

1 STATE OF MINNESOTA IN DISTRICT COURT
2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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5

DOE 1,

6

Plaintiff,

7

vs.

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ARCHDIOCESE OF ST. PAUL AND
MINNEAPOLIS, DIOCESE OF WINONA
9 and THOMAS ADAMSON,

10

Defendants.

11

12

13

Videotape deposition of ANDREW

14

EISENZIMMER, taken pursuant to Notice of

15

Taking Deposition, and taken before Gary W.

16

Hermes, a Notary Public in and for the County

17

of Ramsey, State of Minnesota, on the 6th day

18

of May, 2014, at 366 Jackson Street, St. Paul,

19

Minnesota, commencing at approximately 10:01

20

o'clock a.m.

21

22

23

24

**AFFILIATED COURT REPORTERS
2935 OLD HIGHWAY 8
ST. PAUL, MN 55113 (612) 338-4348**

25

COPY

1 APPEARANCES:

2 JEFFREY R. ANDERSON, ESQ., MICHAEL G.
3 FINNEGAN, ESQ., Attorneys at Law, 366 Jackson
4 Street, Suite 100, St. Paul, Minnesota 55101,
5 appeared for Plaintiff.

6 DANIEL A. HAWS, ESQ., Attorney at
7 Law, 30 East 7th Street, Suite 3200, St. Paul,
8 Minnesota 55101, appeared for Archdiocese of
9 St. Paul and Minneapolis.

10 THOMAS B. WIESER, ESQ., Attorney at
11 Law, 2200 Bremer Tower, 445 Minnesota Street,
12 St. Paul, Minnesota 55101, appeared for
13 Archdiocese of St. Paul and Minneapolis.

14 THOMAS R. BRAUN, ESQ., Attorney at
15 Law, 117 East Center Street, Rochester,
16 Minnesota 55904, appeared for Diocese of
17 Winona.

18

19 ALSO PRESENT:

20 Paul Kinsella, videographer

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I N D E X

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

2 * * *

3 MR. KINSELLA: Today's date is May
4 6, 2014. The time is 10:01 a.m. This is the
5 videotape deposition of Andrew Eisenzimmer.
6 Will counsel please identify themselves for
7 the video record?

8 MR. ANDERSON: For the plaintiff,
9 Jeff Anderson.

10 MR. FINNEGAN: For the plaintiff,
11 Mike Finnegan.

12 MR. HAWS: Dan Haws for the
13 archdiocese.

14 MR. BRAUN: Thomas Braun on behalf
15 of the Diocese of Winona.

16 MR. WIESER: Tom Wieser on behalf of
17 the archdiocese.

18 MR. KINSELLA: Will the reporter
19 please swear the witness?

20 ANDREW EISENIMMER,
21 called as a witness, being first duly sworn,
22 was examined and testified as follows:

23 EXAMINATION

24 BY MR. ANDERSON:

25 Q. Good morning.

- 1 A. Good morning.
- 2 Q. Would you please state your full name for the
3 record?
- 4 A. Andrew Eisenzimmer.
- 5 Q. What is your current association or
6 affiliation with the Archdiocese of St. Paul
7 and Minneapolis?
- 8 A. I'm currently employed by the archdiocese on a
9 part-time basis as a consultant.
- 10 Q. And to whom do you answer as a consultant?
- 11 A. Largely to Mr. Wieser as their outside counsel
12 and to the current chancellor for civil
13 affairs.
- 14 Q. And that is?
- 15 A. Joe Kueppers, Joseph Kueppers.
- 16 Q. You were the chancellor for civil affairs from
17 November of 2005 to October 2012?
- 18 A. Actually, it would have been through December
19 of 2012.
- 20 Q. And have you, then, been a consultant since
21 December of 2012?
- 22 A. Correct.
- 23 Q. What do you do as a consultant?
- 24 A. Well, at the moment, it's largely consulting
25 with respect to outstanding litigation that

1 involves the archdiocese.

2 Q. Do you get called in if there's a crisis?

3 A. Typically not, but I don't know that there's
4 been a crisis per se. I think in the last
5 year-and-a-half I've been in the Chancery a
6 couple of times for meetings.

7 Q. Were you called in to deal with a problem
8 involving Wehmeyer --

9 A. Well --

10 Q. -- after you were retired?

11 A. No.

12 Q. Okay. Are you responsible for dealing as a
13 consultant primarily with issues pertaining to
14 handling sexual abuse issues?

