of your memory after 42
113 years is whether or not you told Brother Wischbrock
114 that you had been given Fisher.

115 A: Oh.

116 Q: By Mr. Mueller?

117 A: That.

118 Q: That may or may not be accurate.

119 A: That is correct.

120 Q: Okay. Tell me about the rumors you heard
121 Now, I'll give you another time frame. Mr. Mueller
122 was relieved of his duties by the Marianists at
123 St. Mary's high school at the end of November 1983
124 where he was the principal. Tell me what rumors you
125 heard after that. I know it goes back a long, long

101 think about it for a long time. It really didn't
102 cross my mind then after seeing the article and then
103 at that time I guess a lot of other stuff was coming
104 about with Priests and Brothers and realized that
105 you know, what he was doing was not right, not
106 correct.

107 Q: Did you hear anything from your Brother
108 Thomas Suda at that time?

109 A: No, I did not.

110 Q: Okay, all right. But you believe that once
111 he was relieved, strike that.

112 You came to have the understanding and
113 belief once Brother Mueller was relieved of his
114 duties at St. Mary's that it was in the public
115 knowledge that he was not involved in legitimate
116 research for an advanced degree, is that fair
117 statement?

118 A: That was my, that was my understanding
119 yes.

120 MR. GOLDFENHERSH: I have no further
121 questions.

EXAMINATION

122 Examination By Mr. N'Jee

123 Q: I just have a couple more. Mr. Suda, in the
124 eighties when you heard that Mueller was relieved of

01 his duties at St. Mary's it would have been through
 02 articles now articles in Post Dispatch?
 03 A I believe it was in the paper yes
 04 Q When we say the paper I don't even know if
 05 the old St. Louis Sun was going at that time
 06 A Globe or I'm not sure
 07 Q Or it would be in the Post Dispatch or maybe
 08 even in the St. Louis Review?
 09 A It could have been in the Review that's
 10 correct
 11 Q Okay So if it was in any of those
 12 newspapers you would have seen whatever was printed
 13 there read it and then reached some your own
 14 conclusions based on the articles?
 15 A Correct
 16 Q Okay Would there have been any other
 17 information provided to you other than what was
 18 contained within those newspaper articles that would
 19 have been the basis of your conclusions other than
 20 your own personal experience?
 21 A At the time then different things I guess
 22 I had heard someone who had a son going there my
 23 friends had sons going there they had mentioned
 24 you know they were talking about what was happened
 25 that he was relieved also of his duties

01 State of Missouri
 02 SS
 03 County of St. Louis
 04 I, Mary L. Peppenhorst, a Notary Public in
 05 and for the State of Missouri, duly commissioned
 06 qualified and authorized to administer oaths and to
 07 certify to depositions, do hereby certify that
 08 pursuant to Notice in the civil cause now pending
 09 and undetermined in the Circuit Court of the City of
 10 St. Louis, State of Missouri, to be used in the
 11 trial of said cause in said court, I was attended at
 12 the offices of Hepler Broom, 800 Market Street
 13 Suite 2300, in the City of St. Louis, State of
 14 Missouri, by the aforesaid attorneys on the 13th
 15 day of February, 2007.
 16 The said witness, being of sound mind and
 17 being by me first carefully examined and duly
 18 cautioned and sworn to testify the truth, the whole
 19 truth and nothing but the truth in the case
 20 aforesaid, thereupon testified as is shown in the
 21 foregoing transcript, said testimony being by me
 22 reported in shorthand and caused to be transcribed
 23 into typewriting, and that the foregoing page
 24 correctly set forth the testimony of the
 25 aforementioned witness together with the questions

01 Q And those are going to St. Mary's?
 02 A St. Mary's yes
 03 Q So you would have had to come to this
 04 conclusion, and I'm not saying anything about the
 05 conclusion but the basis would be these newspaper
 06 articles and maybe some some rumors going around
 07 the school?
 08 A That's correct
 09 MR NOCE That's all I have
 10 MR CRAIG Thank you sir Appreciate it
 11 THE VIDEOGRAPHER This concludes the
 12 deposition of Harold Suda We are off the record at
 13 9:53 This ends tape number 1
 14 MR NOCE You have a right to read this
 15 deposition or you can waive signature It's up to
 16 you
 17 THE WITNESS I'll waive
 18 (Whereupon the proceedings were concluded and the
 19 signature was waived.)
 20
 21
 22
 23
 24
 25

01 propounded by counsel and remarks and objections of
 02 counsel thereto and is in all respects a full
 03 true correct and complete transcript of the
 04 questions propounded to and the answers given by
 05 said witness that signature of the deponent was
 06 waived by agreement of counsel
 07 I further certify that I am not of counsel
 08 or attorney for either of the parties to said suit
 09 not related to nor interested in any of the parties
 10 or their attorneys
 11 Witness my hand and notarial seal at St
 12 Louis Missouri this 21st day of February 2007
 13 My Commission expires February 24 2010
 14
 15
 16 Notary Public in and for the
 17 State of Missouri
 18
 19
 20
 21
 22
 23
 24
 25

(01) COURT MEMO
 (02) IN THE CIRCUIT COURT OF THE CITY OF ST LOUIS
 (03) STATE OF MISSOURI
 (04)
 (05) Timothy Kluempers et al vs Marianist Province of the United States et al
 (06) 052 11454 Div 18 ind 06CC 0000J8 Div 15
 (07)
 (08) CERTIFICATE OF OFFICER AND
 (09) STATEMENT OF DEPOSITION CHARGES
 (10)
 (11) DEPOSITION OF HAROLD L SUDA JR
 (12) TAKEN ON BEHALF OF THE PLAINTIFF
 (13) 2/13/2007
 (14) Name and address of person or firm having custody of
 (15) the original transcript
 (16) Daniel Craig
 (17) Sanders Simpson Fletcher & Smith
 (18) 1125 Grand Blvd Suite 1400
 (19) Kansas City, MO 64106
 (20)
 (21)
 (22)
 (23)
 (24)
 (25)

(01) St Louis Missouri 63101
 (02) IN WITNESS WHEREOF I have hereunto set
 (03) my hand and seal on this _____ day of _____
 (04) Commission expires
 (05) _____
 (06) Notary Public
 (07)
 (08)
 (09)
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 (21) charges had not been paid It is anticipated
 (22) that all charges will be paid in the normal course
 (23) of business
 (24) GORE PERRY GATEWAY & LIPA REPORTING COMPANY
 (25) 515 Olive Street Suite 700

<p>-0- 052-11454 7 12 57 6 06CC-000008 57 6</p>	<p>66- 67 21 8, 67 68 21 8 68- 69 21 10 6th 18 8</p>	<p>49 15 alleged 38 21 alleges 13 18, almost 39 21 alone 24 19 28 3,39 3 along 7 5 aloof 74 10 already 55 18 although 29 5 Alumni 12 22,45 24 46 10, always 16 3 16 13 18 8 18 11 18 12,18 16 18 19 18 25 21 12 32 22 32 23,33 1 42 24,47 17 47 18 animosity 13 4 answered 35 13 anticipated 58 21 anybody 26 18 41 20 anyone 26 8,26 14 26 15 28 24 32 18 39 9 42 8 42 11,45 1 apparently 10 3 appeared 29 10 32 9 appointed 48 23 48 25 49 4 appointment 49 7 Appreciate 54 10 approximately 25 9 April 20 21 29 19 34 6 37 15 39 15 Arch 47 23 Archdiocese 7 8 7 21 47 22 49 3 49 9 area 24 12 24 14 47 10 around 20 5,20 6 20 7 20 17 51 6 54 6 articles 10 19 53 2 53 2 53 14 53 15 54 6 10 16 51 3 52 2 assistance 23 14 36 2 assistant 16 14 49 1 49 4 assisted 26 20 38 15 assisting 23 23 29 3 31 19 39 6 Association</p>	<p>7 21 12 22 45 25 47 22 49 3 49 10 assumed 19 4 attended 11 20 12 5 14 12 15 6 15 11 16 2 16 22 55 11 12 10 47 12 attention 14 12,22 5 43 21 43 24 attorneys 55 14 56 10 56 8 August 49 6 authority 17 10 24 4, authorized 55 6, avoiding 34 12 38 23 aware 13 21,45 2 45 21 away 45 4 awoke 31 2, -B- B o m m e 16 18 back 26 18 41 20 17 20 19 25 23 3 31 1 31 1 36 10 40 8 40 13 41 21 45 7 45 21 46 6 50 25 51 14 Bacon 11 15 41 17 44 17 Bacon s 46 21 band 17 4 22 20 22 20 24 9 24 9 24 11 24 13 27 20 29 6 30 13 based 53 14 Basically 14 22 basically 17 3 18 1 basis 27 9 53 19 54 5 basketball 20 3 20 4 20 7 Baumer 49 25 50 1 50 4 bear 36 13 became 46 3 become 28 9 becoming 18 24 27 23 43 16 Behalf 57 12, behalf 7 15 41 4 47 24 behavior 31 11 belief 51 19 51 21,52 13 believe</p>	<p>11 8 15 21 15 22 22 10 26 20 26 25 29 2 34 1 39 18 40 21 45 9,52 10, 53 3 belt 31 24, best 17 21 20 22 25 3 34 13 37 18 39 17 42 6 better 32 7, birth 12 13 Bishop 47 24 bit 13 8 23 3,24 7 blindfold 22 25 Blvd 57 18 58 4, Board 46 10 board 46 7 46 11 bogus 38 21 Bommer 16 18 16 19 bothered 46 18 16 9 49 16 49 17 breathe 31 4 31 25 Brian 41 17 44 17 Broadway 58 16 Broom 7 3 55 12 53 9 Brother 10 16 13 18 13 23 15 12 15 13 15 16 15 16 16 17 16 19 17 3 17 5 17 6 17 14 17 18 17 24 18 5 18 10,18 17 18 20 18 24 19 1 19 1 19 2,19 4 20 8 20 24 21 18 21 22 22 2 22 6 26 6 26 24, 28 23 29 18,32 16 32 24 33 5,33 11 33 14 33 15 33 16 33 17 33 22 34 2 34 10 34 14 34 18 34 19 34 23 34 25 35 1 35 6 35 9 35 9 35 19 36 1,36 2 36 13 36 25 37 8 37 14,37 14 37 25 38 4 38 8 38 8 38 11 38 14 38 15 38 17 38 17 38 20,38 23 38 24 39 2 39 3 39 5 39 5,39 6,39 11 39 14 39 19 40 14 40 25 41 9 41 21 44 5 44 10 45 16 47 17 47 18 47 20 48 3 48 24 49 11 49 18 49 21 49 21 49 24 49 25 50 1 50 4 50 8 50 13</p>
<p>-1- 11/20/50 12 15 1125 57 18 58 4 13th 7 2 55 14 1400 57 18,58 4 1960s 13 22 1965 11 21 12 5 14 13 16 13 16 23 20 25 21 14,22 10 26 25 41 21 1966 21 1,21 15 27 1 29 19,34 6,37 15 39 15 40 9,40 14 48 10, 1969 12 5,13 1 14 13 16 13,16 23 1970s 13 22 1980s 13 22 51 16 1982 49 5 49 8 1983 50 23 51 22</p>	<p>-7- 700 58 25 7th 18 8,18 10</p>	<p>-8- 800 7 3 55 12 58 10 8th 18 9 18 11, -9- 9 07 7 1 9 53 54 13</p>	<p>-B- B o m m e 16 18 back 26 18 41 20 17 20 19 25 23 3 31 1 31 1 36 10 40 8 40 13 41 21 45 7 45 21 46 6 50 25 51 14 Bacon 11 15 41 17 44 17 Bacon s 46 21 band 17 4 22 20 22 20 24 9 24 9 24 11 24 13 27 20 29 6 30 13 based 53 14 Basically 14 22 basically 17 3 18 1 basis 27 9 53 19 54 5 basketball 20 3 20 4 20 7 Baumer 49 25 50 1 50 4 bear 36 13 became 46 3 become 28 9 becoming 18 24 27 23 43 16 Behalf 57 12, behalf 7 15 41 4 47 24 behavior 31 11 belief 51 19 51 21,52 13 believe</p>	<p>-A- able 28 9 above 58 20 abused 13 23 42 1 42 10 13 18 accurate 50 18 active 12 25 45 21 actually 31 18 38 12 39 25 44 6 47 8 47 9 17 17 46 11 additon 19 2 address 7 3 57 14 administer 55 6 administration 14 23 32 18 39 10 advanced 52 16 aforementioned 55 25 aforesaid 8 3 55 14 55 20 afterwards 26 2 against 13 9 20 21 27 3 29 23 30 15 34 16 36 23 39 9 41 1 50 10 age 8 1 12 11 21 20 agreed 27 10 agreement 56 6 14 8 ahead 18 6 25 5 33 15 35 7 air 31 5 32 1 32 6 alive</p>
<p>-2- 2/13/2007 57 13 2004-2005 48 11 48 14, 2005 10 6,10 9 41 20 44 16, 2007 7 2,55 15,56 12 2010 56 13 21st 56 12, 22nd 7 10 2300 55 13 23rd 58 10,</p>	<p>-5- 515 58 25 5th 10 6,10 9</p>	<p>-6- 63101 58 11 59 1 63102 58 17 64106 57 19 58 5 65 66 21 4 21 8</p>	<p>-B- B o m m e 16 18 back 26 18 41 20 17 20 19 25 23 3 31 1 31 1 36 10 40 8 40 13 41 21 45 7 45 21 46 6 50 25 51 14 Bacon 11 15 41 17 44 17 Bacon s 46 21 band 17 4 22 20 22 20 24 9 24 9 24 11 24 13 27 20 29 6 30 13 based 53 14 Basically 14 22 basically 17 3 18 1 basis 27 9 53 19 54 5 basketball 20 3 20 4 20 7 Baumer 49 25 50 1 50 4 bear 36 13 became 46 3 become 28 9 becoming 18 24 27 23 43 16 Behalf 57 12, behalf 7 15 41 4 47 24 behavior 31 11 belief 51 19 51 21,52 13 believe</p>	<p>-5- 515 58 25 5th 10 6,10 9</p>