15 A. That's the predominant litigation involving
16 the archdiocese at the moment, yes.

17 Q. Have you, yourself, ever reported suspicions
18 of childhood sexual abuse by a cleric to any
19 law enforcement agency?

20 A. Yes.

21 Q. How many times?

22 A. Involving a cleric? I -- there's been at
23 least a few, I believe.

24 Q. Do you consider yourself currently or as
25 chancellor from 2005 to December of 2012 to be

1 or to have been a mandatory reporter?

2 A. No.

3 Q. Have you ever considered yourself to be a
4 mandatory reporter?

5 A. No.

6 Q. The few times that you have made reports to
7 law enforcement of suspicions of childhood
8 sexual abuse by clerics, I want to ask you
9 about that. When have you done that?

10 A. Well, I would be talking about that period of
11 time when I was employed as the chancellor for
12 civil affairs between November 7, 2005, and
13 December 31, 2012.

14 Q. And tell me, then, the first time in that time
15 frame in which you made a report.

16 A. Well, I'm not sure I remember exactly the
17 chronological order, but I'm guessing the
18 first one I would have been involved with was
19 relating to a Father Michael Keating, but when
20 you talk about report, I don't know that we
21 treated Father Keating -- the report of Father
22 Keating matter to the police as a mandated
23 report. Sometimes we report voluntarily as
24 opposed to anything that would be considered
25 mandated under the statute.

1 Q. What do you consider to be a mandated report
2 versus a non-mandated report?

3 A. Well --

4 Q. What is a mandated report, as you understand
5 it?

6 A. If you look at Minnesota statute 626.556, you
7 recognize that only certain professionals and
8 certain clergy are considered mandated
9 reporters. And if you look at clergy
10 specifically, they're not mandated reporters
11 if the information came to them that's
12 otherwise privileged under Minnesota statutes
13 595.02. In addition, the --

14 Q. That's in the priest/penitent privilege,
15 basically?

16 A. Correct.

17 Q. Okay.

18 A. And the statute also specifies that reports
19 are mandated if they're currently occurring or
20 have occurred within the preceding three
21 years. So anything outside that time frame
22 would not be considered a mandated reporting
23 obligation situation.

24 Q. So in the case of Keating, did you not
25 consider that to have been a required report

1 by statute?

2 A. Correct, and, again, largely because of the
3 time frame.

4 Q. And it was because it was alleged to have
5 occurred more than three years before the
6 information was received by you?

7 A. Correct.

8 Q. How long before -- when did you receive the
9 information that caused you to be suspicious
10 of childhood sexual abuse?

11 MR. HAWS: By Keating?

12 MR. ANDERSON: Yes.

13 A. I think I learned of that almost from the time
14 I walked into the Chancery just about. It was
15 shortly after I started in November of 2005.

16 BY MR. ANDERSON:

17 Q. And from whom did you learn that he was
18 suspected?

19 A. I think I first heard of that from Father Jeff
20 Huard.

21 Q. And what did Father Huard tell you?

22 A. I think he largely described his -- I guess
23 it's his niece, as having had some instances
24 with Father Keating prior to Father Keating's
25 ordination as a priest where she was now

1 describing some contact with Father Keating as
2 sexual in nature.

3 Q. So she was describing -- he was describing to
4 you that he understood it to be sexual contact
5 between Keating and her as a minor, correct?

6 A. Correct. Although, it was a little confusing
7 because Father Huard said that her story had
8 changed from the time she had first spoken to
9 him to some later times in terms of the manner
10 in which she was describing what had occurred.

11 Q. But it was, nonetheless, suspicious of sexual
12 abuse of a minor by Father Keating, correct?

13 A. Well, in the fairest sense of -- of that
14 description, yes.

15 Q. Okay. And did you take any action responsive
16 to what Father Huard told you about the
17 information he had concerning the abuse by
18 Keating, the alleged abuse by Keating of the
19 minor?

20 A. Well, I think originally Father Huard was, if
21 I recall correctly, was seeking to contact
22 Father McDonough to -- to discuss that. And I
23 -- if I recall correctly, I don't think Father
24 McDonough was available and that's how he
25 ended up talking with me. By I arranged to

1 get ahold of Father McDonough right away to
2 get some direction from him in terms of what
3 he wanted to do with that situation.