<p>51 6,52 7 52 13 Brothers 19 2 23 17 29 8 32 23 52 4 brothers 13 12 15 5 18 7 18 23 13 14 18 23 20 6,22 19 33 2 47 14 brought 13 17 bucket 30 24 business 58 23</p> <p style="text-align: center;">-C-</p> <p>C h-u-n-n-i-n 15 22, called 10 14 47 10 10 21 17 25 47 17 Came 10 14 came 10 12 18 4,18 11, 19 18 25 14,30 20, 31 15 45 14,45 17 51 19 52 12 carefully 55 17 17 4 cases 11 9 7 8 7 12,8 3 9 15 13 8 55 19 Catholic 7 21,14 16,24 3 47 21 49 2 49 9 caused 55 22 cautioned 55 18 cease 39 6, certainty 37 6 Certificate 57 8 certified 7 6 certify 55 7,55 7 56 7, chairs 24 15 Charges 57 9 charges 58 21 58 22 Chunning 15 13 15 17 15 19 15 23 15 24 15 25 16 1 16 7 33 12 33 15 churches 47 19 Circuit 7 10 7 11 55 9,57 2 City 7 11 55 9 55 13, 57 2 57 19 58 5 civil 55 8 claiming 13 23 claims 13 9 13 17 classmen</p>	<p>18 17 18 18, clients 41 4 clothes 25 19 collect 31 8, College 47 13, college 45 5,47 12 Colorado 11 9 40 21 40 21 coming 32 2 32 23,41 4, 52 3 Commission 56 13,59 4 commissioned 55 5 committees 46 8 community 12 20,13 1, Company 47 10,58 24 company 47 9 complete 56 3, concerned 32 12 32 13 concerning 10 5 37 19 concluded 54 18 concludes 54 11 conclusions 53 14 53 19 54 4 54 5 consciousness 25 15 25 22, considered 43 10 19 13 43 11 48 7 consistent 41 25 contained 53 18 controlled 24 10, conversations 25 21 28 13 8 21, 33 11 33 23 33 25 34 17 Copy 58 7,58 13, corporation 7 22,47 23 correctly 37 12 55 24 Couldn't 37 5 couldn't 27 25,27 25 36 6 council 7 13 counseling 44 1,56 1,56 2 56 6 56 7 country 47 19, County 55 3 couple</p>	<p>10 19 11 9 22 16 22 17 24 15 30 21 41 22 46 12 52 24 course 22 22 23 21 24 13 51 6 58 22 Court 7 10 55 9 57 1 57 2 court 7 6 7 24 8 18,8 23 55 11, Covered 24 25 covered 24 24 30 14 22 24, Craig 6 5 7 15 7 15 8 7, 9 23 14 2,14 9 14 11 21 7 29 16 35 8, 35 14,35 21 36 24 37 7 38 4 41 3 44 7 54 10,57 16 58 2 criminal 11 7, cross 52 2, currently 7 10 custody 57 14</p> <p style="text-align: center;">-D-</p> <p>D a i l y 47 11 Dalyn 47 10 Dan 7 15 37 23 Daniel 57 16 55 2 dates 19 20 7 2 12 13 days 23 18,32 21 34 2 55 15 56 12 59 3 December 20 20 decision 10 25 deem 17 14 degrees 38 18 23 4 34 20 36 16 52 16 delivery 58 20 demeanor 72 9 Denver 40 21 Department 10 4 10 9 10 15 department 10 21 deponent 56 5 deposes 8 3 Deposition 9 20 57 9,57 11 depositions 55 7 7 7 8 14 9 14 54 12 54 15 describe 19 15 describing</p>	<p>43 9 43 10 details 38 5 different 12 22 18 10 20 11 23 10 23 10 29 9 37 22,46 8 51 4 51 5,53 21 difficult 8 23,46 13, directed 9 10 14 11 disappeared 39 19, discussed 48 15 discussions 49 13 49 18 49 20 49 23 29 14 39 14 48 2 48 4 Dispatch 53 2 53 7 Div 57 6 57 6 Division 7 12 doctorate 20 9,23 8 34 23 document 10 1,35 14 done 23 12 27 7 door 22 21 24 17 24 18 27 21 30 13 down 8 19 8 24 10 24 19 11 22 23 24 22 28 5 37 12 41 4 dressed 25 18 Drive 12 3, dropped 33 11 Dubuque 47 13 duly 8 1 55 5 55 17 during 15 7 20 25 21 23 21 25 29 7 46 2 46 2 duties 45 16 45 19 50 22 51 7 52 14 53 1 53 25 dynamics 20 14</p> <p style="text-align: center;">-E-</p> <p>each 8 22 19 22 early 26 25 45 8 46 15 49 6 51 16 edit 14 5 Edward 7 20 58 14 eighties 45 8 45 22 46 2 46 15 52 25 Either 20 5 either</p>	<p>16 6 21 19 37 11 56 8 else 41 15 50 4 encounters 17 13 17 18 19 12, 19 21 19 22 20 16 20 24 21 18 21 22 22 1 32 19 39 10 22 6 22 14 24 7 26 6 26 7 26 8 26 24 27 4 27 18 27 19, 28 22 28 23 28 25 29 17,29 24 30 11 31 11 32 16 34 2 34 9 38 5 ended 26 5 28 19 28 20 28 20,31 7 40 1 40 5 ends 54 13 26 3 28 2 50 23 entire 15 7 episodes 48 3 49 10 essentially 12 10 events 42 14 19 8 19 9 53 1,53 8 everything 42 16 exactly 19 25 Examination 6 4 6 5 6 6 6 7 6 8 8 6 8 7 41 6 41 7 47 3 47 4 52 22 52 23 examined 55 17 except 15 1 18 9 Exhibit 9 20,9 24 35 4 35 22 48 2 Exhibits 6 10 experience 53 20 experiments 36 15 39 7,46 16 51 18 51 24,23 24 26 21 29 3 44 8 44 13 44 18 expires 56 13 59 4 explain 10 11 22 14 24 6 27 3 27 17 29 23 30 10 express 37 20 eyes 22 24 24 25 30 14,</p> <p style="text-align: center;">-F-</p> <p>face 37 20 fact 11 3 17 7 23 23 35 1 38 18 far 1 24,13 3 13 7</p>
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19 15 20 23 21 17 34 5 42 3 48 9 48 22 52 16 fall 40 8 40 14 49 5 49 8 far 17 25 28 14 33 25 34 17 42 4 Father 36 14 Favor 58 1 58 7 58 13, February 7 2 55 15 56 12 56 13 feel 32 7 felt 48 18 few 8 16 41 8 47 5 47 24, fifteen 25 10 figures 24 4 filing 44 17 final 29 17 30 11 31 10 32 16 find 40 3 40 3 40 3 40 19 45 20 fine 29 11 finished 40 5 8 25 9 1 firm 57 14 First 22 18 48 8 first 8 1 10 24 19 25 20 1,20 17 22 6 22 14 26 4 26 5 26 6 26 8 27 20 28 24,30 1 48 2 48 14 55 17 five 30 21 34 14, Fletcher 57 17 58 3 Floor 58 10 follows 9 22 29 15 8 4 43 5 foregoing 55 21 55 23 former 13 17 13 24 35 12 36 20,37 16, forthright 11 12 11 16 55 24 forward 15 22 45 1 four 12 7 12 9 45 4 47 11, frames 20 16 15 8 19 22 21 1 21 15 22 11 27 1 29 19 32 21 34 4 48 12 48 23 50 21 Fred 15 12 15 16 32 24	freshman 18 14 20 2 20 18 21 4 21 6 21 23 21 25 40 5 friends 17 25 53 23 full 56 2 functions 12 23 further 41 5,52 20 56 7, -G- Gale 58 15 games 18 9 18 21,18 21, Gateway 58 24 gave 23 2 37 13,37 13 general 19 21 20 16 42 22 42 23 generated 10 4, gentlemen 16 16, Gerard 58 8 Gerry 7 17, gets 51 6 given 35 1 35 9 36 2,37 1 37 9 50 8 50 14 56 4, Globe 53 6, goes 36 10 50 25 Goldenhersh 6 7 7 20 7 20 47 4 52 20,58 14 Good 8 8,35 7 good 8 24 8 25 10 22 Gore 58 24, gosh 15 21, grab 42 25 grade 18 9 18 11 18 11 graduated 13 1 46 1 graduates 51 5 12 16 45 7 graduation 12 18 Grand 57 18 58 4 Greensfelder 58 15 groggy 25 20, ground 8 16, guess 10 14 11 1 11 3 11 10 17 4 17 25 19 15 19 17 19 24	22 16 22 24 23 16 24 6,25 4 25 25, 27 23 28 11 30 3 30 18 31 6 32 8 32 12 33 3 35 17, 37 10,37 11,44 19 51 2 51 12 51 25 52 3 53 21 guys 11 1 14 3 18 13 18 12 gym 20 7 24 10,46 9 -H- handed 9 24,20 15 56 11 59 3 hanging 20 5 happened 32 24 44 22 48 19 53 24 17 13 28 24 35 5 35 25 hard 25 12 25 13 Harold 6 3 7 7 7 25 8 12 54 12 57 11 head 47 23 heard 40 20,44 22,45 10 46 20 50 20 50 25 52 25,53 22 hearsay 37 16,45 18 52 7 Hebrank 58 9 held 29 14 Helping 34 21, helping 25 24 29 11 33 4 33 9,34 22 36 8, 36 14,11 1,20 12 Hemker 58 15 Hepler 7 3,55 12 58 9 hereby 55 7 hereunto 59 2 High 7 18 7 21 11 23 47 21 49 2 49 9 high 11 20 11 21 12 8 12 19 12 21 12 25 14 13 14 16 16 2 19 9 21 3,22 3 49 1 49 8 50 23 hindsight 44 15 44 15, honest 11 12 11 16 36 4 how s 33 1 33 1 33 2 hundred 37 5 -I- idea 41 11	identification 9 21 identify 7 13 impressions 23 14 11 6 11 11 23 20 23 22 27 12 30 5, inaccurate 50 2 50 6 50 12 Inappropriate 51 10 51 11 incidents 41 20 42 1,42 20 43 11,43 15 44 4, 36 5 42 21 incumbent 48 18 Index 6 1 indicating 43 1, individuals 13 21 16 23 information 37 13 46 23 48 11 53 17, informed 40 17 40 22 34 25 initialed 22 15 initially 32 20 initiated 27 4 29 24 30 1 injured 43 15 injury 43 20 inside 24 14 insisting 26 16 intend 14 5 interested 56 9 interrogatories 8 4 interviewed 10 8 10 5 10 12, 43 4 Into 24 9, into 19 12 20 13 20 25 21 14 24 8 29 5 30 17 30 25 51 5 55 25 investigation 11 7 involved 12 21 44 7 46 3 46 3 46 6 52 15 involvement 12 19 involves 13 9 involving 9 15 43 11 Iowa 47 13 -J- January 20 20	Jerome 49 25 Jerry 16 17 Jerry s 51 17 job 8 24 8 25 John 7 17 11 21 Johnston 7 5 Jr 7 25 Judicial 7 11 juniors 18 15 jury 11 20 -K- Kansas 57 19,58 5 keep 51 13 kept 26 16 48 10 kids 45 25 Kind 39 22 kind 10 25,18 12 18 16 18 17 18 18 18 18 31 2 33 7 39 21 42 18 43 1,43 23 44 7 51 5 51 23 Kirkwood 6 11 10 4 10 9 10 15 11 1 11 13 11 15 12 1 12 2 12 3 37 8 41 13 41 23 41 24 43 5 Klumpers 7 5 Klumpers 57 5 knew 11 8 19 8 31 5 44 19 knowledge 25 3 38 7 38 25, 39 17 42 6 52 15 -L- large 24 14 last 28 6,30 16 32 21 34 9 Later 40 19 later 15 12 19 18 45 20, 21 14 26 25,49 5 lawful 5 1 lawsuits 44 18 lawyers 9 8 7 3 lay 22 23 24 21 28 5, leader 24 11 learned
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51 18 least 27 8 44 6 left 28 21 31 9 legal 7 5 legitimate 23 23 26 21 29 3 44 8 44 15 44 18 46 16 31 18 51 23 52 15 less 19 4 20 25 letting 8 24 9 1 life 45 3 Lipa 58 24 little 14 9 14 9 18 13 22 25 23 7 24 6 30 17 31 2 32 8 32 12 lived 45 3 living 47 6 49 16 49 17 locked 22 21 24 17 24 18 30 13 27 21 longer 40 23 48 24 25 9 30 19 30 20 31 13 44 19 50 25 50 25 52 1 looking 18 12 18 19 loosening 31 3 31 24 31 20 Loras 47 13 lot 8 22 18 22 19 2 23 17 29 6 34 11 52 3 Louis 7 4 7 8 7 11 7 22 11 10 11 24 11 25 12 2 12 3 45 3 47 22 53 5 53 5 55 3 55 10 55 13 56 12 57 2 58 11 58 17 59 1	50 22 marked 9 21, 9 24 Market 7 4 55 12 58 10 Mary 7 5 54 1, 54 2, 55 4 Mary s 44 21 44 23 45 8 45 18 49 1 49 8 50 23 52 14 53 1 masters 20 9 23 7 33 6 34 23 maybe 46 22 53 7 54 6, 35 8 36 6 50 2, 50 6 50 12 50 18 50 18 mean 11 8 18 4, 18 7 20 22 23 16, 32 12, 33 7 33 14 37 19, 42 21 42 25, 45 25 medical 43 20 43 23, meetings 42 22, 42 23, 43 3, 18 21, 24 13 Mel 47 20 members 14 24 15 3 16 9 13 13 16 19 Memo 57 1 memory 42 13 50 12 mentioned 19 12 29 10 30 15 33 4 36 1 36 7 36 11 36 13, 36 18 36 25 44 7 45 15 53 23, 26 13, 28 24 35 3, 37 11 51 9 51 11 Meyer 47 20, mid 45 22 might 9 8 51 3 mind 14 10, 52 2 55 16 minimum 36 13, minutes 25 10, 30 21, 30 22, 30 22 Missouri 7 4 7 12 7 22, 11 25 12 2 55 1 55 5 55 10 55 14, 56 12 56 17 57 7, 59 1 mistaken 20 5 34 15 Mister 48 25, more 14 9, 14 10 19 4, 20 25 27 10, 30 17 34 10 38 5 46 3 52 24 Morning 8 9 morning 8 8 most 25 10	mouth 23 1 25 2 move 26 23 29 17 37 25 38 2 much 19 19 24 10 26 3 26 5, 27 14 28 16 28 19, 28 20, 31 6 33 10, 37 22 46 12 47 25, Mueller 9 15 10 16, 13 19 13 23, 16 24 17 2, 17 14 17 19 17 24 18 5 18 10 18 17 18 20 19 3 19 4, 20 8 20 24 21 18 21 23, 22 2, 22 7 26 7 26 24 28 23 29 18, 32 16, 33 5, 34 3 34 10 34 14 34 19, 34 23 35 1, 35 9 36 2 36 14 36 25, 37 8 37 14 38 9, 38 15, 38 18 38 24 39 3 39 5 39 6 39 11, 39 19 40 14 40 25 42 4 42 10 43 12, 44 11 44 11 44 12, 45 7 48 3 48 24 48 25 49 11 49 18 49 21 50 9 50 16 50 21 51 6 52 13 52 25 Mueller s 38 21 music 17 4 myself 31 9	52 23 54 9 54 14 58 8 nods 22 8, non profit 7 22, 47 23 non responsive 37 24 47 16 47 16 normal 8 21 37 22 58 22 56 9 notarial 56 11 Notary 55 4 56 16 59 6 noted 44 11 notes 43 8 Nothing 50 4, nothing 8 2 25 16, 55 19 Notice 55 8 November 20 20 50 23 51 22, November december 22 10 Novitrate 18 24 Number 9 20 numbers 17 17 7 12, 54 13	13 14 18 23 20 6 29 21 53 5 Olive 58 25 once 27 7 27 10 52 10 52 13 Only 25 6 41 22 only 49 23 operated 49 2 opportunity 9 25 35 22 oral 8 4, Order 13 10 13 13 14 21 14 25, 15 7 16 10, 16 20 ordinary 17 15 19 13 19 16 19 19 Original 58 1, original 57 15 overly 32 11 32 13 8 22 13 15 14 6 14 6 23 1 25 2 25 2 31 23 34 15 39 22 owned 49 2 53 13 53 20
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24 15, smell 25 6 Smith 57 17,58 3 somebody 40 2 41 15 45 10 someone 17 9 45 15 53 22 something 10 17 11 2 20 9 20 21 22 24,23 1 23 5 25 2 26 1 34 20 45 10 Somewhere 34 4 sons 53 23 54 1 46 1 46 5 53 22 Sophomore 40 12, sophomore 15 15 40 11 sorry 11 25,33 14 sort 11 7 20 14 20 15 sound 55 16 speak 11 3,40 25 41 19 specifically 9 10 speculation 36 21 spell 15 18 spoken 41 17 42 8 11 15 41 9 44 5 spring 21 1 21 15 standpoint 17 25 started 21 13 30 22 30 23 40 13,44 16, starting 19 9 21 3 40 8 State 7 11 55 1 55 5 55 10 55 13,56 17 57 3 stated 34 18 37 25 39 13 39 13, Statement 57 9, statement 35 19 52 17 States 7 10,7 19 57 5 states 47 11 8 10 9 8 Steve 7 5 Still 12 2,12 3 still 9 11 12 21 13 14 14 16 25 17 25 18 25 19 27 15 29 2 30 8 32 17 34 11 44 13 stomach 30 23 31 16 stopped	28 1 strange 25 17 26 13 39 23 Street 7 4 55 12 58 25 stricken 38 3 Strike 52 11 strike 37 23 students 19 5 13 17 32 17 studtes 20 11 23 12 studying 38 18,23 9 25 24 26 18 26 18 27 9, 29 12 30 3 stuff 43 1 46 10 52 3 subject 35 20 37 17 subpoenaed 9 14 Suda 6 3 7 7 7 25 8 12 8 13 14 12 29 16 35 11 35 22 37 25 41 3 41 8 47 2 47 5 47 16 49 21 52 8 52 24 54 12 57 11 Suite 55 13,57 18 58 4, 58 25 suit 56 8 Sun 53 5 suppose 14 10 Sure 9 2 18 6 18 6 sure 15 15 20 1 21 13 25 8 25 9 25 20 29 4 30 20 33 2 37 5 37 12 40 2 53 6 surprise 51 12 sustain 43 19 43 20 swear 7 24 36 7 sworn 8 1,55 18 -T- table 22 23 24 22 28 5 30 14 talked 10 25 20 8 36 4 41 23 42 11 48 5 talking 14 5 14 6 23 6 32 22 32 23 32 24 48 9 53 24 8 22 36 8 21 6 tape 54 13 taught 17 4, Taxed 58 1 58 7 58 13	Teacher 17 8 teachers 15 5 17 7, teaches 15 2 teaching 40 14 47 17 Technically 12 1 telling 37 7, terms 17 17 19 20 territory 47 11 testified 39 18 46 23 55 20, testifying 13 8 8 2 35 18 55 18 testimony 9 22 29 15 55 21 55 24, thanked 25 23, Thanks 9 3 47 1 thanks 29 11 themselves 7 13 thereafter 39 19 48 17 thereto 56 2, thereupon 55 20 thesis 23 12, they d 18 25 They re 49 17, they re 49 16, Thinking 17 20 thinking 25 16 36 9 50 1, third 28 23 29 17 29 24 30 11 31 10 32 16 34 2, Thomas 47 16 49 21 52 8, thought 25 4 26 12 44 6, 44 13 46 22,51 13, 13 25,21 2 51 15, Three 43 14 three four 34 13 17 21 18 1, 19 12 19 21 19 22 20 16,20 23 21 18, 22 1 41 20 43 15, 48 3 throughout 9 7 throwing 30 23 times 8 22 18 1 22 18 46 12, Timothy 57 5	to-wit 8 5 Today's 7 2 today 7 6 41 25,46 23 together 28 15,55 25 told 10 24 23 13 35 6, 35 8,41 25 42 9, 50 7 50 13, took 17 3 24 7 Total 58 6,58 12 58 18 totally 24 10 37 4 17 21 touched 38 9 42 5 42 10 42 24, toughest 19 24, towards 23 11 13 5, track 20 3 transcribed 55 22, Transcript 58 1, transcripts 58 20,55 21 56 3 57 15, transferred 40 20 transpired 24 7 27 18 28 14 30 11 30 12 trash 30 25 traveled 47 18 46 12 47 11 trial 14 4 55 11, tried 27 21 30 14,31 8 42 24 trouble 30 16, true 56 3, Truly 36 11, truly 36 5, trusted 22 22 21 1 25 1 trusting 23 16 50 12 24 3 27 15 30 8 truth 8 2 8 2 8 3 9 18 55 18 55 19 55 19 trying 19 24 20 10,20 15 20 19 25 25,31 3 31 4,43 8,51 2 8 25 9 4 19 11 27 8 28 17 28 17 28 17 30 2 30 3 30 17 turn 22 5 two thrds 15 4 18 7 30 1 30 12 typewnting	55 23 26 17 27 6, 27 8 29 12 37 20 46 9, -U- unbuttoned 31 20 uncomfortable 13 8 uncommon 32 7 unconscious 28 9 31 11 38 12 42 15 undetermined 55 9 Unfortunately 23 17 United 7 9 7 18,57 5 Unless 9 9 unusual 19 16,43 11, Upon 58 20 upon 48 18 upper 18 16 used 55 10, using 14 4,28 12 30 16 30 17 -V- varsity 20 6 verbal 8 18 versus 7 8 7 9 Vianney 7 17 11 21 11 23 12 5 12 11 12 16 12 19 12 19 12 25 13 1,13 5,13 9 13 17 14 13 14 15 14 20 15 6,15 11,16 2 16 12,16 22 17 7 17 10 17 12,18 8 18 11 18 14,19 6 19 9 22 2 32 17 32 18 39 10 39 20 40 6,40 9 40 12 40 15 40 23,45 7 45 21 45 25 vice 14 24 16 13 Videographer 7 1 7 23 31 11 videographer 7 5, videotaping 14 3 view 17 9 vigilant 14 10 Visnaw 7 9 vomited 31 18 vomiting 30 23
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1 MR NOCE Chris?

2 A Chris is her brother

3 Q And how long have you been married, sir?

4 A 15 years

5 Q I'm not trying to embarrass you. What was the

6 date of your wedding?

7 A February 9th, 1981

8 Q You're better than I am, I'll tell you that

9 Okay. And how many -- And you have three

10 children, did you say?

11 A Four children

12 Q Four children. And what are their names and

13 ages, please?

14 A Joshua is 12, Madelyn is eight, Lucas is seven

15 and Michael is four

16 Q Okay. All right. And what is your present

17 age, please?

18 A 39 today

19 Q Happy Birthday!

20 A Thank you

21 Q My daughter's birthday was yesterday. We went

22 to the Cheesecake Factory and celebrated

23 A. Are you going to take me there, too?

24 Q You bet. I will

25 MR CRAIG You are?

10

1 Q With Dan. With Dan

2 MR ASSOUAD He's not under oath

3 MR CRAIG See how easily he lied to you

4 and he's going to take you to the Cheesecake Factory?

5 A. It's on the record

6 Q I'll take you

7 Before -- I want to go to some of your

8 background, if I can

9 A. Okay

10 Q. Okay. Tell me, where did you grow up in St

11 Louis?

12 A. I grew up in Affton

13 Q. In Affton. Okay. What was your residence in

14 Affton?

15 A 4645 Seibert Avenue S-E-I-B-E-R-T, 63123

16 Q Okay. And where did you go to grade school?

17 A St Raphael. It's on Jamieson

18 Q On Jamieson. And did you attend kindergarten

19 through --

20 A. Kindergarten through eighth grade

21 Q Okay. How did you do academically in

22 kindergarten through eighth grade at St Raphael?

23 A Almost straight As

24 Q. And did you have any experiences there that

25 you found affected your life negatively when you were in

11

1 St Raphael? Anything untoward happen to you when you

2 were at St Raphael?

3 A. No

4 Q. Okay. So nothing in this lawsuit concerns any

5 event, whether it was physical, mental, getting hurt on

6 the playground, getting reprimanded by a teacher or a

7 priest or a pastor or anything like that, nothing

8 concerning this complaint happened to you when you were

9 at St Raphael, is that correct?

10 A That's correct

11 Q Okay. And St Raphael, you understand, was an

12 Archdiocesan?

13 A. I do understand that, yes

14 Q. It was a parish school

15 A Yes

16 Q Okay. Who was the pastor there when you were

17 there?

18 A Monsignor Gallagher

19 Q Did you attend church there regularly? Was

20 that your parish, as well?

21 A That was our parish

22 Q Okay. You know he's retired now?

23 A I do know that. He's a friend of the family

24 Q I know him very well, because I do

25 condemnation work when he was doing the real estate work

12

1 for the Archdiocese. A great guy. Really wonderful

2 guy

3 A Very bright

4 Q Yeah, very much so. And aggressive when it

5 comes to condemnation work. He knows his real estate

6 What year did you graduate from the eighth

7 grade?

8 A 1982

9 Q Did I get your date of birth?

10 A. 10/19/67

11 Q And you graduated, then, in May or June of

12 '82?

13 A. May of '82

14 Q And then what was your -- the next school you

15 attended, sir?

16 A St Mary's High School

17 Q Okay. And where was that located?

18 A On South Grand

19 Q And you understood that that was an

20 Archdiocesan-owned high school?

21 A Yes

22 Q Okay. And you attended there for four years?

23 A Yes

24 Q Okay. From '82 to '86?

25 A That is correct

13

1 Q. Okay And you graduated in May of '86?

2 A Correct

3 Q Okay Let's start with your freshman year

4 How did you do academically in your freshman year?

5 A A's, maybe a couple of B's. Mainly A's. I

6 want to say all A's. I had one B all through high

7 school.

8 Q Okay You were a top student, then?

9 A Yes

10 Q Why did you get a B?

11 A I can't tell you that. I don't know.

12 Q What did you get it in?

13 A I want to say it was computer science.

14 MR GOLDENHERSH Let's go off the record.

15 THE VIDEOGRAPHER We are going off the

16 record at 9:24 a.m.

17 (Off-the-record discussion held)

18 Proceedings continued as follows.)

19 THE VIDEOGRAPHER Back on the record, 9:25

20 a.m.

21 Q (By Mr. Goldenhersh) In computer science what

22 year did you get -- what year in high school were you

23 when you got that? Freshman, sophomore, junior, senior?

24 A. I want to say I was a junior or senior. I

25 can't remember exactly.

14

1 Q Okay And did you make the honor roll, the

2 gold honor roll, then, or whatever the honor roll was

3 called --

4 A Yes

5 Q -- all semesters throughout high school?

6 A Yes

7 Q You would agree with me, then, as we discuss

8 what you say happened to you as a result of your

9 connection with Mr. Mueller, whatever happened to you

10 did not affect your academic performance in high school.

11 Would you agree with that?

12 A I would agree with that.

13 Q Okay I understand that you were a good

14 athlete, as well, is that a fair statement?

15 A That's a fair statement.

16 Q Okay Tell me what sports you participated in

17 when you were a freshman through senior in high school.

18 A Football, basketball, baseball and hockey.

19 Q Did football and basketball overlap or --

20 A A little bit.

21 Q A little bit. But you still handled both

22 sports?

23 A Yes.

24 Q Okay Football. What position did you play?

25 A I was an offense tackle and a defensive end.

15

1 Q Okay And did you play freshman ball through

2 varsity?

3 A Yes.

4 Q Okay And were you on -- Which teams? Were

5 you on the freshman team or sophomore team?

6 A As a freshman I played on the sophomore team.

7 And then I played sophomore team again as a sophomore,

8 and then played varsity my junior and senior year.

9 Q Okay Did you letter in football?

10 A Yes.

11 Q And did you letter on the sophomore team, as

12 well as varsity?

13 A I don't know if we had sophomore letters.

14 Q Okay.

15 A I think it was just varsity letters.

16 Q Just varsity letters?

17 A I think so.

18 Q And did you letter both years in football?

19 A Yes.

20 Q Okay Basketball. What position did you

21 play?

22 A I was a forward or a center.

23 Q Okay And how many years did you play

24 basketball?

25 A My freshman and sophomore year.

16

1 Q Okay Did you receive any letters in that

2 sport?

3 A No.

4 Q Baseball. How many years did you play?

5 A All four years. I played on the -- they refer

6 to it as the B team on my freshman year and then I

7 played varsity my sophomore year through senior year.

8 Q So three years on varsity?

9 A Yes.

10 Q Did you letter in all three years?

11 A Yes.

12 Q And hockey, what position did you play?

13 A I was defenseman, but we didn't get a team

14 until I was a junior.

15 Q Okay.

16 A Junior senior year.

17 Q Did you play both years?

18 A Yes.

19 Q Did you letter in that sport?

20 A I don't believe they issued letters in

21 sanctioned sports. It's a club sport.

22 Q I see. So you played that off like in

23 Stenberg Rink or Valley Rink or wherever you played?

24 A Yes.

25 Q Okay And it wasn't a school inter league, it

17

1 Q And what's your brother's name?
2 A Robert
3 Q Okay
4 A He's not a junior
5 Q Okay And how old is he, approximately?
6 A He is 43
7 Q. And where does he live?
8 A He lives in Ballwin, Missouri
9 Q. Okay And then you have two sisters?
10 A Yes
11 Q. Okay And what are their names?
12 A Linda
13 Q. Uh-huh
14 A And Karen
15 Q. Okay What is Linda's last name?
16 A Travers
17 Q And where does she reside?
18 A St Louis
19 Q. Is she related to the architect?
20 A. No
21 Q Okay And where in St Louis does she reside?
22 A. She lives in Affton
23 Q Affton, okay And how old is Linda?
24 A 48
25 Q 48, okay And how old -- Karen's last name?

22

1 A Wurdack, W-U-R-D-A-C-K
2 Q. And where does she reside?
3 A St Louis
4 Q St Louis Is she in Affton, too?
5 A Yes
6 Q Okay And how old is she?
7 A 47
8 Q Okay So you are the baby of the family?
9 A Correct
10 Q Okay What is Linda's husband's name?
11 A She's divorced
12 Q Okay What was the prior husband's name?
13 A Dan Travers
14 Q And what does he do, do you know?
15 A He lives in Florida now He worked for Emerson
16 Electric for years I don't know if he still works for
17 Emerson I believe he still does Or some division for
18 Emerson
19 Q Do you know what he did for Emerson?
20 A I think he was in purchasing
21 Q All right And what is Karen's husband's
22 name?
23 A Richard
24 Q And what does Richard Wurdack do?
25 A Title insurance

23

1 Q I know Richard Is he related -- Is Lloyd
2 Wurdack his father?
3 A That's his father
4 Q Yeah, I know Richard and - And he's out in
5 Franklin County Title?
6 A. That's correct
7 Q I have known Lloyd for 30 years I guess
8 He's a really nice man He's like the Dean of Titles
9 He knows his stuff
10 Okay I don't mean to pry about any of your
11 family stuff, but I have to ask you some questions and I
12 will try to be brief on these topics
13 A That's fine
14 Q. To the best of your knowledge, information and
15 belief, has your brother Robert Giegling, ever claimed
16 that he was sexually abused by anyone?
17 A. No
18 Q. Okay To the best of your knowledge,
19 information and belief, has Linda Giegling ever claimed
20 sexual abuse by anyone?
21 A No
22 Q. To the best of your knowledge, information and
23 belief, has Karen Wurdack Giegling Wurdack ever
24 claimed sexual abuse by anyone?
25 A No

24

1 Q Okay To the best of your knowledge, have
2 either of your parents ever claimed sexual abuse by
3 anyone?
4 A No
5 Q. You went to Southern Illinois University in
6 Carbondale, correct?
7 A Correct
8 Q. And you started there in what year?
9 A 1986
10 Q. Okay I wasn't sure if you had any time off
11 or -- You didn't go into military or reserves or
12 anything like that?
13 A. No
14 Q You went straight through?
15 A Correct
16 Q So you would have started in September or
17 August of '86?
18 A Correct
19 Q. Okay And you graduated in four years, then?
20 A. Yes, I did
21 Q Okay I know you have a degree in accounting
22 A Yes
23 Q And my son deviated from the standard law
24 degree that Goldenhershes get and became an accountant
25 We don't hold it against him But it changed and it's

25

1 recall? Is Dean's list 3.0 or 3.5 or --
2 **A** I want to say my grade point was above a 3.5
3 **Q** For your entire freshman year?
4 **A** Yes
5 **Q** That's very good. What was your sophomore
6 year?
7 **A** Same. Dean's list every semester
8 **Q** Junior?
9 **A** Same
10 **Q** Senior?
11 **A** Same
12 **Q** Did you graduate Phi Beta Kappa?
13 **A** I graduated *Cum Laude*
14 **Q** *Cum Laude*. Maybe Phi Beta Kappa is only in
15 arts and sciences. Did you have any other honors from
16 the business school? Were you *Magna Cum Laude*?
17 **A** No, I was just *Cum Laude*
18 **Q** *Cum Laude*. Any other honors that you recall?
19 Any business society honors?
20 **A** No
21 **Q** Okay
22 **A** Not -- Not academically
23 **Q** Okay. Would it be -- It's a truthful
24 statement, then, to say that whatever your claims are
25 that happened to you vis-a-vis Mr. Mueller and your

30

1 episodes in high school, that whatever those events were
2 -- and we will talk about them as we get into this
3 deposition -- they did not affect your academic
4 performance at SIU-Carbondale, isn't that a correct
5 statement?
6 **A** That is a correct statement
7 **Q** Okay. And, likewise, I take it that you did
8 quite well, because you went on to a minor league career
9 or a major baseball career. From what I have read you
10 did quite well in your athletics at Carbondale, is that
11 a fair statement?
12 **A** That's a fair statement
13 **Q** What was your batting average?
14 **A** I was a career 300 hitter at SIU
15 **Q** And how good were you at throwing people out
16 at second base?
17 **A** Average
18 **Q** Average, okay. What was your time to --
19 **A** I was an average 2.0
20 **Q** 2.0, okay. And did you -- I don't know a lot
21 about college athletics. Did -- Do they give letters
22 there?
23 **A** Yes
24 **Q** Okay. Did you receive college athletic
25 letters?

31

1 **A** Yes
2 **Q** And what years did you get those?
3 **A** Sophomore, junior and senior
4 **Q** Would it be a fair statement to say that
5 whatever befell you that you'll tell us about later,
6 vis-a-vis Mr. Mueller, that whatever those events were,
7 they did not affect your athletic performance at SIU-
8 Carbondale? That's a fair statement, isn't it?
9 **A** That is a fair statement
10 **Q** Okay. And did you graduate -- Strike that
11 When you graduated college -- So that's going
12 to put us in 1990, right?
13 **A** Correct
14 **Q** Did you immediately sit for the CPA exam after
15 that?
16 **A** I sat for the CPA exam for the first time in
17 November of '90
18 **Q** Okay. And how many parts was it back then?
19 **A** It was three days. It was a total of five
20 parts, but the practice was broken into two parts
21 **Q** Five parts, okay. And did you take it in
22 Illinois or Missouri?
23 **A** Missouri
24 **Q** Okay. And did you pass it the first time?
25 **A** No

32

1 **Q** Did you pass any parts the first time?
2 **A** No
3 **Q** It's quite an exam, isn't it?
4 **A** I didn't study the first time
5 **Q** Yeah. It's quite an exam, though, whether you
6 study or not, isn't it?
7 **A** Yes
8 **Q** All right. And when was the next time you
9 took it?
10 **A** The next time I took it was -- Let me think. I
11 finished baseball up in -- It would have been May of '93
12 **Q** Okay. I take it the first time you took the
13 bar, because you told me you didn't study, you also
14 didn't -- the bar. Strike that
15 I take it the first time you took the CPA exam
16 you did not take a CPA review course?
17 **A** I did not. I was playing baseball that summer
18 **Q** Right. So you were quite busy and you just
19 said, "I'm going to go see how I do"?
20 **A** Exactly
21 **Q** Okay. Good for you. And it's safe to say --
22 I mean, it's a correct statement to say that whatever
23 you allege Mr. Mueller did to you did not affect your
24 performance on the CPA exam the first time you took it,
25 correct?

33

1 **A** Correct
 2 **Q.** And you're not making any claim for any of
 3 your academic performances or loss of academic
 4 performance, loss of athletic performance or anything up
 5 to those -- anything involving athletics or academics as
 6 a result of what Mr Mueller allegedly did to you,
 7 correct?
 8 **A** Correct
 9 **Q** So you graduate in -- I guess it's May of
 10 1990?
 11 **A.** Correct
 12 **Q** Okay What did you do after May of 1990?
 13 **A** In -- Well, in June of 1990, I signed
 14 professional -- a professional baseball contract
 15 **Q.** And that was with Cincinnati?
 16 **A.** Correct
 17 **Q** And you went to --
 18 (Mr Hadican enters the deposition)
 19 MR GOLDENHERSH Hi, Marty
 20 MR HADICAN Hi Go ahead Go ahead
 21 **Q.** (By Mr Goldenhersh) Okay Did you go to one
 22 of their farm clubs, then?
 23 **A** Yes
 24 **Q** Okay Where was that?
 25 **A** Plant City, Florida

34

1 **Q** I have no clue where Plant City is Where is
 2 that?
 3 **A** It's between Orlando and Tampa, right in the
 4 middle of the state
 5 **Q** Okay And do you just rent an apartment down
 6 there?
 7 **A.** Yes
 8 **Q** Okay Where did you live, do you recall?
 9 **A.** I don't remember the name of the place
 10 **Q.** Were you married then?
 11 **A.** No, I was engaged
 12 **Q** Okay Okay So you're in Plant City,
 13 Florida And how long were you in Plant City, Florida?
 14 **A** From June until beginning of August
 15 **Q.** June 1990 to August 1990?
 16 **A.** Correct
 17 **Q.** And then where did you go?
 18 **A** I came back to St Louis
 19 **Q** Okay And what did you do in St Louis?
 20 **A** I worked for a shoe company
 21 **Q** Okay So I understand this, then, your
 22 baseball catching career in the minor leagues was for a
 23 period of approximately three months?
 24 **A** No
 25 **Q** Okay You were down there from June 1990 to

35

1 August 1990?
 2 **A** Correct
 3 **Q.** And why did you come back to St Louis, then?
 4 **A.** The season ended
 5 **Q.** I see Okay So, in minor leagues you only
 6 -- Do you have a spring training in minor leagues, too,
 7 then?
 8 **A** Yes
 9 **Q.** All right So the season ends in August, and
 10 then you come back to St Louis?
 11 **A** Correct
 12 **Q** Okay And you work for a shoe company?
 13 **A.** Yes
 14 **Q.** What was the company's name?
 15 **A.** M C Shoe Company
 16 **Q.** Where are they located?
 17 **A** They were located on Taylor Street, Taylor --
 18 yeah, Taylor Street
 19 **Q.** How did you get the job with them?
 20 **A.** The -- A guy that worked there knew my sister
 21 **Q.** Okay And what did you do for M C Shoe
 22 Company?
 23 **A** I loaded and unloaded trucks
 24 **Q.** Okay How long were you working there?
 25 **A** Until I left for spring training in March

36

1 **Q.** Okay So you were -- I take it that because
 2 you were pursuing a baseball career you were merely
 3 looking for fill-in kind of jobs or summer-type work or
 4 seasonal work and not looking for accounting jobs while
 5 you were in the minor leagues?
 6 **A** Correct
 7 **Q.** Okay I just kind of want to understand that
 8 So it's fair to say while you were pursuing your
 9 baseball career and endeavors, you were not trying to
 10 fulfill your CPA requirements or those kinds of studies?
 11 **A.** Correct
 12 **Q.** Okay And while you were pursuing your minor
 13 league endeavors, you really didn't start studying or
 14 doing anything else for your CPA examinations?
 15 **A** Correct
 16 **Q** Okay All right So you worked at the shoe
 17 company until spring training starts?
 18 **A** Yes
 19 **Q.** All right And when did spring training
 20 start?
 21 **A** March
 22 **Q.** March --
 23 **A.** What year are we in?
 24 **Q** '91, I believe
 25 **A** March '91

37

1 were -- what was it designed for?
2 **A.** It was for the Department of Defense clients
3 **Q.** And I don't want to go into particulars, but
4 is it -- Department of Defense, they don't pay tax?
5 **A.** It was a financial accounting system to --
6 **Q.** To keep track of their expenses, purchases and
7 expenses, or what -- Just give me a general idea what
8 **A.** To financially manage their business, and also
9 there was an asset management piece to it which we -- and
10 there was a purchasing piece, as well. But the -- And I
11 dealt primarily in the asset management to track their
12 telecommunications equipment around the world
13 **Q.** I see. Were you a designer of the system or a
14 seller of the system?
15 **A.** A little bit of both
16 **Q.** A little bit of both, okay. And you -- Did
17 you stay in the same position as a systems consultant
18 for government contracts for your four or so years with
19 KPMG?
20 **A.** Yes
21 **Q.** Okay. And you state in here that your salary
22 was 3,550 monthly
23 **A.** Yes, I believe so
24 **Q.** Approximately?
25 **A.** Approximately, yes

54

1 **Q.** And did that include bonuses and whatever else
2 -- overtime?
3 **A.** We didn't get overtime, but we had bonuses
4 **Q.** Okay. So a bonus would be in addition to
5 that?
6 **A.** Correct
7 **Q.** All right. And I understand from your Answers
8 to Interrogatories, but I just want to clear this up for
9 the record, you are not making any claim for economic
10 damages or lost wages or any harm to you financially as
11 a result of whatever you claim happened to you by Mr
12 Mueller. Is that a fair statement?
13 **A.** That's a fair statement
14 **Q.** Okay. And then where did you go when you left
15 Peat Marwick? Was that to the Federal Bureau of
16 Investigation?
17 **A.** Yes
18 **Q.** Okay. And you have been there since when?
19 **A.** April of 1998
20 **Q.** How did you make that transition? Were you
21 recruited or did you just apply?
22 **A.** I just applied
23 **Q.** You just applied. I know they seek out
24 people who are accountants and lawyers. Was that one of
25 the attributes that you had that to make them want to

55

1 hire you, because you had a CPA degree?
2 **A.** I went in under the accounting program, yes
3 **Q.** Went in under the accounting program
4 How long were you in training there?
5 **A.** I had four months of training in Quantico,
6 Virginia
7 **Q.** Okay. And during those four months did Becky
8 and your -- You had Joshua by then, right?
9 **A.** We had Madelyn, also
10 **Q.** Madelyn. Did the two kids move with you to
11 D C area or Virginia?
12 **A.** No, they stayed here in St. Louis
13 **Q.** They stayed here. Okay. And did you have a
14 house here in St. Louis at that time?
15 **A.** Yes
16 **Q.** Where was your house in St. Louis?
17 **A.** On Southshore
18 **Q.** Is that one word?
19 **A.** Yes
20 **Q.** Where is Southshore?
21 **A.** It's in Mehlville
22 **Q.** What was that address?
23 **A.** 744
24 **Q.** And how long did you reside there?
25 **A.** Five years

56

1 **Q.** Okay. So you're in Quantico, Virginia for
2 four months for training?
3 **A.** Correct
4 **Q.** And then where did you get posted after
5 training?
6 **A.** Chicago
7 **Q.** Okay. And that's when you sold the Southshore
8 home and moved to Chicago?
9 **A.** My wife sold the house while I was in training
10 **Q.** Okay. So you knew you would be going out of
11 St. Louis?
12 **A.** They pretty much guaranteed you would not come
13 home
14 **Q.** Right, yeah. And where -- Did you live in one
15 of the suburbs in Chicago?
16 **A.** Yes
17 **Q.** Okay. Have you lived in the same home since
18 you moved there?
19 **A.** No
20 **Q.** Okay. What was the first home in Chicago?
21 **A.** 156 Beaver Creek
22 **Q.** And what municipality was that?
23 **A.** Bolingbrook
24 **Q.** Bolingbrook?
25 **A.** Uh-huh. B-O-L-I-N-G-B-R-O-O-K

57

1 Q And where is that? North, south --
 2 A It's a southwest suburb
 3 Q Okay And then where was the next home that
 4 -- your second home, which is your second residence?
 5 A About 500 yards away from that, 117 North
 6 Cranberry in Bohingbrook
 7 Q Did you have to hire a moving van?
 8 A We just formed a human chain and passed
 9 everything over
 10 MR GOLDENHERSH Let's take a break for a
 11 minute
 12 THE VIDEOGRAPHER Going off the record at
 13 10 13 a m
 14 (A short break was taken)
 15 THE VIDEOGRAPHER We are back on the
 16 record at 10 23 a m
 17 Q (By Mr Goldenhersh) Mr Giegling, we are back
 18 on the record now, so we will continue for a minute, if
 19 you don't mind
 20 So you moved 500 yards, right?
 21 A Correct
 22 Q Okay
 23 A Approximately
 24 Q Approximately And I take it that from the
 25 time you went to Chicago you've remained in the same

58

1 position with the FBI, is that correct?
 2 A I'm a special agent, yes
 3 Q Right So, you started as a special agent --
 4 Your duties may change or your assignments may change,
 5 but your category is special agent correct?
 6 A Correct
 7 Q Okay And you have been in that position from
 8 completing your training to date?
 9 A That would be -- I graduated from the academy
 10 August 18th of 1998 So it was since that time
 11 Q Now, I don't want to violate any
 12 confidentiality, if there are any I want to observe
 13 what we have to observe We have a protective order, I
 14 believe, in place Just give me your annual salary
 15 range from when you started there Your best estimate
 16 A When I started there it was -- I want to say it
 17 was in the \$40 000-a-year range
 18 Q Uh huh
 19 A And now I'm close to a hundred thousand
 20 dollars
 21 Q Okay And so it would be fair to say, then,
 22 throughout your employment career, whatever happened to
 23 you as we will discuss later between you and Mr Mueller
 24 and those events in high school did not affect your
 25 employment career and your economic progress in your

59

1 employment career, is that correct?
 2 A That's correct
 3 Q Okay And you're not making any claim for any
 4 damages as a result of lost earnings or how Mr Mueller
 5 affected you financially or employmentwise, correct?
 6 A Correct
 7 Q Okay Now, I have got to regress and go back
 8 to the next topic I want to talk about your social
 9 life a little bit
 10 A Okay
 11 Q And I want to go back to your social life,
 12 because grade school -- I went to public school So
 13 grade school and junior high school is your grade
 14 school, I guess You go from kindergarten to grade
 15 school in the parochial system
 16 A Correct
 17 Q Okay And I take it you had a very normal
 18 social life from kindergarten to eighth grade, correct?
 19 A Correct
 20 Q Okay Nothing -- No events of any major
 21 proportions or magnitude that framed your life or shaped
 22 your life that you need to tell me about that you can
 23 think of today, correct?
 24 A No, not that I can think of
 25 Q Okay So now we are in high school that

60

1 starts ninth grade, correct?
 2 A Correct
 3 Q And you are probably, what, 14 to 15 years
 4 old then?
 5 A I think I turned 15 early in my freshman year
 6 Q Okay Because you were born in October?
 7 A Correct
 8 Q Okay So you're in high school and you're at
 9 St Mary's, and that's in 1981, correct?
 10 A No, that would have been '82
 11 Q '82? Yeah, you started St Mary's in May of
 12 '82
 13 A September
 14 Q September of '82 And you graduated in May of
 15 '86, okay
 16 A Correct
 17 Q September of '82, did you -- Coming in as a
 18 freshman did you have a girlfriend when you were in high
 19 school, then?
 20 A I believe I did
 21 Q Okay Who was that?
 22 A Let's see I think her name was Amy
 23 Q A M-Y?
 24 A Right, yeah, I think so
 25 Q Sometimes it's A-M-I-E-E or whatever What

61

1 Q. Are you just guessing that there's a bed?
 2 A. Yeah, I'm just trying to envision I don't
 3 know exactly what it looked like anymore now
 4 Q. Okay, all right Typically there would be a
 5 few chairs -- Do you recall if there were chairs in
 6 there or a cot? I mean, you don't think there's a
 7 hospital bed in there, do you?
 8 A. Not that I know I don't know I honestly
 9 don't know
 10 Q. You don't know, okay All right And I
 11 believe from the Answers to Interrogatories I have seen,
 12 you say that this alleged abuse of you by Mr Mueller
 13 occurred during a finite period of time between
 14 September of '82 and November of '83, is that a fair
 15 statement?
 16 A. That's a fair statement
 17 Q. Okay So that would have been during your
 18 sophomore year and your -- your freshman year and your
 19 sophomore year, right?
 20 A. Correct Oh, thank you
 21 Q. Okay What was the -- So you knew he was the
 22 principal in August of 1982 What was your first
 23 one-on-one contact with him in September of '82, as you
 24 tell us in your Answers to Interrogatories?
 25 A. What was my first individual -- Could you --

82

1 Q. Sure
 2 A. -- clarify that?
 3 Q. Well, you're claiming that you had these
 4 encounters, and I'm using your word, okay? That's the
 5 words that you use in your Answers to Interrogatories
 6 A. I understand
 7 Q. I want to know when you had your first
 8 encounter with him Do you recall the day?
 9 A. I don't remember the day exactly
 10 Q. Do you recall the month?
 11 A. No
 12 Q. Do you recall the day of the week?
 13 A. No
 14 Q. And you don't recall the month, either?
 15 A. No, it would -- You know, to the best of my
 16 recollection, it would have been somewhere after I had
 17 started a few months, because I didn't know the man prior
 18 to that
 19 Q. All right So -- So then your first encounter
 20 would have been after September of '82?
 21 A. That's fair to say
 22 Q. Okay When do you think it occurred? Give me
 23 your best recollection
 24 A. I don't know I couldn't go there I don't
 25 know

83

1 Q. All right Do you -- Do you know what the
 2 first episode -- How did you come into contact with him
 3 during this first episode? Did he ask you to come to
 4 his office, did he meet you in the hallway? Tell me
 5 what happened in your own words
 6 A. I believe at some point he approached me with
 7 telling me that he had this research project for his
 8 Master's Degree or something along those lines that he
 9 needed help with, and was interested if I -- interested
 10 to know if I could help him
 11 Q. How did he want you to help him?
 12 A. Well, he just said that I would have to meet
 13 with him on some occasions and he would explain that to
 14 me
 15 Q. Okay And what did you say to him?
 16 A. "Okay "
 17 Q. And when was the first such occasion?
 18 A. I don't remember the exact date
 19 Q. Okay Do you recall what happened on the
 20 first occasion?
 21 A. I remember we went -- Again, I don't remember
 22 if -- which exact room it was, if it was his office or it
 23 was a guidance counselor's office or if it was possibly
 24 the nurse's office It was somewhere in the school
 25 Q. Okay

84

1 A. And it was usually in a -- And it was -- If my
 2 memory serves me correct, it was always sometime in the
 3 evening It wasn't during the day of school when all the
 4 other students were there
 5 Q. How do you -- Why do you come to believe the
 6 first time was in the evening and not during the day?
 7 A. Because if I -- It was -- It was usually dark
 8 Q. Okay All right Tell me about the first
 9 encounter
 10 A. He explained to me that he had this project for
 11 his -- I want to say it was his Master's Degree -- and
 12 that part of the research meant that I could not tell
 13 anyone that this was happening, that would -- that would
 14 ruin the project, basically is what he told me That
 15 would ruin the project and ruin the research And that
 16 there were things that he would do that would require my
 17 trust
 18 Q. Did he tell you what he was going to do?
 19 A. Before he would do everything he would explain
 20 to me what he was going to do He would blindfold me and
 21 he would tell me prior to that, "I am going to blindfold
 22 you "
 23 Q. Okay And I want to stick just, Mr Giegling
 24 with the first very episode so I don't confuse these
 25 A. Okay

85

1 **A** I mean, he didn't do it so hard where I
2 couldn't breathe
3 **Q** Uh-huh
4 **A** It was just another, "Do you trust me?" Yes I
5 trust him
6 **Q.** So you were conscious during that?
7 **A** I was conscious As far as I know I was
8 conscious I don't know for sure one way or another I
9 really don't All I know is that it was, like I said,
10 very dark and very quiet
11 **Q.** As you sit here today -- And that's the best
12 you can do I understand that, Mr Giegling As you
13 sit here today, do you have any recollection of being
14 unconscious in the presence of Mr Mueller?
15 **A** I cannot say if I was unconscious or I was not
16 unconscious
17 **Q** Okay So as you sit here today you don't have
18 any recollection of ever being unconscious?
19 **A.** Again, I cannot say I was conscious or
20 unconscious I don't know
21 **Q** I understand that That's why I'm putting it
22 in -- just to be sure that I'm clear on the record
23 **A.** And I'm as clear as I can be, I don't know
24 **Q** You don't know one way or the other?
25 **A** I don't know one way or the other

98

1 **Q** Okay And if you sat here today and tried to
2 tell me you were unconscious, because you don't know you
3 would be speculating, wouldn't you?
4 **A** Yes
5 **Q.** Okay Good That's all I want to do I
6 think very linearly
7 **MR CRAIG** Straight
8 **Q** Linearly, right, straight, and so I just have
9 to get that concept down
10 What else happened to you that you recall?
11 **A.** I don't know
12 **Q** That's the most you recall right now?
13 **A** That's the most I recall right now
14 **Q** All right Do you -- Do you have any
15 recollection of Mr Mueller doing anything sexual to
16 you?
17 **A** No
18 **Q** Do you have any recollection of you doing
19 anything sexual to him?
20 **A** No, I do not
21 **Q** When you had this gel put in your hair, did
22 you --
23 **A** Can I --
24 **Q** Sure
25 **A** One thing As far as other things, during the

99

1 school day, you know, as I would walk down the hall and
2 pass him or he passed me, he would continually touch me
3 You know, he was -- Constantly he would grab that
4 pressure point right there, you know, and push down on
5 it And, in the sessions, also, as I remember now, he
6 would -- he would typically rub the backs of my
7 shoulders
8 **Q.** Okay
9 **A.** Maybe either massaging them, just -- You know,
10 his hands seemed to always be on me, --
11 **Q** Sure
12 **A.** -- on my shoulders --
13 **Q** Okay
14 **A.** -- you know, whether I was sitting or standing
15 **Q** Okay
16 **A** But, you know, in the hallway there would be a
17 number of encounters where he would -- that was, you
18 know, a typical thing
19 **Q.** Sure Do you ever recall being in a prone
20 position?
21 **A** In a prone position? No, I cannot specifically
22 recall being in a prone position
23 **Q** Okay The -- When he would grab you in the
24 hallway there would be other people around, correct?
25 **A** Correct

100

1 **Q** Okay And if he grabbed you in the hallway
2 was it because guys were hoisting around or anything like
3 that?
4 **A** No
5 **Q.** Okay And you don't know whether this was one
6 time, three times or four times, correct, that you went
7 to this --
8 **A** The individual encounters?
9 **Q** Yes, sir
10 **A.** I know it was multiple times
11 **Q** Okay Right You don't know if it was one --
12 **A** I know it was more than one
13 **Q** Okay So you don't know if it was two or
14 four?
15 **A** You know, I know it was more than two
16 **Q** All right
17 **A** I just don't know the exact number
18 **Q** It wasn't 50 was it?
19 **A** No
20 **Q** Okay It wasn't 20, was it?
21 **A** No
22 **Q** It wasn't ten, was it?
23 **A.** I'd say between two and seven
24 **Q** Okay I'm just trying to pin it down
25 **A** To give an estimate, two to seven times

101

1 Bad question Let me figure this one out Give me a
 2 second here
 3 When you talked to Tim Turner, he was one of
 4 your friends and confidantes, right?
 5 A. Yes
 6 Q Okay So you knew by talking to him you would
 7 be disclosing what Mueller asked you not to disclose to
 8 some minor extent or to some extent, correct?
 9 A Correct
 10 Q And Tim, likewise, was doing the same thing,
 11 correct?
 12 A Correct
 13 Q Okay By disclosing to Tim what was going on
 14 with you means that you knew what was going on during
 15 these experiments at the time they were happening,
 16 correct?
 17 A I knew that I was helping him with a project
 18 Q Sure And you knew what the events were with
 19 that project, correct?
 20 A Correct
 21 Q All right So in order -- When you left those
 22 -- each encounter, to the time you talked with Tim, you
 23 had a recollection of what occurred to you at those
 24 encounters, and that's why you discussed it with Tim,
 25 right?

110

1 A Correct
 2 Q Okay So, it's fair to say, Mr Giegling,
 3 when you left these encounters and he put stuff in your
 4 hair, you knew he put stuff in your hair, right?
 5 A Right
 6 Q And you always remembered that, didn't you,
 7 that he put stuff in your hair?
 8 A I remembered the events, yes
 9 Q Yes From -- And you are how old today?
 10 A. I am 39 years old today
 11 Q Today And Happy Birthday And I owe you
 12 lunch I know that
 13 And from age 14 or -- You were 15 in freshman
 14 year, right?
 15 A Yes
 16 Q Okay So from 15 to 39, for 24 years, you've
 17 remembered that Mr Mueller put hair gel in your hair
 18 during some of these encounters, right?
 19 A Right
 20 Q Okay And during your entire -- from age 15
 21 to 39, you remember that on occasion during some of
 22 these encounters Mr Mueller bound your hands behind
 23 you, correct?
 24 A I remember I never thought of it for years, I
 25 thought about it

111

1 Q. I realize that But you always remembered
 2 that, didn't you?
 3 A I remembered that, yes
 4 Q And, in fact, you remembered it long enough to
 5 tell Tim Turner about it, right?
 6 A We were still in high school
 7 Q. Sure
 8 A. That was probably shortly after
 9 Q Shortly after the event, right But as you
 10 sit higher today under oath you remember that he bound
 11 your hands behind you with soft rope, correct?
 12 A. I remember he did that, yes
 13 Q And you never forgot that, did you?
 14 A. Probably not
 15 Q And you always remembered that he did these
 16 activities where he asked you to fall backwards and then
 17 he would catch you, correct?
 18 A Well, I have to say some of the -- I mean, I
 19 remember -- I have always remembered that I had these
 20 sessions with him
 21 Q Sure
 22 A. The individual details of the sessions, like I
 23 said, did I remember them? I don't know for sure They
 24 are something I hadn't thought about for 25 years, 24
 25 years until all this came to light and I started thinking

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1 about it more again
 2 Q Oh, I understand that But, when you talked
 3 to Tim Turner, you knew he had played these episodes
 4 with you where he had asked you to trust him and fall
 5 backwards, right?
 6 A. Absolutely
 7 Q Right
 8 A. But that was -- Again, that was when it was
 9 happening
 10 Q Sure, around that time It was after the
 11 event happened for you to talk --
 12 A Correct
 13 Q -- to him about it And when you graduated
 14 high school you still remembered it, didn't you?
 15 A I can only assume I still remembered it
 16 Q Yeah, okay When you -- When he put this
 17 metal instrument, this blunt metal instrument against
 18 your skin, you remembered that in high school, didn't
 19 you?
 20 A. Yes
 21 Q Sure And when you -- I don't know what FBI
 22 training really goes through Do you go through
 23 criminal justice administration?
 24 A Define criminal justice administration
 25 Q That would take me a long time to do that Do

113

1 **Q** Did you ever tell Kevin Hacker about Mueller's
2 contact with you?
3 **A** No
4 **Q** Did you ever tell the assistant principal,
5 Eleanor Marfissi, about Mueller's contact with you?
6 **A** No
7 **Q** So the only person you ever discussed this
8 with while you were in high school at St. Mary's was Mr
9 Turner, correct?
10 **A** That's correct
11 **Q** Did you ever -- Did you ever have any --
12 After high school, did you ever have any discussions
13 with anyone prior to September 2005, regarding your
14 encounters with Mr. Mueller?
15 **A** No
16 **Q** All right. Did -- Reading these articles or
17 these reports that you found that came to light in
18 September 2005, did that rekindle memories for you?
19 **A** Yes
20 **Q** Did that make your memories clearer or did it
21 confuse memories?
22 **A** It opened up my memories to a whole new light
23 **Q** Meaning that you attributed a benevolence to
24 you?
25 **A** I don't know what benevolence means. So you

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1 will have to tell me what that means
2 **Q** Bad axe. You attributed some untoward conduct
3 or wrongful conduct towards what occurred to you?
4 **A** Yes
5 **Q** Okay. Whether you knew it was wrongful or
6 not, you remembered what happened to you. It was only
7 in 2005 that you put a wrongful motive to it, is that a
8 fair statement?
9 **A** It was in 2005 that I learned what the
10 allegations were of what he was really doing that, yes,
11 at that point I realized that there was no research
12 project and that there was no Master's Degree and this
13 was some kind of fraud
14 **Q** Okay. Somebody lied to you?
15 **A** Bill Mueller lied to me
16 **Q** Well, Bill Mueller lied to you. But the
17 events that was connected with the lie, his alleged
18 experiments with you for his thesis, you carried those
19 memories with you, correct?
20 **A** Correct
21 **Q** Okay. Those you never forgot?
22 **A** That's probably safe to say that I -- somewhere
23 in my memory they were there
24 **Q** Right. What you didn't appreciate was the
25 fact that he never disclosed to you that he didn't have

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1 a thesis and he wasn't truly working on a Master's
2 Degree when he asked you to participate in these
3 encounters?
4 **A** Until --
5 **Q** 2005?
6 **A** Until September -- Until September of 2005, I
7 did not appreciate the fact that my trust had been
8 violated
9 **Q** Okay. So that's the basis of your claim right
10 now is that he lied to you and you found out about that
11 lie in 2005?
12 **A** I found out about that lie in 2005, correct
13 **Q** Okay. When did you know that he left the
14 order?
15 **A** Probably shortly after he left the order
16 **Q** Okay. In fact, you guys communicated a little
17 bit, didn't you?
18 **A** We did
19 **Q** You wrote him, didn't you?
20 **A** I wasn't real good about writing. I may have
21 written him on occasion, but he used to write me on --
22 quite frequently. I want to say
23 **Q** Yeah, he would write you and he would write
24 Tim Klumpers, wouldn't he?
25 **A** I don't know about Klumpers. I know that he

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1 wrote Tim Turner
2 **Q** And there were occasions, though, when you
3 wrote him, right?
4 **A** I'm sure there were. I can't say for sure
5 **Q** Did you save any of that correspondence?
6 **A** No
7 **Q** Prior -- So, some of this time frame in
8 November of '83, you were 16 years old and driving,
9 right?
10 **A** Yes
11 **Q** Okay
12 **A** Because I specifically remember that, because
13 the day that I got my -- I got my driver's license on my
14 birthday and I left school early to get my driver's
15 license. And I remember the next day I think -- I think
16 I said I had a doctor's appointment or something along
17 those lines, I went to get my driver's license, and Bill
18 Mueller found out about it the next day and he asked me
19 about it
20 **Q** That to get your driver's license?
21 **A** That I didn't go to the doctor, I went to the
22 DMV
23 **Q** So you weren't candid with him, were you?
24 **A** On that occasion, no, I wasn't
25 **Q** And you passed both the written and driver's

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1 **Q** In preparation for your deposition today, I
2 think you mentioned the fact that you read some medical
3 records you read -- you may have read your petition and
4 perhaps the interrogatory answers. Were there any --
5 and Father Fleming's deposition which you read maybe in
6 the past. Were there any other documents that you
7 reviewed in preparation for the deposition?
8 **A** No. And I didn't review all those in totality
9 I, you know --
10 **Q** Did anybody ever give you any legal reported
11 cases, case law to look over? I mean, the opinions of
12 courts of records, such as Missouri Court of Appeals or
13 the Missouri Supreme Court or any other court
14 **A** I can't remember who, but somebody may have
15 recommended, you know, "Go out on the Internet and look
16 at" specific things you know. Whether or not I did it
17 -- I may have briefly looked. No, I don't -- I'm trying
18 to think.
19 **Q** And I don't want to know --
20 **A** I'm getting confused on, you know, reading
21 newspaper articles and -- because I know I was going back
22 and reading newspaper articles to see what all the
23 allegations were.
24 **Q** Did you set up your own personal file on this
25 -- on Bill Mueller?

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1 **A** Did I set up my own personal file just for Bill
2 Mueller? No. I did not. My wife may have, but I'm not
3 that organized.
4 **Q** Okay. What I mean is like a folder where if
5 there's an article in the paper --
6 **A** My wife -- I think she did set up a file, and
7 then anything I get after I look it over, I do stick it
8 in there.
9 **Q** Okay. And I don't know how much of the
10 training you received in the FBI or maybe if you took
11 business law courses or anything like that, but when I
12 say to you reported cases, like opinions of courts of
13 record like the Missouri Supreme Court or Missouri
14 Court of Appeals you know what I mean by that?
15 **A** I know what you mean, yeah.
16 **Q** Okay.
17 **A** Yes.
18 **Q** And have you ever been provided a copy of any
19 opinions regarding sexual abuse cases as it relates to
20 statutes of limitations? Have you ever been given any
21 such cases?
22 **A** I don't know if I have actually been provided
23 copies of anything. I think people have made me aware of
24 some of the circumstances surrounding that.
25 **Q** Okay. Now, I don't want -- I don't want to

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1 know if that's what your lawyer talked to you about, but
2 anybody other than your lawyer talk to you about that?
3 **A** I can't recall. I can't recall if it was just
4 my attorney or if it was somebody else mixed in there. I
5 mean --
6 **Q** Okay.
7 **A** -- because when this all happened there were,
8 you know, the conversations, you know, with my attorney
9 and with, you know, my family. I get confused on who
10 told me what.
11 **Q** Can you remember the name of any cases like
12 who was the defendant or who was the plaintiff?
13 **A** No.
14 **Q** Okay. Or even the school names involved, if
15 any? Did you read any case involving Chamnade, for
16 instance?
17 **A** If I -- If it was something about Chamunade, it
18 was probably something I read in the newspaper. So I
19 don't know. To be real honest, I am not a big reader, so
20 I read what I need to read.
21 **Q** Or you read for a living, don't you, almost?
22 I mean, that's a lot of your work, isn't it?
23 **A** A lot of my work is interviewing.
24 **Q** Okay. After the incidents involving Mueller
25 took place, and after they stopped but, before he left

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1 the school, did you ever take any steps to avoid him for
2 any reason?
3 **A** No, because I completely trusted the man.
4 **Q** And when you were a freshman at St. Mary's, do
5 you remember, did you take the bus to school or -- like
6 Bi-State, or how did you get to and from school?
7 **A** I carpooled with my cousin.
8 **Q** And who was that?
9 **A** Tim Giegling.
10 **Q** Tim Giegling. All right. And what was he, a
11 junior or a senior?
12 **A** He was a senior.
13 **Q** And did he play sports?
14 **A** Yes, he did.
15 **Q** Okay. So in the fall the two of you were
16 playing football?
17 **A** He played football, yes.
18 **Q** And so you're playing B team football your
19 freshman year. Is he on the varsity?
20 **A** I believe after football practice a lot of
21 times, because I remember I had to sit there and wait,
22 that's when my mom usually picked me up.
23 **Q** Okay. All right. And do you think the
24 incidents that you've mentioned -- I'm not going to go
25 into it because we have covered it very carefully and

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1 fully But the incidents did not take place right after
 2 school, but before you went home It wasn't as if
 3 between football practice and going home it took place,
 4 or do you remember?
 5 **A.** I don't remember It's possible, because there
 6 were times when I would be the last one standing there
 7 waiting for my mom to pick me up
 8 **Q.** But it would be your mom -- If it took place
 9 during that time period it would have been your mom
 10 picking you up?
 11 **A.** My mom or a sister or, yes, somebody in my
 12 family, probably
 13 **Q.** Did you start driving to school your sophomore
 14 year, as soon as you got a license, or did you have to
 15 wait?
 16 **A.** I think I started driving to school I never
 17 took the bus, and I know I didn't have a carpool, you
 18 know, unless my mom took me once in a while or my dad, I
 19 drove
 20 **Q.** Do you have any recollection of after one of
 21 these incidents that your mom or dad picked you up and
 22 drove you home?
 23 **A.** I have no direct recollection
 24 **Q.** Other than William Mueller telling you not to
 25 discuss it with anybody, having you swear to secrecy

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1 about it, was there any other reason you felt you
 2 couldn't or shouldn't discuss what happened?
 3 **A.** I didn't feel a need because, like I said, I
 4 thought I was helping on a research project
 5 **Q.** I mean, what happened to you wasn't anything
 6 that seemed to embarrass or shame you at the time, did
 7 it?
 8 **A.** I can't say it would have been anything that
 9 would have -- at that time that I thought would embarrass
 10 or make me shameful of Did I think maybe something --
 11 that it was weird sometimes, yes
 12 **Q.** Okay And even at the time did you think it
 13 was unusual and weird, these experiments?
 14 **A.** Yeah, I may have thought they were odd, but --
 15 **Q.** Okay
 16 **A.** - you know, again, I had no reason not to
 17 trust him And you went to a Catholic school, too You
 18 know what the Brothers and the Priests -- You looked up
 19 to them
 20 **Q.** Did you have any physical feelings that you
 21 associated at the time with what was going on of these
 22 incidents?
 23 **A.** Could you clarify physical feelings?
 24 **Q.** I mean you didn't feel any physical injury,
 25 damage or harm at the time of the incidents?

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1 **A.** No Like when I -- when it was over or walked
 2 out, no
 3 **Q.** Okay And so if you put those things aside --
 4 I think you agreed with me there, there was no --
 5 **A.** I agree with you, I didn't feel there was any
 6 -- when I left those sessions, so to speak, or incidents,
 7 I did not feel any physical pain
 8 **Q.** Okay And was there anything physical that
 9 you felt when you left at all?
 10 **A.** Not that I can recall
 11 **Q.** Were you on the newspaper at all at St
 12 Mary's?
 13 **A.** Was I on the newspaper?
 14 **Q.** Yeah, the school newspaper
 15 **A.** Gosh, I don't know if we had a newspaper I
 16 was not an editor or writer or anything like that, if
 17 that's the question you were asking I may have been in
 18 it, I don't know But I don't know if we had a newspaper
 19 at the time
 20 **Q.** Okay There was another one of Robert
 21 Patrick's articles -- and this has actually got a date
 22 on it -- September 20, 2005, and it says -- First of
 23 all, it talks, "Tracking Mueller, records, Kevin Hacker,
 24 current principal at St Mary's said that he had no
 25 records as to why Mueller left Hacker said that the

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1 Marianist would have maintained complaints and records "
 2 Then it says, "An old St Mary's school newspaper
 3 clipping says Mueller, quote, cited personal and family
 4 members, closed quote "
 5 Do you remember reading that anywhere in the
 6 paper?
 7 **A.** You know, I don't remember reading that, but
 8 now as I think about it more, I think Mueller did
 9 actually tell me that he was going -- he was -- he was
 10 leaving St Mary's -- Not necessarily he was leaving the
 11 order Are you talking when he left the order or when he
 12 left St Mary's and then came back?
 13 **Q.** No, no, I think it's talking about an old St
 14 Mary's school newspaper, and I think they are talking
 15 about when he left St Mary's
 16 **A.** When he left St Mary's Again, I don't recall
 17 a newspaper at St Mary's I know there's -- We get --
 18 As alums we get the Clarion Maybe that was the
 19 newspaper Maybe it had it then I don't remember ever
 20 seeing it, but -- I read it now But I want to say that
 21 he did tell me that -- since you mentioned personal
 22 reasons, I think he did tell me that he was leaving due
 23 to some personal -- whether it was something to deal with
 24 his mother being ill or needed to take care of his father
 25 -- and now I don't even know if his father was still

213

1 **A** My father went to St Mary's High School, my
2 mom -- I think she went to a Catholic high school but I
3 can't remember the exact name
4 **Q** Okay
5 **A** It closed down So I don't know -- I don't
6 remember exactly what it is
7 **Q** Do you know what area of the --
8 **A** It's South City
9 **Q** South City Okay All right And then how
10 about your brother -- your older brother? Did he go to
11 Catholic high school -- Catholic grade school and high
12 school?
13 **A** He went to Seven Holy Founders until, I think,
14 the sixth grade, and then he went to Affton Grade School
15 and then Affton High School
16 **Q** Any reason why he didn't pursue a parochial
17 education, went to public school education?
18 **A** I think he had grade issues
19 **Q** Okay
20 **A** Yeah
21 **Q** It would be easier for him to be in public
22 school system?
23 **A** I think so I don't know the exact reason but
24 I think it was something into that area
25 **Q** Sure Okay How about your two sisters?
26

1 **A** My two sisters both went to Seven Holy Founders
2 Grade School and both went to Dubourg High School
3 **Q** It's Bishop Dubourg High School is what it's
4 called?
5 **A** I don't know
6 **Q** Is that still around?
7 **A** Yes
8 **Q** I think it's Bishop Dubourg And then you
9 attended Seven Holy Founders from kindergarten -- That
10 goes through eighth grade?
11 **A** I didn't go there kindergarten
12 **Q** Okay
13 **A** First through eighth
14 **Q** Where did you go for kindergarten?
15 **A** It's right up the street It was in Affton
16 It was Affton School District It was a public school
17 **Q** Okay
18 **A** I don't remember the exact name of it
19 **MR CRAIG** Gotsch
20 **A** No, it wasn't Gotsch Right at MacKenzie and
21 Pancho It's where all the houses are now
22 **Q** Did you guys go to school together?
23 **MR CRAIG** No, he went to Catholic school
24 and I was in the good public system
25 **A** Yeah
27

1 **MR GOLDENHERSH** I see We will do your
2 depo next
3 **Q** (By Mr Goldenhersh) When did you graduate --
4 I take it -- I was a public school person, so grade
5 school went through to sixth grade and then we had
6 middle school
7 **A** No, this went to eighth grade
8 **Q** Eighth grade When did you graduate eighth
9 grade?
10 **A** '82
11 **Q** Okay And then where did you go after eighth
12 grade?
13 **A** St Mary's
14 **Q** St Mary's High School And that would be,
15 then, ninth through 12th?
16 **A** Yes
17 **Q** Okay And are all the grades in the same
18 building, ninth through 12?
19 **A** At which school?
20 **Q** St Mary's
21 **A** There's two buildings, but they are connected
22 **Q** Right, okay But St Mary's High School is
23 nine through 12?
24 **A** Yes
25 **Q** Okay Where I went to high school it was 10
28

1 through 12
2 **A** No, it was 9 through 12
3 **Q** So you started St Mary's High School in the
4 fall of '82 or fall of '83?
5 **A** No, fall of '82 '82, '83 -- yes
6 **MR CRAIG** Reavis
7 **A** Reavis Grade School yeah Very good
8 **Q** Would you have started in August or September,
9 as best you recall?
10 **A** I don't know
11 **Q** Do you know if school started before or after
12 Labor Day?
13 **A** I don't remember
14 **Q** Okay
15 **A** I played football and we had -- I know we
16 started that in August and just kind of all ran
17 together So I don't know exactly when we started, if it
18 was September or August or --
19 **Q** Sure Sure
20 **A** Thinking about that for five minutes It's all
21 housing --
22 **MR CRAIG** When you said houses, that's
23 why I was confused Yeah they tore it down
24 **A** They tore it down
25 **Q** All right Just looking at your answers to
29

1 Interrogatories it said you attended St. Mary's High
 2 School approximately '81 to '86. So most likely was '82
 3 to '86, right?
 4 A Yes, it had to be.
 5 Q I beg your pardon?
 6 A Yes.
 7 Q Okay. When you were in grade school, by the
 8 time you got to seventh and eighth grade did they have
 9 student council? Did they have any things like that?
 10 A I don't remember.
 11 Q All right. What kind of student were you from
 12 first grade through eighth grade?
 13 A B student.
 14 Q B?
 15 A Uh-huh.
 16 Q That's a yes, right?
 17 A Yes.
 18 Q Okay. Solid B student pretty much?
 19 A Yes.
 20 Q Okay. You didn't get --
 21 A I didn't have straight A's. I had some A's,
 22 some B's. Maybe a C sparked in there somewhere.
 23 Q You never got D's and F's?
 24 A No.
 25 Q Right. I mean to be in these kinds of schools

30

1 you had to do fairly well academically.
 2 A Yes.
 3 Q What kind of outside activities did you
 4 participate in in grade school?
 5 A I played football, soccer and basketball. I
 6 was in Boy Scouts.
 7 Q Uh-huh.
 8 A I was an altar boy. I don't know if that's --
 9 Q Okay. What was the highest badge level you
 10 obtained as a Boy Scout? Did you become an Eagle Scout?
 11 A No, Star or Life.
 12 Q Okay. And did you do well in football and
 13 soccer and basketball? You look like an athlete.
 14 A Football, a little bit of soccer but not so
 15 much basketball.
 16 Q A little short for that. Genetic vertically
 17 challenged, we would say?
 18 A Fouled out. I fouled out too much.
 19 Q A little vertically challenged, too?
 20 A Yeah.
 21 MR GOLDENHERSH David and I and Marty are
 22 definitely vertically challenged, aren't we, guys?
 23 MR HADICAN That was that aggression from
 24 football that caused that tip --
 25 A Yes, sir.

31

1 MR HADICAN - caused that funnel
 2 A Yes.
 3 Q Did they give athletic letters in grade school
 4 through eighth grade?
 5 A No.
 6 Q And you were an altar boy at Seven Holy
 7 Founders?
 8 A Yes.
 9 Q Does that help you refresh your recollection
 10 who the pastor was there?
 11 A It changed so much, I honestly don't remember.
 12 Q Okay. You understand that Seven Holy Founders
 13 is part of the Archdiocese of St. Louis and is a parish
 14 within the Archdiocese of St. Louis?
 15 A Yes.
 16 Q Okay. Is there any incident that you want to
 17 tell me about today under oath in which you claim you
 18 had any kind of emotional, physical or sexual abuse
 19 while you attended church or parish activities at Seven
 20 Holy Founders?
 21 A Nothing.
 22 Q Okay. The only thing we are going to discuss
 23 that ever happened to you which comprises your
 24 complaints is the one incident with Mr. Mueller,
 25 correct?

32

1 A Yes.
 2 Q Okay. And you understand Mr. Mueller was a
 3 Marianist, correct?
 4 A Yes.
 5 Q Okay. And you understand there's a
 6 distinction between an Archdiocesan or a Diocesan priest
 7 and a Marianist brother, correct?
 8 A I mean, I don't know the exact differences. To
 9 me they were always a brother or a priest and one in the
 10 same.
 11 Q Well, do you understand that if you are an
 12 order priest you answer to your order and if you are a
 13 diocesan priest you answer to your Bishop or Archbishop?
 14 Did you have that general understanding?
 15 A No.
 16 Q Do you have that understanding today?
 17 A Because you just said it.
 18 Q Okay. That would be the first you heard of
 19 it?
 20 A Yeah. I mean the exact dynamics of the Catholic
 21 church and who reports to who and who does what, no, I
 22 didn't know that until you just said it today.
 23 Q Okay. Let's talk about your activities, then
 24 in high school. By the way, did you have any real close
 25 friends between kindergarten and eighth grade?

33

1 **A** Ice hockey
 2 **Q** Ice hockey But that was not a school sport,
 3 right?
 4 **A.** It was a club sport
 5 **Q** A club sport Did -- Were your -- Were your
 6 friends, Matt Giegling, Tim Turner, Jim Bommarito and
 7 Mike Vitali on any of these teams?
 8 **A.** Tim Turner was football until senior year, Matt
 9 was football all years, Matt played hockey, Jim Bommarito
 10 was football all four and hockey, Mike Vitali was
 11 football only, Mike Gasterich was hockey, Girefero was
 12 hockey, as well Livelle didn't play any sports Lenny
 13 Freeman played football, Tim Pratt played football
 14 **Q** Gasterich?
 15 **A** Gasterich was hockey
 16 **Q** Hockey, okay
 17 **A** He was two years younger, so he was just two
 18 years in hockey
 19 **Q.** Did you play hockey four years?
 20 **A** No, it was only -- It started my junior year
 21 **Q** Junior year And they didn't, then, give out
 22 letters or anything for hockey?
 23 **A** We did
 24 **Q** You did
 25 **A** I don't know if the parents organized it or

42

1 what, but we got letters
 2 **Q** So you played hockey your junior and senior
 3 year?
 4 **A** Yes
 5 **Q** What position did you play generally in
 6 hockey?
 7 **A** Right wing or defense
 8 **Q** Did you get a letter both years in hockey?
 9 **A** Yes
 10 **Q** Did you -- Did you -- Did you ever get into
 11 any removals from any games in hockey because of hockey
 12 fights or anything like that?
 13 **A** No, I didn't -- Not that I can think of
 14 **Q** Okay, good
 15 **A** Because I think if you got suspended you had to
 16 skip the next game, and I don't ever remember missing a
 17 game
 18 **Q** High school hockey is pretty clean, I think
 19 **A** Yeah
 20 **Q** That's why I don't watch pro hockey
 21 Football Where did you -- What positions did
 22 you play?
 23 **A** I was running back and defensive line backer
 24 first three years, and my senior year I switched off from
 25 offensive guard to running back two or three times, just

43

1 different games
 2 **Q** I take it St Mary's is kind of a small high
 3 school, so a lot of guys played both ways?
 4 **A.** Yes
 5 **Q.** So you played offense -- You played the whole
 6 game?
 7 **A** Yes
 8 **Q.** Did you letter in hock -- Strike that Did
 9 you letter in football?
 10 **A** Yes
 11 **Q** When you were a freshman did you play
 12 sophomore team or B team, or did you play varsity all
 13 the time?
 14 **A** No, we got -- No, no, we got moved up Matt
 15 and I actually got moved up, I think it was, to sophomore
 16 or JV
 17 **Q** As a freshman?
 18 **A** I think -- I can't recall exactly It was
 19 either that -- It was either freshman year or sophomore
 20 year, but I know we got moved up
 21 **Q.** Okay
 22 **A** I think it was towards the end of our freshman
 23 year I don't know exactly
 24 **Q** That's all right
 25 **A.** I don't remember at that time

44

1 **Q.** They had a freshman program?
 2 **A** Had a freshman program, a JV program and a
 3 varsity program
 4 **Q** Okay How many years did you play varsity
 5 ball?
 6 **A.** I lettered two for sure, junior and senior, and
 7 I can't remember if I lettered my sophomore year
 8 **Q** Okay So possibly --
 9 **A.** Yeah I don't know exactly if I did or not
 10 **Q.** Were you one of the All Metro running backs or
 11 All Metro football players?
 12 **A** I was All Metro I think as an offensive
 13 lineman
 14 **Q** So you really excelled in football?
 15 **A.** Yes
 16 **Q** Did you play college football?
 17 **A.** Yes, I had a scholarship to Benedictine
 18 That's why I went up there
 19 **Q.** What positions did you play there?
 20 **A.** Offensive guard
 21 **Q** And how many years did you play?
 22 **A.** Four
 23 **Q** Four And they gave you an athletic
 24 scholarship for football?
 25 **A.** Yes, partial

45

1 Q Partial Did you receive any accolades or
2 awards or letters as playing college ball?
3 A I was three-year letterman, captain junior and
4 senior year, Pre Season All American senior year
5 Q. Okay Slow down You were captain junior --
6 A And senior year
7 Q. -- and senior year You were what, All
8 American?
9 A Pre-Season All American, senior year
10 Q. I don't know what that means, pre-season
11 versus --
12 A They -- The papers or whatever, they predict --
13 Q That you will be an All American?
14 A Yes I didn't end up -- I was -- I think I was
15 an Honorable Mention All American at the end of the
16 season
17 Q. Is Benedictine in -- Is that college 1A ball?
18 A It's -- At the time it was NAIA Division II
19 I'm not sure if it's Division I or Division II now,
20 because they changed things up
21 Q Sure What kind of schools did they play?
22 A We played Peru State Panhandle State -- Peru
23 State, Panhandle State, other NAIA schools
24 Q Small schools?
25 A Yes

46

1 Q. Were they in a particular conference?
2 A At the time we were not in a conference, we
3 were an independent
4 Q. Okay
5 A Now they are
6 Q Did you try out for pro ball?
7 A. No
8 Q Any ambitions for pro ball?
9 A Well, of course
10 Q Yeah but what caused you not to try out for
11 it?
12 A Too short, not fast enough
13 Q Genetic limitations?
14 A Yes, exactly
15 Q. Thank you When you were in high school and
16 football did you ever get thrown out of any games for
17 temper management?
18 A No
19 Q And when you were in college did you ever get
20 thrown out of any games --
21 A No
22 Q. -- for temper management? How did you do
23 academically in high school now?
24 A I was Honor Roll, B's and A's
25 Q B's and A's?

47

1 A. Yes
2 Q So you were a scholar athlete, as well, then?
3 A. I don't know if you would call it that I
4 don't know if there was an official thing that I got I
5 was honor roll --
6 Q You were honor roll?
7 A -- most of the four years I don't know if
8 there's like an A honor roll or B honor roll
9 Q Well, I talked to Matt Giegling and I
10 understand he was really up there, he was astronomical,
11 like number two in the class?
12 A. He worked very hard
13 Q Yeah But you did very well, then, to be on
14 these sports and getting As and Bs there, right, --
15 A. Yes
16 Q -- academically? All right And did you work
17 a job, too, while you were in high school?
18 A. Yes
19 Q. During the year or just summers?
20 A. During the year -- I think both
21 Q Okay Where did -- Well, tell me what you
22 recall
23 A. I recall I was a dishwasher at Rich &
24 Charlie's
25 Q. Where are they located?

48

1 A. South County off of Lindbergh --
2 Q On Lindbergh?
3 A. Right by South County Mall I think it's
4 Watson I forget the name of the road I don't know
5 Q And you did that during the school year or
6 just summers?
7 A Yes it was during the school year
8 Q. How many days a week or just weekends?
9 A. Just weekends
10 Q Just for pocket money?
11 A. Yes
12 Q. Did you have any problems with absenteeism in
13 showing up for work on weekends?
14 A. No
15 Q. Okay And where else did you work?
16 A. It was a car wash/gas station Waterways,
17 maybe
18 Q. Waterway?
19 A I don't know the exact name, but it's right by
20 Grandpa Pigeon's off of MacKenzie and Chippewa I think
21 Q Sure Was that just a weekend job, as
22 well, --
23 A Yes
24 Q -- or summer job?
25 A No, it was a weekend during the school year,

49

1 yes
 2 **Q** Did you ever have any problems there?
 3 **A** No
 4 **Q** Have you ever been arrested?
 5 **A** No
 6 **Q** Have you ever been pulled over for a DUI or --
 7 **A** No Speeding -- I have gotten speeding
 8 tickets, but nothing --
 9 **Q** I don't need to know about that I'm sure you
 10 got a parking ticket too right? I bet Dan got one the
 11 other day
 12 **A** No, actually I've never had - got a parking
 13 ticket
 14 **Q** I get the same thing, because I can't find a
 15 lot, I get a parking ticket
 16 **Q** Okay So, it's safe to say, then -- Let me
 17 back up one minute Whatever happened to you -- And we
 18 will get into detail about that as best you recall But
 19 whatever occurred to you vis-a-vis Mr Mueller, it
 20 certainly didn't affect your ability to excel in
 21 athletics, correct?
 22 **A** Correct
 23 **Q** And it certainly -- whatever Mueller did or
 24 didn't do to you, it didn't affect your academic
 25 performance, correct?

50

1 **A** Correct
 2 **Q** And whatever Mueller did or didn't do to you,
 3 it didn't affect your high school behavior in school,
 4 you maintained a good demeanor and didn't get in
 5 trouble, correct?
 6 **A** Correct
 7 **Q** Whatever Mueller did or didn't do to you
 8 didn't cause you to use drugs or alcohol or get in
 9 problems with the law correct?
 10 **A** Correct I never got trouble, but I can't say
 11 that I didn't drink
 12 **Q** Right
 13 **A** Okay? We are under oath
 14 **Q** And I'm not going to ask you about how often
 15 football players and hockey players and guys go out and
 16 drink But you never got arrested for it, did you?
 17 **A** No, never got arrested
 18 **Q** You never got arrested for having illicit
 19 drugs, did you?
 20 **A** No
 21 **Q** You don't carry illicit drugs?
 22 **A** No
 23 **Q** And during high school you didn't use illicit
 24 drugs, did you?
 25 **A** No

51

1 **Q** And during high school you didn't drink to
 2 excess where you had to be put into a alcohol program,
 3 did you?
 4 **A** No
 5 **Q** Did you ever get arrested for drinking in high
 6 school?
 7 **A** No
 8 **Q** Did your parents ever tell you you had a
 9 drinking problem in high school?
 10 **A** No
 11 **Q** Okay Did you yourself perceive you had a
 12 drinking problem in high school?
 13 **A** No
 14 **Q** You were always in control of yourself
 15 weren't you?
 16 **A** Yes
 17 **Q** You were a good academic student, you were a
 18 good social student, you were a good athlete, and you
 19 could maintain jobs and be there regularly and have no
 20 problems, correct?
 21 **A** Correct
 22 **Q** You never got in fist fights in high school or
 23 college, correct?
 24 **A** No, I have gotten in fist fights
 25 **Q** Okay Then we are going to talk about fist

52

1 fights
 2 **A** Okay
 3 **Q** Okay I thought the only one we had was in
 4 fifth and sixth grades You got in high school fist
 5 fights?
 6 **A** Yes
 7 **Q** Tell me about your fist fights in high school
 8 **A** All the details?
 9 **Q** Yes, sir
 10 **A** A gentleman, Gary Schner --
 11 **Q** How would I spell that last name?
 12 **A** S-C-H-N-E-R
 13 **Q** Okay
 14 **A** He tried to take advantage of my sister She
 15 told me that he gave her a lot of alcohol, and she was
 16 out with him and another gentleman, Tim Noonan And as I
 17 recall, Tim was supposed to take her home, Gary said he
 18 would take her home, and he tried to make her give him
 19 oral sex or he wasn't going to give her a ride home
 20 **Q** Uh-huh
 21 **A** That's what I recall she telling me
 22 **Q** Uh-huh
 23 **A** So, we confronted each other at school on
 24 Monday or whatever, and then I think it was the following
 25 weekend, but it was a weekend, that we got in a fight at

53

1 **A** Right
 2 **Q** Okay Any other -- Did you ever get into --
 3 when you were in college, ever get into any bar fights
 4 when you were --
 5 **A** I was a bouncer, you know breaking things up
 6 and stuff like that, but no - no real fights you know
 7 like -- no
 8 **Q** This would be a bouncer after you turned 21?
 9 **A** No, in Kansas the drinking age was 18
 10 **Q** Okay
 11 **A** And then it moved up a year And I was always
 12 one year behind, but you could still get in the bars at
 13 18, you just got a stamp on your hand differently and
 14 then you weren't supposed to drink
 15 **Q** I see And then you were a bouncer in what
 16 town in Kansas?
 17 **A** Atchison
 18 **Q** Atchison?
 19 **A** Yes
 20 **Q** And how -- Did you do that during the school
 21 year after football season was over?
 22 **A** No during the school year, sophomore, junior
 23 and senior year I think so
 24 **Q** Just kind of did this on weekends, then?
 25 **A** Wednesday night The bar was only Wednesday

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1 Saturday -- Friday and Saturday and so I played
 2 Saturday, so I never worked Friday It was Wednesday and
 3 Saturday Not every one, but that was the main time I
 4 worked
 5 **Q** Okay Did you ever -- And you never got into
 6 any fist fights as a bouncer where the police were
 7 called or anything like that?
 8 **A** No, not that I can -- Not that I can recall,
 9 no Not that I can recall
 10 **Q** Okay, good Are you licensed to carry any
 11 weapons?
 12 **A** No I don't own any weapons I don't own any
 13 weapons
 14 **Q** Yeah, I just didn't know if Kansas was one of
 15 these concealed and carry states or not
 16 **A** I don't think it is
 17 **MR CRAIG** No, but I was telling him that
 18 I saw a brace or something on Giegling's leg yesterday, I
 19 said, "What, did you hurt your ankle or something?" He
 20 said, "No, it's my nine millimeter " He had it strapped
 21 to his leg all day
 22 **MR GOLDENHERSH** But how can he fly with
 23 that?
 24 **MR CRAIG** Walks right on in He says he
 25 got his FBI paperwork pre-board ahead of everyone

71

1 **MR GOLDENHERSH** I thought they still made
 2 you put it in the hold --
 3 **A** No, I think they encourage it
 4 **MR CRAIG** Yeah, he's a cop on the plane
 5 **MR GOLDENHERSH** Better not shoot that
 6 thing on the plane, then everyone goes down
 7 **MR CRAIG** He brought the coffee over
 8 here Didn't want to get it in the camera way
 9 **Q** (By Mr Goldenhersh) How well did you -- I
 10 mean, being a college athlete is pretty rigorous, isn't
 11 it?
 12 **A** Yes
 13 **Q** So you have got to practice during football
 14 season three, four hours a day?
 15 **A** We had to lift weights, and then I guess lift
 16 weights, film session and practice, anywhere from three
 17 to four hours I think that's a fair statement
 18 **Q** Yeah, and so what was your major in college?
 19 **A** Business administration
 20 **Q** With an emphasis in what? Finance, economics?
 21 **A** We were -- I'm trying -- We were liberal arts,
 22 so we had to take a little bit of finance, a little bit
 23 of marketing, a little bit of administration, and so we
 24 didn't -- you couldn't major in marketing or major in
 25 finance or major in administration or management, so it

72

1 was just a little bit of everything
 2 **Q** Okay You took accounting?
 3 **A** Yes
 4 **Q** Took economics?
 5 **A** All of those
 6 **Q** You just had a whole smatter?
 7 **A** Yes
 8 **Q** Okay Did you continue your education beyond
 9 -- Do you have a BS or is it a BA degree, did you say?
 10 Is it BS in business?
 11 **A** Yes, yeah
 12 **Q** Have you continued your education beyond your
 13 BS?
 14 **A** No
 15 **Q** Any formal education?
 16 **A** No
 17 **Q** Okay Where did you graduate in your high
 18 school rank do you know?
 19 **A** I have no idea I mean, it was --
 20 **Q** As and Bs, you were probably top quarter?
 21 **A** I was middle third, middle quarter -- you know,
 22 top quarter I don't know exactly
 23 **Q** So you did very well academically You were
 24 on honor roll almost every semester?
 25 **A** Yes

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1 befell, if anything, between you and Mr Mueller did
2 not affect your economic or job performance at Ansell?
3 That's correct, isn't it?
4 **A.** That's correct
5 **Q.** Okay And then where did you go after Ansell?
6 **A.** Moved back to Kansas City and worked for Tesa
7 Tape That's what I currently do
8 **Q.** When you were in Omaha did you buy a home
9 there?
10 **A.** No, we had an apartment, and that was our
11 rationale We were either going to buy a house or move
12 back to Kansas City
13 **Q.** Okay I'm not familiar with Tesa Tape What
14 do they do?
15 **A.** We have pressure-sensitive tape We sell
16 pressure-sensitive tape to industrial or commercial uses
17 So your box tape, duct tape, double-coated tape Not
18 audio tapes or anything like that Anything that has
19 adhesive on it
20 **Q.** Okay So pressure-sensitive meaning a machine
21 is going to press it down?
22 **A.** Your machine or your finger hand, whatever
23 **Q.** Okay So if you are in shipping business or
24 if you want -- if your Federal Express and you've got to
25 tape up a box, they are going to be using a Tesa

86

1 product?
2 **A.** Every Fed Ex box that you open, that tear strip
3 is our tape
4 **Q.** Okay That's what I kind of thought And do
5 you all manufacture it, --
6 **A.** Yes
7 **Q.** -- the tape itself, or do you just resell it
8 for somebody else that manufactures it?
9 **A.** We have our own manufacturing facilities and
10 other competitors manufacture some tape for us
11 **Q.** Okay And who would be your competitors?
12 Like 3M?
13 **A.** 3M, Intertape, Scappa -- There's a whole bunch
14 of them
15 **Q.** 3M private labels for you, but also competes
16 with you?
17 **A.** No, Intertape is the only one that private
18 labels for us
19 **Q.** So 3M would be your largest competitor?
20 **A.** Yes
21 **Q.** Okay Is Tesa publicly traded?
22 **A.** No
23 **Q.** Privately-held company?
24 **A.** Privately held Germany -- Homburg, Germany is
25 the world headquarters

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1 **Q.** Okay Is it a family-owned?
2 **A.** It's a Beiersdorf Company So, Nivea Hand
3 Cream, Curad band-aids, Jobst Hosiery That's all within
4 the family of the companies
5 **Q.** I see So is it also part of the Bear?
6 **A.** No
7 **Q.** Okay But there's a holding company up there,
8 and Tesa is a subsidiary of a publicly-traded company?
9 **A.** No, it's all private
10 **Q.** It's all totally private?
11 **A.** All totally private
12 **Q.** Okay Huge -- Huge business then?
13 **A.** Yes
14 **Q.** How long have you been with Tesa?
15 **A.** It will be 12 years in April
16 **Q.** What was your first position when you went in?
17 **A.** I have always been a sales rep My title has
18 changed from territory manager to industrial sales
19 specialist, just -- I do the same job It's just
20 different titles within that
21 **Q.** But with the title comes more responsibility?
22 No?
23 **A.** No
24 **Q.** You are still doing basically the same thing?
25 **A.** The last couple of years we segmented out to

88

1 different markets, but the big picture job function is,
2 yes, the same
3 **Q.** Do you supervise any people?
4 **A.** No
5 **Q.** You are just a one-on-one sales?
6 **A.** I manage a distribution chain through five
7 states
8 **Q.** Okay Do you make sales calls, too?
9 **A.** Absolutely
10 **Q.** Okay And do you have people that report to
11 you in managing this distribution chain?
12 **A.** I have my distributors that report to me, but
13 they are not direct reports They work for a different
14 company
15 **Q.** I see, okay I got the picture
16 Do you have to travel to five states?
17 **A.** Yes
18 **Q.** Okay What are the -- What's your territory?
19 **A.** Kansas, Missouri, Iowa, Nebraska, Southern
20 Illinois, and I have part of Northwest Arkansas So if
21 you want to add that, that's six
22 **Q.** Do you -- Do you generally travel by car or do
23 you have to fly to these locations?
24 **A.** I -- Both
25 **Q.** Both okay And you're quite successful at

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1 Tesa Tape, aren't you?
 2 **A.** Yes
 3 **Q.** Okay You make a good salary?
 4 **A.** I could always take more
 5 **Q.** Everybody can, but --
 6 **A.** But, yes, I make a good salary
 7 **Q.** Right And I don't like to go into
 8 particulars, but with bonuses and -- Do you get any kind
 9 of -- Do you have a phantom stock plan?
 10 **A.** We get -- What do they call it? It's a
 11 discretionary match, or it's like a profit --
 12 **Q.** 401K?
 13 **A.** It's a profit sharing that they drop into our
 14 401K every year
 15 **Q.** Okay So, for 2005 or 2006, I mean, you are
 16 in the six figures?
 17 **A.** Yes
 18 **Q.** So, you're doing quite well with this company?
 19 **A.** Yes
 20 **Q.** Okay And it's fair to say that anything --
 21 if anything ever befell you in contact with Mr Mueller,
 22 it certainly hasn't affected your performance in doing
 23 your job with Tesa Tape Company, correct?
 24 **A.** That's correct
 25 **Q.** Okay You're doing very well there?

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1 **A.** Yes
 2 **Q.** And you're well thought of there?
 3 **A.** Yes
 4 **Q.** And you've never had a disciplinary problem at
 5 Tesa?
 6 **A.** Never
 7 **Q.** And I take it you've never had a disciplinary
 8 problem with any of your employers?
 9 **A.** None of my companies that I've worked for
 10 **Q.** Right I want to talk about your family for a
 11 minute
 12 **A.** Okay
 13 **Q.** We have already talked a little bit about your
 14 wife And I understand that you have three children
 15 with Jeannie, right?
 16 **A.** Yes
 17 **Q.** Okay Mary Jane was born when?
 18 **A.** November 22nd, 1990
 19 **Q.** She's got a birthday coming up
 20 **A.** Yes
 21 **Q.** And what grade in school is she?
 22 **A.** She's a sophomore in high school
 23 **Q.** Have you ever discussed Mueller with her?
 24 **A.** Once the lawsuit and the article came out in
 25 the paper I discussed -- wanted them to know and hear it

91

1 from me before they heard it, if they would ever hear it,
 2 somewhere else
 3 **Q.** Okay I'll get back to that, those topics,
 4 then I just want to be sure I covered it
 5 Catherine, C-A-T-H-E-R-I-N-E, is how old?
 6 **A.** She's 12
 7 **Q.** What's her date of birth?
 8 **A.** June 29th, 1994
 9 **Q.** Okay And then you have Brock He's the
 10 little guy, right?
 11 **A.** Yes
 12 **Q.** And what's Brock's date of birth?
 13 **A.** September 15th He's three, so 2003
 14 **Q.** Okay Because here I have him as two So
 15 he's had a birthday since then
 16 **A.** Right
 17 **Q.** So he's three years old?
 18 **A.** Last month
 19 **Q.** So we know you are not discussing anything
 20 with Brock
 21 **A.** Hu-huh
 22 **Q.** Brock's kind of a quiet guy You are not
 23 going to have a deep conversation
 24 **A.** We talk about trains and balls and cars.
 25 **Q.** Is he playing any sports, yet, like little

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1 soccer or --
 2 **A.** Not yet
 3 **Q.** Not yet?
 4 **A.** Next summer Yeah, next summer
 5 **Q.** My grandson is playing soccer He started at
 6 four, I think, he's five now
 7 And you had some discussion, then, with
 8 Catherine, as well as Mary Jane, or just Mary Jane?
 9 **A.** I honestly don't remember if I talked to
 10 Catherine about it
 11 **Q.** That's okay It might come to you We will
 12 figure that out a little bit later
 13 **A.** Yeah
 14 **Q.** All right And except for substituting now
 15 Jeannie is a mom full time?
 16 **A.** Yes
 17 **Q.** Okay During high school and college, besides
 18 Jeannie, who were your high school girlfriends and
 19 college girlfriends?
 20 **A.** High school girlfriends, Denise Dennon, I
 21 think D-E -- I have no idea
 22 **Q.** Just spell it as best you can
 23 **A.** D-E-N-N-O-I-R I'm guessing I really don't
 24 know
 25 **Q.** That's all right Have you stayed in touch

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1 Q That was your parish?
 2 A Yes
 3 Q How about Catherine?
 4 A She goes to St Joseph
 5 Q Okay That goes through eighth grade?
 6 A Yes
 7 Q And do you intend to have Brock in parochial
 8 school?
 9 A Yes
 10 Q. I take it that your family goes to church
 11 together when you can?
 12 A. My immediate family?
 13 Q Yes, sir
 14 A Yes
 15 Q You go if you are not playing rugby or
 16 whatever --
 17 A. Or Brock's not sleeping
 18 Q Right, or no one's sick You guys try to go
 19 to Sunday church together?
 20 A. Correct
 21 Q Okay Or Saturday night mass or whatever you
 22 do
 23 A Right
 24 Q Do the girls go to Sunday school on top of
 25 their religious training?

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1 A No
 2 Q I wasn't sure if that occurred anymore or not
 3 Okay Now we are in high school
 4 A Okay
 5 Q And you know Mr Mueller is going to be your
 6 principal, right?
 7 A Correct
 8 Q. Okay Did you ever get sent to the
 9 principal's office for any problems in school?
 10 A Not that I can remember
 11 Q. Okay How did you become personally
 12 acquainted with Mr Mueller where he knew your name and
 13 you knew his name?
 14 A He walked the halls all the time and interacted
 15 with the students all the time
 16 Q Okay
 17 A So, just from -- We were small enough that I
 18 think that you could get to know people
 19 Q. How big of a high school was St Mary's?
 20 A 400, maybe, 500
 21 Q Okay So smaller than your college where you
 22 went?
 23 A Yes
 24 Q. Okay And the -- you had -- How did Mr
 25 Mueller ask you to become involved in whatever you

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1 became involved in? You knew he was the principal, you
 2 saw him in the hallways Take me through the scenario
 3 on how you and he had conversations which led up to the
 4 incident, okay?
 5 A. I don't recall exactly when, but he approached
 6 me and asked me to help him out He was getting his
 7 Master's in psychology and he had some experiments that
 8 he needed to do for his Master's, and he was wondering if
 9 I could help him
 10 Q Were you a freshman or a sophomore or a junior
 11 at this time?
 12 A Sophomore
 13 Q You were a sophomore How old were you at the
 14 time, as best you recall?
 15 A. As best I recall, 15
 16 Q. Okay Was this in the fall or the spring that
 17 you were asked?
 18 A. Fall
 19 Q Fall And you were still playing football
 20 then? Football season was ongoing, as best you recall?
 21 A As best I recall, yes
 22 Q. Okay When he approached you did he approach
 23 you during the school session or did he -- was this in
 24 the cafeteria, was it in the hallway? Did he ask you to
 25 come to his office first?

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1 A I really don't recall exactly when or where
 2 Q Okay
 3 A He asked me to help him out
 4 Q Sure Okay You don't think you were driving
 5 at that time, do you?
 6 A No
 7 Q Okay Okay So he asked you to help him out
 8 with his Master's thesis, right?
 9 A. Right, something to that effect Master's or
 10 he had -- It was either psychology or some kind of --
 11 some kind of continual education he needed help with,
 12 some experiments for his thesis or something to that
 13 nature
 14 Q. Did you recall that he had asked you to do
 15 this stuff without reading anything on the Internet
 16 about --
 17 A. Did I recall that he asked me?
 18 Q Yes, sir
 19 A Yes
 20 Q Okay Did you always remember that he had
 21 asked you to participate in helping him with his
 22 research or his experiment?
 23 A. Yes
 24 Q You never forgot that he came to you and asked
 25 you to be part of his research or psychological

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1 experiment, correct?
 2 **A** Correct
 3 **Q** Okay And you didn't have to go on the
 4 Internet or hear things on the news or read articles to
 5 help you recall that he had asked you to be a part of
 6 his --
 7 **A.** No, I always knew that -- I always remember,
 8 you know, him asking me to help him out for his Master's
 9 **Q** Sure Okay Good What happened next?
 10 **A** Well, the afternoon -- the afternoon or the
 11 night of the incident I remember he pulled me away from
 12 -- like it was after football or after -- sometime after
 13 school It was -- It was kind of dark, and I remember
 14 walking down along freshman hall then going down the
 15 stairs to sophomore hall, and I went into the nurse's
 16 office
 17 **Q.** Okay I need to back up a minute, because I
 18 don't understand a few things
 19 **A** Okay
 20 **Q** You said it was either the afternoon or night?
 21 **A** It was late afternoon
 22 **Q** Okay This would be after a football
 23 practice, then?
 24 **A** Possibly Again, I don't remember if it was
 25 exactly football season I knew it was in the fall

1 **Q** Okay Well, when you say night, it wouldn't
 2 have been at 9 00 or --
 3 **A** No, no, no
 4 **Q** Okay
 5 **A** It was when it got -- started to get darker
 6 **Q.** Dusk?
 7 **A** Yes, fair enough Dusk
 8 **Q** So it was either afternoon, late afternoon --
 9 **A** It's late afternoon, dusk
 10 **Q** Okay In the 4 00 to 5 00?
 11 **A** Yes
 12 **Q.** My pen's run out of ink Excuse me
 13 **A** Okay
 14 MR ASSOUAD Do you need a pen?
 15 MR GOLDENHERSH I got one That's what I
 16 use on David's stuff
 17 MR NIEMEIER That's why it was full of
 18 ink
 19 **A** Exactly You have had it for years, though
 20 MR GOLDENHERSH Well, maybe one brief
 21 You never know
 22 **Q** (By Mr Goldenhersh) Okay You said there's a
 23 freshman hall and a sophomore hall?
 24 **A** That's what -- All the freshman had their
 25 lockers and the first floor by -- closest to the

1 principal's office
 2 **Q** Okay
 3 **A** So it was like an L-shape building
 4 **Q** Okay All right And when you went -- Were
 5 you still at school?
 6 **A** Yes
 7 **Q** Okay You never went home, did you?
 8 **A** No
 9 **Q** Okay So this would be like after football
 10 practice?
 11 **A** Again, I'm -- I don't know for sure if it was
 12 after football or if we still had football, but I
 13 remember that we walked into the door right by the --
 14 right by the principal's office and walked down that long
 15 hallway
 16 **Q** Okay Were you the only two people in the
 17 building that you know of?
 18 **A.** That I know of, yes
 19 **Q** Okay So the first thing that happened was he
 20 came up to you and said -- Well you don't remember
 21 where he came up to you, right?
 22 **A** Correct
 23 **Q** Okay And he asked you if you would
 24 participate in helping him with some scholastic work of
 25 some kind?

1 **A.** Correct
 2 **Q** Okay And you said sure right?
 3 **A.** Correct
 4 **Q** Did he give you a time and place to meet? How
 5 did you know to come --
 6 **A** I think that - I think it was all kind of was
 7 at the same moment, so to speak It wasn't like he asked
 8 me, 'In three weeks I'd like to visit with you about this
 9 experiment' I think it was I was there after school, he
 10 said, "I need to talk to you," kind of walked away, and
 11 it all transpired at this moment
 12 **Q** At that moment, okay
 13 **A** It wasn't anything planned or set up
 14 **Q** All right So more likely than not this would
 15 have been either before or after a football practice
 16 then, if he came to you, because you were still at
 17 school
 18 **A** Either football practice or I was lifting
 19 weights It was in the fall And again, I don't
 20 remember if we were playing still or not
 21 **Q** Okay If you were lifting weights you'd be in
 22 a gym where weights were being lifted right?
 23 **A.** That's what you do, yes
 24 **Q** Right Would there be other people around?
 25 **A** Sometimes there were

1 Q Okay Did Mr Giegling ever tell you in any
2 conversations you and he had that he has a specific
3 recollection of being sexually abused by Mueller?
4 A What do you mean by sexually abused?
5 Q That either Mr Mueller had some kind of
6 touching of each other's genital areas oral sex, anal
7 sex
8 A Mr Giegling and I talked, and he has told me
9 that he went several occasions, doesn't remember exactly
10 how many, and that he doesn't ever remember anal sex,
11 touching of the genitals, oral sex, things like that
12 Q Mr Giegling tell you that he told his medical
13 care provider that he does not recall any incident of
14 sexual abuse?
15 A He did not He and I did not discuss that
16 Q All right Did you have discussions with Mr
17 Turner where -- Did Mr Turner tell you he was ever
18 sexually abused by Mr Mueller?
19 A Based on your definition of sexually abused
20 with oral, anal --
21 Q Genital touching --
22 A Genitals --
23 Q Masturbation?
24 A No, he did not have - or he did not recall any
25 of that

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1 Q Okay Did Mr Bommarito ever tell you he had
2 been sexually abused, given that definition, by Brother
3 Mueller?
4 A He was never involved whatsoever
5 Q Okay Did Mr Vitali ever tell you he was
6 sexually abused by Mr Mueller?
7 A He was never involved
8 Q Okay Did Mr Strka ever tell you he was
9 sexually abused?
10 A From what I remember of the conversation with
11 Mr Strka, he said he -- happened several times that he
12 would be pulled out of class From what I remember, he
13 told me he was blindfolded and heard like heavy breathing
14 from across the room, that Mr Mueller was there and --
15 But I cannot remember -- I don't think he ever said that
16 he sexually assaulted him based on the definition that we
17 were talking about
18 Q Okay
19 A I don't -- I don't remember him saying that
20 Q Okay You understand that Jimmy Strka's uncle
21 is a Monsignor within the Archdiocese of St Louis?
22 A I learned that when we were talking, yes
23 Q Okay John Sheehy Did he ever tell you he
24 was sexually abused --
25 A No

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1 Q -- by Mueller?
2 A No, he was not He called and said that he
3 remembers talking to Mueller about, you know that he
4 needed help, and that -- but he never did anything or
5 nothing -- never -- nothing ever happened, never went
6 into a scenario like I had
7 Q All right And how about Ed Naeger? Has he
8 ever told you he was sexually assaulted?
9 A Based on your definition he said he was not
10 sexually assaulted, but he had participated in the
11 experiment I don't recall how many times
12 Q Okay Now, this happened one time, then, and
13 it's during your sophomore year, right?
14 A Correct
15 Q Do you always recall going -- being asked by
16 Mr Mueller and walking with him down the sophomore hall
17 and going into the nurse's office?
18 A Yes
19 Q Do you always recall that he told you he was
20 going to that day or that day asked you to
21 participate in one of his experiments and you and he
22 walked together in the nurse's office? You always
23 recalled that?
24 A Yes
25 Q Okay I think you said he blindfolded you,

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1 correct?
2 A Correct
3 Q What did he use to blindfold you with?
4 A I have no idea
5 Q You didn't see what the blindfold was?
6 A He was behind me and -- and approached me from
7 behind so I don't remember I just remember that it
8 went dark and he put something across my eyes and he
9 said, "This" -- you know, "Trust me, trust me This is
10 part of the experiment "
11 Q Did he tell you that he would be using a
12 blindfold before he did?
13 A I don't recall I don't
14 Q Okay
15 A I don't think he did, but I don't remember
16 exactly
17 Q Okay When he asked you to come into the
18 nurse's room and walk down the hall with him you did
19 that voluntarily at his request?
20 A That's correct
21 Q Right And he never grabbed you and forced
22 you to go in there, correct?
23 A Correct
24 Q Okay And you were never afraid for your
25 safety when he was walking you down the hall or asking

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1 neck, if I press the pen to your neck it has a round
 2 edge, it won't feel sharp To me he pressed something to
 3 my neck that had an edge
 4 Q. Okay
 5 A. So that's why it felt sharp
 6 Q. The reason I'm asking is Mr Giegling said
 7 that what was pressed against him was flat
 8 A. Which is true It was a flat, but it has an
 9 edge
 10 Q. You could feel a corner or an edge?
 11 A. This is a flat piece, something here, you can
 12 feel the edge by something being pressed on my neck, on
 13 the skin
 14 Q. Sure, depending on what the thickness is
 15 A. Absolutely
 16 Q. I understand that So this could have been a
 17 metal ruler, could it have not?
 18 A. It could have been, yes
 19 Q. Okay So it could have been something other
 20 than a knife, right?
 21 A. Correct
 22 Q. Because you did not see it?
 23 A. I did not see it
 24 Q. And you will agree with me that if it was a
 25 metal bar that was one-inch wide by a 1/6th of an inch in

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1 width, it would feel like it had an edge, right?
 2 A. That is correct
 3 Q. Okay Did you -- Was your skin penetrated in
 4 any way when this was next to you?
 5 A. No
 6 Q. Did you see -- Did you see or observe after
 7 the event any blood on your neck or your clothing?
 8 A. No
 9 Q. Did you see any cuts or marks on your neck or
 10 your clothing?
 11 A. Not that I can remember
 12 Q. Okay All right And were you -- Was there
 13 anything else that you recall? Did he tie you up?
 14 A. No
 15 Q. So your hands were free?
 16 A. My hands were down at my side
 17 Q. Right Right But if you felt scared enough
 18 or you felt you were threatened enough, you were free to
 19 protect yourself, correct?
 20 A. That statement was never made, but if I felt
 21 threatened then I would have protected myself
 22 Q. You would have I believe you would have,
 23 don't you?
 24 A. Yes
 25 Q. Okay Were you ever afraid for your physical

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1 safety in going into the nurse's office with Mr
 2 Mueller?
 3 A. No
 4 Q. And while you were in there and he was
 5 conducting this alleged experiment that he claimed, were
 6 you ever really afraid for your physical safety that he
 7 would harm you?
 8 A. No
 9 Q. You never feared that he would do anything
 10 that would be malicious towards you during this time
 11 frame, correct?
 12 A. Absolutely not I trusted him --
 13 Q. Sure
 14 A. -- and never felt or thought that he would ever
 15 do anything inappropriate
 16 Q. Okay Now, this -- when he asked you to
 17 breathe heavy and/or hyperventilate or whatever this
 18 was, did he ask you to stand up and do this?
 19 A. I was standing the whole time
 20 Q. Standing the whole time, okay
 21 A. He came behind me, put the blindfold, put the
 22 whatever, sharp object, whatever -- however you want to
 23 describe it -- to my neck, and he said, "Okay, breathe
 24 heavy, breathe heavy, trust me, trust me, I'll catch
 25 you "

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1 Q. All right I want to come back to this
 2 Again, you called it a sharp object He put some kind
 3 of blunt object that had an edge to it against your
 4 neck, right? Or did you feel a single blade against
 5 you?
 6 A. No, like a -- As an example, if a knife was
 7 this way --
 8 Q. Yes, sir
 9 A. No, it was more of a -- If this was your sharp
 10 object --
 11 Q. Here's a pocket knife
 12 A. It was north and south It would be like
 13 this --
 14 Q. Correct And you --
 15 A. -- as opposed to something that's one single
 16 that you could feel
 17 Q. Correct You did not feel -- That's very
 18 sharp Be careful
 19 You did not feel a blade against your neck
 20 from the cutting edge of a blade, did you, that you
 21 recall here today?
 22 A. I can't say that it was or wasn't a blade,
 23 because it could have - As we just demonstrated, it
 24 could have been a blade, but --
 25 Q. Turned flat?

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1 A Turned flat
 2 Q Right, that's what I'm saying
 3 A Right
 4 Q As you sit here today though -- I don't care
 5 if it was a knife or not
 6 A No --
 7 Q Okay My question is as you sit here today
 8 you can't tell me that the sharp edge of a knife was
 9 placed against your neck, correct?
 10 A That is correct
 11 Q Okay It could have been a flat edge of a
 12 dinner knife, it could have been a flat edge of a ruler,
 13 it could have been --
 14 A It could have been anything
 15 Q -- anything?
 16 A Absolutely
 17 Q All right That's all I need to clarify
 18 And when he asked you to breathe heavy, what
 19 happened after you breathed heavy? Then what did he ask
 20 you to do?
 21 A I was standing there, my arms at my side, he'd
 22 say, "Breathe heavy, breathe heavy Trust me, trust me
 23 Breathe heavy, I'll catch you," and I just kept like
 24 hyperventilating or, you know, breathing heavy, and then
 25 I remember feeling something over my mouth or, you know,

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1 over my face and - and then the next thing I remember I
 2 was sitting down Whether it was on that table or chair
 3 or something, I was sitting
 4 Q You were sitting Okay And the thing over
 5 your face, do you recall what it was at all?
 6 A No
 7 Q Did it have an odor to it?
 8 A Not really an odor, no
 9 Q Okay
 10 A I mean, it was a cloth, but it didn't smell
 11 like gasoline or something as distinctive as something
 12 like that
 13 Q Did it -- Was it a soft kind of cloth?
 14 A Yes
 15 Q Like a towel?
 16 A Like a handkerchief or a towel or something of
 17 that nature
 18 Q Or towel Okay All right Did it have any
 19 kind of medicinal smell to it that you recall?
 20 A What do you mean by that?
 21 Q Any kind of chemical smell any kind of odor,
 22 that you recall?
 23 A Not that I can recall
 24 Q Okay I mean, you know that alcohol has a
 25 smell to it if you use rubbing alcohol right?

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1 A Correct
 2 Q Did it smell like anything that you were
 3 familiar with or do you recall any odor to it?
 4 A I don't recall anything that I could pinpoint
 5 and way this was alcohol or gasoline or nail polish
 6 whatever
 7 Q Sure Okay Now, when you left that office
 8 after this was -- then you were sitting up and he said,
 9 "It's time to go" or?
 10 A "We got to go, we got to go"
 11 Q So you leave, correct?
 12 A Correct
 13 Q Did you - From the time you left did you
 14 always remember going into the office?
 15 A Correct
 16 Q You always remember that he blindfolded you?
 17 A Correct
 18 Q You always remember that he held something to
 19 your neck?
 20 A Correct
 21 Q You always remember that he asked you to
 22 hyperventilate?
 23 A Correct
 24 Q And you always remembered he put something
 25 over your mouth or nose?

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1 A Correct
 2 Q And you always remembered him telling you "We
 3 got to go"?"
 4 A Correct
 5 Q And from the time you left that office that
 6 day in your sophomore year, you always remembered those
 7 events as they occurred?
 8 A Correct
 9 Q Okay Why don't we take a break, because I'm
 10 going to ask you some difficult questions in a minute
 11 and I think it's probably a good idea to take a couple
 12 minutes and then we will get back to it
 13 THE VIDEOGRAPHER We are going off the
 14 record at 11 32 a m
 15 (A short break was taken)
 16 THE VIDEOGRAPHER We are back on the
 17 record at 11 44 a m
 18 Q Now, after this incident that occurred to you
 19 have you told me everything you recall?
 20 A As much as I can recall, yes
 21 Q Okay When -- Did you walk out of the nurse's
 22 office with Brother -- Mr Mueller, Brother Mueller,
 23 when he said, "You got to go?" Did you both walk down
 24 the hall together?
 25 A I don't remember walking out together

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1 student directed to the Archdiocese prior to your
 2 incident which the student is complaining of any of
 3 Mueller's incidents with them?
 4 **A.** No
 5 **Q.** Okay Now, I'm going to parse that one more
 6 time Have you ever seen any document from any
 7 Marianist school to the Archdiocese advising that
 8 Mueller had done things to children before he had ever
 9 had this incident with you?
 10 **A.** If I would have seen documents, then when the
 11 incident occurred I would have not - I wouldn't have
 12 thought that it was just an experiment that I'm trying to
 13 help him out If, at that time, I knew that he had other
 14 ulterior motives to what his experiment was that I was
 15 helping him out with, then the incident would have never
 16 happened So, I have never seen any information, any
 17 documents I'm not privy to that information
 18 **Q.** Right I think we miscommunicated there I'm
 19 asking you as you sit here today have you --
 20 **A.** As I sit here today, I have not seen a
 21 document --
 22 **Q.** Okay
 23 **A.** -- from anyone
 24 MR CRAIG Make sure you let Ed finish his
 25 question, too --

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1 **A.** Absolutely
 2 MR CRAIG -- before you start talking
 3 **Q.** When you left the school that day did you
 4 report this incident to the -- Who was your assistant
 5 principal?
 6 **A.** I think it was Eleanor Marfissi
 7 **Q.** Okay When you left the school that day after
 8 the incident in 1983, did you report the incident to
 9 Eleanor?
 10 **A.** I didn't report the incident to anyone, because
 11 I did not think it was something that was inappropriate
 12 My reason for going there was to help him out for an
 13 experiment
 14 **Q.** Okay And I take it that up until the time
 15 you filed this lawsuit, you never placed the Archdiocese
 16 on notice that he had conducted this incident with you,
 17 correct?
 18 **A.** That is correct
 19 **Q.** Okay
 20 **A.** As we stated earlier, when I was 25, when I was
 21 35, if somebody, a principal, pulled a child into a room
 22 and put a knife or made them inhale or things like that
 23 as we discussed earlier, it's an inappropriate act I
 24 believe that whether I'm 25, 30 35
 25 When I was 25, 30, 35, my particular incident,

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1 I thought I was helping him out for an experiment, plain
 2 and simple
 3 **Q.** Okay
 4 **A.** I had no recollection that -- that anything
 5 harmful -- he had no ulterior motives to what was going
 6 on In my situation I thought I was helping -- helping a
 7 person that I looked up to out
 8 **Q.** Okay My simple question is at any time prior
 9 to filing the lawsuit did you ever report this incident
 10 to authorities at the Archdiocese of St Louis?
 11 **A.** No
 12 **Q.** Okay Did you ever report this incident to
 13 anyone at the Marianist prior to filing this lawsuit?
 14 **A.** No Can I make a statement?
 15 **Q.** No, there's no question pending
 16 Besides Jan Comeau, have you retained any
 17 expert that you are aware of that you've seen in
 18 connection with your case?
 19 **A.** No
 20 **Q.** And is Jan Comeau, the licensed social worker,
 21 the only treating medical provider that you've seen with
 22 respect to the incident with Dr -- with Brother
 23 Mueller?
 24 **A.** Yes
 25 **Q.** Okay

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1 **A.** As I stated earlier, she's the only person that
 2 I have talked to about this
 3 **Q.** Okay When you had your discussions in 2005,
 4 with your friends, Matt or Tim Turner or James Stika or
 5 Edward Naeger, did their relation of their incidents
 6 restore any memory to you of your incident?
 7 **A.** No
 8 **Q.** Okay Do you know a Kevin Hacker?
 9 **A.** Yes
 10 **Q.** Okay How -- Who is Kevin Hacker?
 11 **A.** He's currently the principal of St Mary's and
 12 associate principal -- I don't know what his exact title
 13 was when I was there, but he was in some kind of
 14 administration role
 15 **Q.** Okay Was he one of your teachers at all
 16 whenever you were there? I think he taught English if
 17 I remember
 18 **A.** I don't recall ever having him as a teacher
 19 **Q.** Okay
 20 **A.** I don't remember I really don't
 21 **Q.** And I don't think he became an assistant
 22 principal till later, but we'll come back to that
 23 Did you ever report anything to Kevin Hacker
 24 regarding Mr Mueller and his alleged experiments at any
 25 time while you were a student at St Mary's?

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1 assuring that they knew absolutely nothing about it, I
 2 think more than anything it's their responsibility to
 3 check into their employees, so to speak, or who works for
 4 them. I think it's something that they neglected to look
 5 at based on things that happened in the past
 6 A. And as anyone comes to a new employment
 7 opportunity, we get screened and different things like
 8 that, as far as background check, drug tests, different
 9 items
 10 **Q.** Did you get a background check and screened
 11 when you went to work for V J Construction?
 12 **A.** No, I did not
 13 **Q.** Did you get a background check and a drug
 14 screen test when you went to work for Met Life?
 15 **A.** No, I did not
 16 **Q.** Okay. That may not have been the protocol
 17 back in 1980s, would you agree with that?
 18 **A.** That might not have been the protocol, but I
 19 had a background check and screening for Ansell Edmont
 20 and Tesa Tape, so it is -- it does happen
 21 **Q.** Right, but those were not in the 1980s, were
 22 they?
 23 **A.** No, it couldn't have been, because I didn't
 24 graduate from college until '90
 25 **Q.** Right, exactly. Give me a minute

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1 THE VIDEOGRAPHER We are going off the
 2 record at 2 31 p m
 3 (Off-the-record discussion held
 4 Proceedings continued as follows)
 5 THE VIDEOGRAPHER We are back on the
 6 record at 2 37 p m
 7 **Q.** Given my definition of sexual abuse that we
 8 have discussed today, which is genital to genital,
 9 genital/anus, hand to genitals, genitals or private
 10 parts to mouth, anything like that, using that
 11 definition, have you ever told anyone at any time that
 12 you recall being sexually assaulted in that manner by
 13 Brother Mueller?
 14 **A.** Based on your description of it, no
 15 **Q.** Okay. I have no further questions at this
 16 time
 17
 18 CROSS EXAMINATION
 19 Questions by Mr. Assouad
 20
 21 **Q.** Mr. Kluempers, I'm just Justin Assouad. I'm
 22 the lawyer for the Marianist. I will be very brief and
 23 let you out of here
 24 **A.** Okay
 25 **Q.** How much did you weigh back in November of

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1 83?
 2 **A.** November of '83?
 3 **Q.** Yeah, your best estimate. I know you don't
 4 know exactly
 5 MR. GOLDENHERSH Your football weight
 6 **Q.** What was your football weight?
 7 **A.** 160 -- '83. I was a sophomore. Probably 175,
 8 180
 9 MR. GOLDENHERSH I don't think you were
 10 150 for a long time, pal
 11 **Q.** You were a big boy back then
 12 MR. CRAIG I don't know
 13 **A.** I was about the same height. I was thus tall
 14 in eighth grade, and really haven't grown up since, but
 15 have grown out. So 170 -- 150 -- I don't know
 16 Somewhere in that area, 170, 180 pounds
 17 **Q.** And you were lifting weights so you were
 18 pretty muscular back then, November of '83?
 19 **A.** Yes
 20 **Q.** Have you ever talked to anyone from the
 21 Marianist about the allegations in your lawsuit?
 22 **A.** I have not talked to anyone
 23 **Q.** Has anyone from the Marianist made any
 24 statements about the lawsuit or your allegations, to
 25 your knowledge?

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1 **A.** Can I ask a question to your question?
 2 **Q.** You don't understand my question? I'll try to
 3 rephrase it
 4 **A.** Would you consider a letter received from St
 5 Mary's and someone else contact?
 6 **Q.** Sure. And that was a letter that was sent to
 7 all students? Is that the letter you are referring to?
 8 **A.** Yes
 9 **Q.** Aside from that letter. I know what you are
 10 talking about
 11 **A.** Aside from that letter, no
 12 **Q.** And that's -- I'm talking in particular to
 13 your allegations and what you've alleged in this
 14 lawsuit
 15 **A.** I have not talked to anyone from the Marianist
 16 **Q.** Okay. Did you try to avoid Mr. Mueller after
 17 this incident happened in November of '83?
 18 **A.** Not at all
 19 **Q.** Does -- Is there anything about your contact
 20 with Mr. Mueller after this incident in November of '83
 21 that stands out in your mind?
 22 **A.** After the --
 23 **Q.** Right
 24 **A.** No, I -- I think the contact was normal, you
 25 know. See him in the hall

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IN THE MATTER OF.

Timothy Kluempers, et al
vs.
Marianist Province of the
United States, et al

Cause No 052-11454 Div 18 and 06CC-000008 Div 15

Deposition of Brother Stephen Glodeck
12/14/2006

Gore Perry Gateway Lipa Baker Dunn & Butz
Certified Court Reporters & Legal Videographers
1-800-878-6750

Full GLOSSARY included with this DepoScript

111 A He's very elderly His best recollection
112 was the late 70s
113 Q And Father Hakenewerth would have been
114 Mueller's superior at that time correct?
115 A In the same way that you described
116 supervision before he was the provincial at that
117 time yes
118 Q Other than what you've heard from Father
119 Hakenewerth have you received any information that
120 Father Fleming and your predecessors had been given
121 reports of improper conduct on the part of Mueller
122 in the 1960s or 1970s
123 MR NOCE You mean other than Father
124 Hakenewerth's testimony?
125 MR CRAIG Yes
126 MR NOCE I'm sorry
127 A No I have not
128 Q (By Mr Craig) Okay You recall that
129 Father Fleming testified that while Mueller was
130 employed at St Mary's high school here in St Louis
131 the Archdiocese of St Louis would have had
132 supervisory authority over him?
133 A I don't remember him saying that but that's
134 true partially
135 Q Before Ed objects when we say Archdiocese

111 and the Archdiocese of St Louis?
112 MR NOCE Do you mean now Dan or then?
113 MR CRAIG Has it changed?
114 MR NOCE I don't know but I'm trying to
115 get --
116 Q (By Mr Craig) Now or - now and in the
117 early 1980s?
118 MR NOCE I don't know that there's a
119 foundation for him to answer as to the 1980s but
120 you can Brother if you know
121 A Again, my reference is the east coast when
122 we assumed -- you asked relationship When we teach
123 and administer and - a Diocese in a school the
124 ownership of the school remains with the Diocese
125 We have the usual responsibility for professional
126 conduct in the school that any teacher administer
127 would have in the school The direct movement of
128 religious personnel in the school is the
129 responsibility of the Order
130 Q (By Mr Craig) Now you've spoken with and
131 even given some quotes to the media relative to this
132 whole Mueller situation correct?
133 A Indeed yes
134 Q And when did you that you were speaking on
135 behalf of the Marianist Order is provincial

111 of St Louis I think Father Fleming may have meant
112 that generically because I think there's a different
113 legal entity that actually owns St Mary's But I
114 think - Would you agree with me that that -- what
115 Father Fleming was meaning that whatever legal name
116 may technically own the school it was the
117 Archdiocese of St Louis or one of its subsidiaries
118 that was in the supervisory position over Mueller at
119 St Mary's?
120 MR GOLDENHERSH I'm going to object to the
121 form of the question It calls for speculation as
122 to what was in the mind of Father Fleming The
123 question that was asked and the answer that was
124 given is what the -- only you and he could have
125 understood And it calls for a legal conclusion on
126 the part of supervision and whether or not the
127 Archdiocese of St Louis or the Catholic High School
128 Association of St Louis had any supervisory roles
129 over a Marianist Brother who reported to its Order
130 MR NOCE I join in the objection but you
131 can answer Brother
132 A Yeah I'm not I can answer the question
133 only from an east coast reference I'm not sure
134 Q (By Mr Craig) What is your understanding
135 of the relationship between St Mary's high school

111 superior correct?
112 MR NOCE It's kind of overly broad but
113 you can answer certainly
114 A Yes
115 Q (By Mr Craig) Let me hand you what we've
116 previously marked as Exhibit 1 Let me know when
117 you've had an opportunity to review it
118 A Uh huh
119 Q You've previously seen and read this
120 article correct?
121 A I have
122 Q And you're actually quoted in the article
123 correct?
124 A I am
125 Q And for identification it appears to be a
126 St Louis Post Dispatch article of some unknown
127 date?
128 A It does yes
129 Q Okay Would you agree with me though this
130 article is from either 2005 or 2006?
131 A I would agree with you yes
132 Q And if we look on the second page of this
133 document in the first column up at the top it says
134 since September 52 former students have contacted
135 officials of the schools of the Marianist Province

111 of the United States with memones of the
 112 psychological experiments
 113 MR NOCE Where are you reading that
 114 exactly?
 115 MR CRAIG First column top of second
 116 page
 117 MR NOCE Let s see if I ve got the right
 118 article I may not have
 119 MR CRAIG Did I give you the same?
 120 MR NOCE No I think I ve got a different
 121 one
 122 MR CRAIG You know what yours may have
 123 been shrunken down You have the same article
 124 MR NOCE I think it s a different format
 125 or something
 126 A Yes
 127 MR GOLDENHERSH Here is it Gerry
 128 MR CRAIG Right where I said it was
 129 MR GOLDENHERSH It s a different format
 130 MR CRAIG Okay You ready?
 131 MR NOCE Yeah
 132 Q (By Mr Craig) Okay Is that true?
 133 A That s true
 134 Q Okay At least 52 former students have
 135 stated they were subjected to some form of the

111 people who notified us in confidence And then you
 112 know if the court rules of course we ll provide
 113 that But I think as it stands right now we re not
 114 in a position to provide that
 115 MR CRAIG Is your stated privilege the
 116 priest penitent privilege?
 117 MR NOCE No It may even be HIPA I don t
 118 know but it s - it s something where these
 119 individuals contacted him in a religious setting and
 120 it could be a first amendment issue too
 121 A Also -- I mean I d like to - I also told
 122 them they asked me and I told them I would not
 123 reveal the names of these two people without first
 124 contacting them and telling them I was going to do
 125 that
 126 Q (By Mr Craig) Well we ll go through the
 127 courts We ll let it go at this point We ll go
 128 through the courts and we ll see where it goes
 129 okay?
 130 MR NOCE Sure
 131 MR GOLDENHERSH Can I see the article for
 132 a second just to be sure this is the same I m not
 133 sure this one is
 134 MR CRAIG It s exactly the same article
 135 MR NOCL It seems to be a differently

111 conduct that Mueller has admitted to?
 112 A Yes
 113 Q Okay Have you kept a list of these men s
 114 names?
 115 A Yes
 116 Q And do you -- Where is that kept?
 117 A It s kept in my office
 118 Q Okay Here in St Louis?
 119 A Yes
 120 Q What is the address of your office here in
 121 St Louis?
 122 A 4425 West Pine Boulevard 63108
 123 Q And what is -- is that -- What s the name of
 124 the office?
 125 A Marianist Provincial offices
 126 Q Okay And you also state that two have
 127 claimed to have been fondled is that - did you say
 128 that?
 129 A I did say that
 130 Q Okay Who claims to have been fondled?
 131 A They asked me not to --
 132 MR NOCE Yeah I think that those were
 133 relayed to him in confidence and I would object it
 134 to Dan I suspect that you and I m going to
 135 direct him not to answer that to identify these

111 formatted
 112 MR CRAIG I think it was shrunk maybe for
 113 8 and a half by 11
 114 MR GOLDENHERSH I m trying to find the
 115 reference to the two students
 116 MR CRAIG It s the same paragraph since
 117 September 52 former students and then at the end of
 118 the paragraph --
 119 MR GOLDENHERSH It s not the same
 120 MR NOCE That paragraph is a little bit -
 121 see Dan the 52 is referenced right underneath the
 122 picture there and I m not --
 123 MR GOLDENHERSH The 52 is right under his
 124 picture the second paragraph I mean, that s the
 125 whole problem with using undated articles and
 126 anything that comes from the Post Dispatch which is
 127 non reliable and is hearsay
 128 MR CRAIG Well obviously we have the
 129 same exhibit cause you --
 130 A We do
 131 MR NOCE Right Right
 132 Q (By Mr Craig) We ll just set this one
 133 aside The important one is the witness has the
 134 correct article
 135 Okay Brother Glodeck if we look -- again

STATE OF MISSOURI)
) SS
CITY OF ST LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

FILED
MAR 10 1978
MARINO V. FATH
CLERK CIRCUIT COURT
ST. LOUIS

JOHN DOE SGI)
)
Plaintiff,)
) Cause No 052-10453
vs.)
) Division No. 2
FATHER DONALD STRAUB, et al.)
)
Defendants.)

ORDER

The Court has before it the "Archdiocese of St. Louis' Motion To Dismiss Counts I, II, III, IV, V, VII, VIII, IX, XI, and XII of Plaintiff's Petition." The Court being fully advised in the premises now rules as follows

The facts as pleaded by Plaintiff are summarized as follows. Plaintiff was born on January 2, 1964, and came from a devout Catholic family. Defendant Straub was employed and trained by the Archdiocese to be a priest and authority figure. And as a result of Defendants representations Plaintiff developed an admiration, trust, reverence and respect for the Catholic Church and its agents, including Straub. Plaintiff's parents entrusted Plaintiff to Straub as a result of the special relationship between them. Straub sexually abused Plaintiff from 1975 to 1978 when Plaintiff was 11 to 14 years of age. These acts of abuse took place during church functions in which Straub had custody and control of Plaintiff in his roles as priest and authority

Plaintiff has stipulated that Count I is against Defendant Straub only.

figure When Straub had sexual contact with Plaintiff, he falsely represented to Plaintiff that he was providing spiritual counseling mentoring and advice

It is alleged that the circumstances of the abuse caused Plaintiff to develop various psychological mechanisms and symptoms of psychological distress, including great shame, guilt self-blame and depression such that Plaintiff was unable to know or have reason to know that he was the victim of sexual abuse committed upon him by Straub, and rendered Plaintiff incapable of ascertaining the resulting damages from the conduct

Plaintiff further alleges that Straub acted upon the authority of and at the request and/or permission of the Archdiocese that the Archdiocese provided the tools and materials to aid and abet Defendant Straub's abuse of Plaintiff, that Straub was under the direct supervision and control of the Archdiocese that Straub's conduct was undertaken while in the course and scope of his employment with the Archdiocese, during Straub's tenure as a priest the Archdiocese and the Archbishop transferred Straub to several parishes, following complaints lodged regarding Straub, that though the Archdiocese was aware that Straub had been sexually abusing children prior to his abuse of Plaintiff it knowingly allowed Straub to remain in a position to molest Plaintiff, that upon learning of Straub's and other agents' wrongful conduct, the Archdiocese ratified the wrongful conduct by failing to report it to law enforcement authorities, prospective parishioners, the victims or their families, that Defendants conduct communicated to Plaintiff and other victims that Defendants' conduct was proper and that legal action was not necessary that this action had the desired effect of silencing Plaintiff and other victims and prevented them from discovering their injuries, and that as a direct result of Defendants' wrongful conduct Plaintiff suffered injuries

Defendant Archbishop Raymond Burke is sued in his capacity as Archbishop only
Defendant Archdiocese of St. Louis, through Defendant Burke (collectively "the Archdiocese")
moves to dismiss the following counts asserted against it for failure to state claims: Count II
(Breach of Fiduciary Duty), Count III (Constructive Fraud and Conspiracy to Commit Fraud),
Count IV (Fraud and Conspiracy to Commit Fraud), Count V (Intentional Infliction of Emotional
Distress), Count VII (Negligence), Count VIII (Vicarious Liability (Respondeat Superior))
Count IX (Negligent Supervision, Retention, and Failure to Warn), Count XI² (Childhood Sexual
Abuse), and Count XII (Failure to Supervise Children)

A motion to dismiss for failure to state a claim is solely a test of the adequacy of the
plaintiff's petition. Grewell v. State Farm Mut. Auto. Ins. Co., 102 S.W.3d 33, 36 (Mo. 2005). It
is an assertion that plaintiff's allegations, even when taken as true, are insufficient to establish a
cause of action. Id. The Court assumes that all of plaintiff's averments are true, and liberally
grants to plaintiff all reasonable inferences therefrom. Id. No attempt is made to weigh any facts
as to whether they are credible or persuasive. Instead, the petition is reviewed to see if the facts
alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in
that case. Nazeri v. Missouri Valley College, 860 S.W.2d 303, 306 (Mo. banc 1993). The
petition is sufficient to withstand the motion if it "invokes substantive principles of law entitling
plaintiff to relief and alleges ultimate facts informing defendant of that which plaintiff will
attempt to establish at trial." Grewell, 102 S.W.3d 33 at 36, quoting Bracey v. Monsanto, 823

² Plaintiff's petition contains a numbering error: Count XI appearing twice. For purposes of this order, the Court shall refer to Plaintiff's claim for "Childhood Sexual Abuse" as Count XI, and the claim for "Failure to Supervise Children" as Count XII.

S W 2d 946 951 (Mo banc 1992) Although the petition need only allege ultimate facts mere conclusions of the pleader that are not supported by factual allegations are disregarded in determining whether a petition states a cause of action on which relief can be granted Johnston v. Norrell Health Care, Inc. 835 S W 2d 565, 567 (Mo App E D 1992) The petition should not be dismissed for mere lack of definiteness or certainty or because of informality in the statement of an essential fact Id. citing Merriman v. Canton 395 S W 2d 106 109 (Mo 1965)

Count II Breach of Fiduciary Duty Plaintiff alleges that as a result of representations made by the Archdiocese, and by holding itself and its clergy out as counselors and instructors on spiritual, moral and ethical matters, the Archdiocese had dominion and influence over Plaintiff which resulted in the creation of a fiduciary relationship with Plaintiff Plaintiff alleges the Archdiocese breached its fiduciary duty to Plaintiff and abused its position of trust and confidence for its own personal gain in several ways, including, *inter alia*, using Plaintiff's dependency and innocence as a child to prevent him from recognizing that the abuse was wrongful, by enforcing the secrecy around the acts and teaching Plaintiff that the acts were normal or necessary to the relationship, by keeping a known pedophile in the presence of children such that he would be allowed to molest Plaintiff, and by hiding the fact of previous abuse from parents, state authorities, parishes, and parishioners

The Court finds that Count II for breach of fiduciary duty is not viable The Eastern District Court of Appeals in H.R.B. v. J.L.G. 913 S W 2d 92 (Mo App E D 1995) ruled that causes of action for breach of fiduciary duty are not cognizable in Missouri because such an action would require judicial inquiry into the confidential relationship between a priest or church and a parishioner—that is, it would require the court to stand in judgment of church doctrine and

policy—which would inevitably entangle government with religion in violation of the First Amendment to the United States Constitution

Plaintiff contends the adjudication of the alleged breach of fiduciary duty by the Archdiocese would not necessarily involve any impermissible inquiry into church doctrine or the relationship between the Archdiocese and Straub in violation of the First Amendment because the breach of fiduciary duty alleged is based on the “power imbalance” and a breach of confidential relationship between Plaintiff and the Archdiocese. The case cited, Service Life Ins Co v Davis, 466 S W2d 190, 196 (Mo App 1971), and the principle explained there, applies to the question whether or not trust is reposed with respect to property or business affairs of the other. Id. Plaintiff has not cited any Missouri case applying the principle outside those concerns, and the Court’s own research has not identified a case applying it to a cause of action for breach of fiduciary duty or breach of confidential relationship in the context of child sexual abuse by clergy. Plaintiff points out that H.R.B. and the reasoning employed there has been ignored in subsequent Supreme Court decisions, including Gibson, 952 S W 2d 239, and Gray v. Ward, 950 S W 2d 232 (Mo 1997), and that the Supreme Court’s rulings in those cases imply that a properly pleaded cause of action for breach of fiduciary duty would be recognized in Missouri. Plaintiff’s well-articulated argument on this point has appeal, however, absent a contrary ruling by the Missouri Supreme Court, this Court is constrained to follow the dictates of the Eastern District in H.R.B. Count II is dismissed.

Count III Constructive Fraud and Conspiracy to Commit Fraud. “A breach of a fiduciary obligation is constructive fraud.” Klemme v Best, 941 S W 2d 493, 495 (Mo banc 1997). Constructive fraud is a long-recognized cause of action, id. that courts have equated with the

breach or violation of a fiduciary, or confidential relationship Tobias v. Korman 141 S W 3d 468, (Mo App E D 2004) "A confidential relationship exists when one person relies upon and trusts another with the management of his property and attendance to his business affairs, thereby creating some degree of fiduciary obligation." Id. From this definition it is apparent that a cause of action based on a constructive trust involves the management of property. Plaintiff's claim does not involve the management of property, rather, the claim is that the Archdiocese breached its duty to supervise the children in its care, and in particular Plaintiff, when, instead of removing Straub from the priesthood and coming to the aid of victims such as Plaintiff, it committed the malfasant act of moving Straub around. in the hope that his sexual abuse of children in the care of the Archdiocese would not be revealed. Such a claim does not sound in constructive trust, as it does not involve the management of money or property. Plaintiff has not identified any case law, and the Court's own research has revealed none recognizing a cause of action for breach of constructive trust under circumstances such as exist in the case at bar.

Plaintiff having failed to state a claim for constructive fraud, his claim for conspiracy to commit constructive fraud also fails. Williams v. Mercantile Bank of St. Louis NA, 845 S W 2d 78, 85 (Mo App E D 1993) Count III is dismissed.

Count IV Fraud and Conspiracy to Commit Fraud With respect to the Archdiocese, Plaintiff alleges that the Archdiocese represented to Plaintiff that Straub was a safe person whom Plaintiff could trust, by, among other things, placing Straub in a position of trust, that of a priest, and by placing Straub in a position to sexually abuse the children in the care of the Archdiocese that the representation that Straub was safe was false and material, as the Archdiocese knew Straub had molested children in the past and was likely to do so again that the Archdiocese

intended that this representation cause Plaintiff to remain exposed to Straub that Plaintiff did not know, at least initially that the representation was false, that Plaintiff had a right to rely on the representation in that Plaintiff was only eleven to fourteen years of age and impressionable while Straub and the Archdiocese were figures and institutions of authority, to which Plaintiff was expected to acquiesce, and that Plaintiff was proximately injured thereby

In his memorandum in opposition to the motion to dismiss, Plaintiff argues he has stated a claim for "fraudulent concealment of a tort," and/or fraudulent misrepresentation and/or 'fraudulent deed' However, 'fraudulent concealment of a tort' is not a recognized cause of action in Missouri, and the case cited, Batek v Curators University of Missouri, 920 S w 2d 895 900 (Mo banc 1996), does not support Plaintiff's contention A claim for fraudulent concealment is most often brought in medical malpractice actions, as was the case in Batek, and is used to extend the applicable statute of limitations Plaintiff has cited no case law applying a claim of "fraudulent concealment" in the context of a claim alleging child sexual abuse

Plaintiff further contends he has stated a claim for fraudulent misrepresentation The elements of fraudulent misrepresentation are (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of the falsity or his ignorance of its truth, (5) the speaker's intent that his representation should be acted upon by the hearer and in the manner reasonably contemplated, (6) the hearer's ignorance of the falsity of the representation, (7) the hearer's reliance on the truth of the representation, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximately caused injury Clark v Olsen, 726 S W 2d 718, 719 (Mo 1987) In an action for fraudulent misrepresentation, a plaintiff may recover damages, both general and special, for any injury that was the direct and natural consequence of plaintiff's

acting on the faith of defendant's false representation Refrigeration Inus, Inc. v. Nemmers, 880 S.W.2d 912, 917 (Mo. App. W.D. 1994). A claim of fraudulent misrepresentation is in the nature of an action of deceit for the recovery of actual and exemplary damages that is pecuniary loss as the tort of fraud is essentially economic in nature. See Jurcich v. General Motors Corp., 539 S.W.2d 595 (Mo. App. 1976). The measure of such damages generally follows the "benefit of the bargain" rule. See Dierkes v. Blue Cross Blue Shield of Mo., 991 S.W.2d 662, 669 (Mo. banc 1999).

The Court finds that Plaintiff has failed to state a claim for fraudulent misrepresentation because he has not alleged he sustained any pecuniary loss as a result of the Archdiocese's alleged misrepresentations. See Jurcich, supra. Count IV is dismissed.

Count V. Intentional Infliction of Emotional Distress. Archdiocese argues this count must be dismissed because Plaintiff has not alleged the Archdiocese's conduct was intended only to cause extreme emotional distress to Plaintiff. Plaintiff responds that this is a claim against the Archdiocese, and is a claim that the Archdiocese placed Straub, a known pedophile, in the position of a priest and minister to youth. Plaintiff argues this "betrayal" was reckless and outrageous conduct independent of the physical touching by Straub, a different defendant, and that this betrayal is a discrete harm to Plaintiff warranting an independent tort recovery.

A claim for intentional infliction of emotional distress consists of extreme and outrageous conduct by a defendant who intentionally or recklessly causes severe emotional distress. K.G. v. R.T.R., 918 S.W.2d 795, 799 (Mo. banc 1996). The elements of a claim for intentional infliction of emotional distress are that (1) defendant's conduct was extreme and outrageous, (2) defendant acted in an intentional or reckless manner, and (3) the conduct must be the cause of (4) severe

emotional distress Polk v Inroads/St. Louis, Inc., 951 S W 2d 646, 648 (Mo App E D 1997)
Hendrix v Wainwright Industries 755 S W 2d 411, 412 (Mo App E D 1988) The Court in
Hendrix said that for the third element it is necessary to plead that the emotional distress is
medically diagnosable and medically significant 755 S W 2d at 412. A desire to cause
emotional distress must be the sole motivation for the conduct alleged. Intentional infliction of
emotional distress requires not only intentional conduct, but conduct that is intended only to
cause severe emotional harm. K.G. 918 S W 2d at 799. Moreover, in intentional infliction of
emotional distress cases, where the conduct complained of consists of a traditional tort, such as
battery, and the conduct was not intended only to cause extreme emotional distress to the victim,
recovery must be sought under the traditional common-law action, and emotional distress may be
considered as an element of damages. Id. Put another way, there is no independent action for
intentional infliction of emotional distress where the existence of the claim is dependent upon a
battery. Id. at 800.

Plaintiff's allegations do not support the inference that the Archdiocese's sole purpose in
its conduct was to invade Plaintiff's interest in freedom from emotional distress. See id. at 799-
800. Plaintiff therefore fails to state a claim for intentional infliction of emotional distress
against the Archdiocese. Count V is dismissed.

Count VII Negligence With respect to the Archdiocese, in this Count Plaintiff alleges
the Archdiocese had a duty to protect children served by its churches, that the Archdiocese knew
or reasonably should have known of Straub's dangerous and exploitive propensities, that Straub
was an unfit agent, and despite such knowledge, the Archdiocese breached its duty to protect
Plaintiff when it failed to protect Plaintiff from the sexual abuse described in the petition, and

that the Archdiocese's actions were willful, wanton and reckless

This claim is not a justiciable controversy. To state a claim for negligence, a plaintiff must allege (1) the defendant had a duty to the plaintiff (2) the defendant failed to perform that duty and (3) defendant's breach was the proximate cause of plaintiff's injury. Gibson v. Brewer, 952 S.W.2d at 249. In Gibson, the Supreme Court ruled that a negligence action against the Diocese was not viable because

[w]hether negligence exists in a particular situation depends on whether or not a reasonably prudent person would have anticipated danger and provided against it (Citation omitted). In order to determine how a "reasonably prudent Diocese" would act, a court would have to excessively entangle itself in religious doctrine, policy, and administration.

Gibson, at 249. Count VII is dismissed.

Count VIII. Vicarious Liability. In this count Plaintiff alleges the Archdiocese is vicariously liable for Plaintiff's injuries caused by its employee, Straub. The Court finds that Plaintiff has failed to state a claim under a theory of vicarious liability. Under the doctrine of respondeat superior, a principal is liable for the acts of its agent that are (1) within the course and scope of employment and (2) done as a means or for the purpose of doing the work assigned by the principal. Henderson v. Laclede Radio, Inc., 506 S.W.2d 434, 436 (Mo. 1974). As noted above, intentional sexual misconduct is not within the scope of employment of a priest, and is in fact forbidden. Gibson, 952 S.W.2d at 246. The Supreme Court in Gibson so ruled, and so must this Court. Count VIII is dismissed.

Count IX. Negligent Supervision, Retention, and Failure to Warn. In this count Plaintiff alleges the Archdiocese knew or reasonably should have known of Straub's dangerous and exploitive propensities and/or that he was an unfit agent that despite such knowledge, the

Archdiocese negligently retained and/or failed to supervise Straub in the position of trust and authority as a Roman Catholic priest and spiritual counselor where he was able to commit the wrongful acts against Plaintiff, that the Archdiocese failed to provide reasonable supervision of Straub, failed to use reasonable care in investigating Straub, and failed to provide adequate warning to Plaintiff and his family of Straub's dangerous propensities

The Court finds that Plaintiff has failed to state a claim in Count IX. The Missouri Supreme Court in Gibson ruled that a claim of negligent supervision and retention by the Diocese in that case was prohibited by the First Amendment to the U.S. Constitution because 'adjudicating the reasonableness of a church's supervision of a cleric—what the church 'should know'—requires inquiry into religious doctrine,' which 'would create excessive entanglement, inhibit religion, and result in the endorsement of one model of supervision.' Gibson, 952 S.W.2d at 247. And "questions of hiring, ordaining and retaining clergy necessarily involve interpretation of religious doctrine, policy, and administration," in violation of the First Amendment. The same reasoning applies to allegations of a church's failure to warn. Count IX is dismissed.

Count XI. The Archdiocese argues that Count XI for "childhood sexual abuse" fails to state a claim because (1) as an unincorporated association the Archdiocese lacks the requisite "corporeal characteristics" to cause physical contact with Plaintiff, (2) the Archdiocese cannot be held vicariously liable because sexual abuse is never within the scope of employment of a Catholic priest, (3) there is no Missouri authority that recognizes a cause of action for ratification of sexual battery by an unincorporated association, (4) the Archdiocese cannot commit any of the criminal offenses referred to in § 537.046 and cannot be held liable for aiding or abetting Straub

in committing his offenses and (5) the Archdiocese cannot be found guilty of a criminal offense under § 562 056 because Plaintiff has not alleged it failed to discharge any specific duty of affirmative performance imposed by law or that the sexual abuse was conducted "on behalf" of the Archdiocese

Plaintiff responds that Count XI states a claim because (1) § 537 046 plainly contemplates liability for entities such as the Archdiocese, (2) the Archdiocese aided and abetted Straub, (3) via § 562 056, the Archdiocese can be convicted of any of the exemplar crimes included in § 537 046, (4) the Archdiocese committed civil aiding and abetting of Straub, (5) the Archdiocese ratified Straub's conduct, and (6) the Archdiocese can be held vicariously liable for Straub's conduct

Section 537 046 RSMo defines childhood sexual abuse as

Any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of eighteen years and which act would have been a violation of sections 566 030 [rape], 566 040 [sexual assault], 566 050 [repealed-sexual assault in the second degree], 566 060 [forcible sodomy], 566 070 [deviate sexual assault], 566 080 [repealed-deviate sexual assault in the second degree], 566 090 [sexual misconduct in the first degree], 566 100 [sexual abuse], 566 110 [repealed-sexual abuse in the second degree], or 566 120, RSMo [repealed-sexual abuse in the third degree], or section 568 020, RSMo [incest]

Section 537 046, RSMo The elements constituting aiding and abetting are found in § 562 041

A person is criminally responsible for the conduct of another when (1) the statute defining the offense makes him so responsible, or (2) either before or during the commission of an offense with the propose of promoting the commission of an offense, he aids or agrees to aid or attempts to aid such other person in planning, committing or attempting to commit the offense

§ 562.041 At the time of the alleged events the Archdiocese and Archbishop Burke as its representative, constituted an unincorporated association³

Under Missouri law,

An unincorporated association is guilty of an offense if (1) the conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on the association by law, or (2) the conduct constituting the offense is engaged in by an agent of the association while acting within the scope of his employment and in behalf of the association and the offense is one identified by a statute that clearly indicates a legislative intent to impose such criminal liability on the association

Mo Rev St § 562.056

The Court finds that Plaintiff has stated a claim against the Archdiocese for childhood sexual abuse under § 537.046 via § 562.056 and 562.041. The Archdiocese may be found guilty of crimes including childhood sexual abuse on the basis of accessory liability for aiding and abetting. See State v. Kobel, 927 S.W.2d 455, 459 (Mo. App. W.D. 1996), State v. Forister, 823 S.W.2d 504, 508 (Mo. App. E.D. 1992), State v. May, 587 S.W.2d 331, 334 (Mo. App. 1979). Section 537.046 does not distinguish between one who is guilty of directly committing the offense and one who is guilty as an accessory. The statute appears to incorporate the entirety of the criminal law regarding the referenced offenses, which presumably includes the liability of one who aids and abets. While it is clear that the Archdiocese may not be held vicariously liable for the conduct of its priests outside the course and scope of their duties, as discussed below, the

³ The Archdiocese became a non profit corporation on October 1, 2005

Archdiocese may be held liable for its own misdeeds including if proven at trial accessory liability

Archdiocese complains that Plaintiff has not alleged that the Archdiocese omitted to discharge any specific duty of affirmative performance imposed on the Archdiocese by law. The Court disagrees. It is abundantly clear that the law imposes on the Archdiocese the duty not to be an accessory to child sexual abuse. This state, through its citizens' legislature and courts, have demonstrated little tolerance for those who prey on its children, this includes accessory to such crimes. There is no reason to believe the legislature in enacting § 537.046 intended that accessories to such offenses be excluded from its reach. The motion to dismiss Count XI is denied.

Count XII Failure to Supervise Children In this Count Plaintiff alleges Straub failed to supervise children when he sexually abused Plaintiff, that the Archdiocese was aware of previous misconduct by clergy within its boundaries, including Straub and that future harm was certain or substantially certain to result without proper supervision, that the Archdiocese caused Straub to be transferred from earlier assignments because of his inappropriate touching of young boys, that the Archdiocese disregarded the known risk of sexual abuse that Straub posed to the children the Diocese was charged with safekeeping, that Plaintiff was, in fact sexually abused by Straub on Archdiocese property, that the Archdiocese knew or should have known that such abuse by its employees was substantially certain to cause those children harm, that despite this knowledge the Archdiocese placed Straub on positions in which he would have daily contact with children, that despite the risk posed by Straub the Archdiocese ratified Straub's action of being alone with small children by approving and paying for travel expenses and other expenses associated with

his outings with children that despite the known risk posed by Straub and others the Archdiocese never contacted law enforcement regarding any allegations of sexual assault committed by its employees, that by engaging in these actions the Archdiocese disregarded the risk posed to the Plaintiff and other similarly situated children and that as a result of the Archdiocese's failure to properly supervise children Plaintiff was sexually abused by Straub and injured

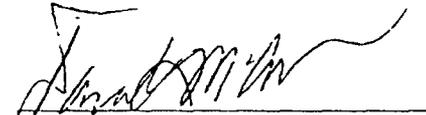
The Archdiocese contends this count should be dismissed for the reasons cited above in Gibson

The Court finds that Plaintiff has stated a claim for failure to supervise children. The Archdiocese had a duty to exercise reasonable or ordinary care in the supervision of Plaintiff. The exercise of ordinary care where children are involved requires more vigilance and caution than might be the case where adults are involved. Smith v. Archbishop of St. Louis, 632 S.W.2d 516, 521-22 (Mo. App. E.D. 1982). This is particularly true when a potentially dangerous condition exists and the supervisor is or should be aware of it.

Here, Straub was under the Archdiocese's direct supervision and control as a parish priest. When Plaintiff was with Straub, the Archdiocese stood *in loco parentis* to him and owed him a duty of care and supervision. The Archdiocese knew Straub had a propensity to engage in inappropriate sexual behavior with young boys, and that it was substantially certain to cause harm yet it continued to place Straub in positions where he would have direct contact with children. Plaintiff has stated a claim for failure to supervise children. The motion to dismiss Count XII is denied.

THEREFORE, it is Ordered and Decreed that Defendant Archdiocese's Motion to Dismiss is GRANTED as to Counts II (Breach of Fiduciary Duty) III (Constructive Fraud and Conspiracy to Commit Fraud), Counts IV (Fraud and Conspiracy to Commit Fraud) V (Intentional Infliction of Emotional Distress), VII (Negligence) VIII (Vicarious Liability (Respondeat Superior)), and IX (Negligent Supervision, Retention) The Archdiocese's motion is DENIED as to Counts XI (Childhood Sexual Abuse), and XII (Failure to Supervise Children)

SO ORDERED



Donald L. McCullin, Judge

Dated 5/14/07
cc Attorneys of record