4 Q. In terms of the "he," you mean what Father
5 McDonough wanted to do as the then vicar
6 general?

7 A. Yes, correct.

8 Q. Did you consider that to be at that time
9 McDonough's primary responsibility, versus
10 yours, to deal with it?

11 A. Well, since I was rather new at the job, that
12 wasn't necessarily very clear. But I think
13 all of us in the Chancery recognized that we
14 had obligations to respond when we learned of
15 some kind of misconduct. In this particular
16 situation, it was made more complex by the
17 fact that the instances that were being
18 described had occurred prior to the ordination
19 of -- of Father Keating. And so I got ahold
20 of Father McDonough as quickly as I could to
21 say, you know, "What do you want to do here?
22 What" -- you know, "What options do we want to
23 discuss and what action do we want to take?"

24 Q. In terms of protecting minors and the
25 mandatory reporting statute, however, it

1 really doesn't draw the distinction between
2 pre-seminary, post-seminary, cleric, non-
3 cleric, does it?

4 A. Correct. But as I noted earlier, this was
5 outside of the mandatory reporting period, so,
6 you know, there was that consideration. But
7 in terms of protecting children, it's helpful
8 to make sure that there is not an instance
9 where the conduct can be repeated.

10 Q. In your view, when you say it was outside the
11 mandatory reporting period, how long ago had
12 the alleged abuse occurred before you received
13 the information from Father Huard that it may
14 have occurred?

15 A. And as I sit here today, I don't recall how
16 much earlier the events in question had
17 occurred.

18 Q. Well, you're asserting, however, that it must
19 have been more than three years before you
20 received it, otherwise, you would have -- it
21 would have been a mandated report, correct?

22 A. Well, I didn't view myself and never have as a
23 mandated reporter. But certainly Father Huard
24 was potentially a mandated reporter as a
25 member of the clergy, although it wasn't clear

1 at that point in time whether his conversation
2 with his niece was considered privileged or
3 not, so -- but, ultimately, in the discussions
4 with Father McDonough, we decided that the
5 best course of action was to report that to
6 police authorities.

7 Q. Well, first let's get the privilege settled.
8 If it's a priest/penitent privilege, protected
9 by statute, that means confidential, Father
10 Huard cannot share that with you, correct?

11 A. Well, yeah. I mean, he was not suggesting
12 that there was any privilege that existed
13 there, right.

14 Q. Right. Let's just get that correct. So we
15 don't have a privilege issue there?

16 A. Right.

17 Q. So my question to you is, when did Father
18 Huard share this information with you?

19 A. Well, again, I -- I mean, it was sometime
20 either November or December 2005, I believe.

21 Q. Okay. And did you make any memorandum or
22 recording of what he told you he had
23 understood Keating had done to the girl?

24 A. I don't know that I did, but I may have
25 prepared a memorandum to someone that would

1 have detailed at least some of that
2 information.

3 Q. Today you have no recollection of having
4 recorded anything in connection with that
5 conversation?

6 A. You know, I -- I'm sure -- I have a
7 recollection of I would have taken notes and
8 those kinds of things, whether I then
9 memorialized that in a memorandum, I don't
10 know.

11 Q. When you took notes as the chancellor such as
12 you just referred, what would have happened to
13 those notes and what file would they have been
14 put in and retained?

15 A. Well, typically, I would not retain
16 handwritten notes. Usually those would be
17 just scratching of highlighted words or
18 something like that, which oftentimes would be
19 indecipherable at a later point. Normally
20 what I would do, or at least what I developed
21 as a practice in that office was to, then,
22 draft a written memorandum if it was something
23 that needed to be memorialized.

24 Q. And as you testified today, you don't actually
25 recall if you recorded anything, however --

1 A. I don't.

2 Q. -- is that correct?

3 A. And at times it's also possible that I would
4 have memorialized things of that nature
5 perhaps in an e-mail as well as opposed to a
6 mem -- a memorandum.

7 Q. And so as best you can recall today, then, how
8 long before you got the information from Huard
9 concerning Keating's conduct towards the girl
10 did you believe it had occurred?

11 A. I don't re -- I don't recall as I sit here how
12 long ago -- how long prior to my talking with
13 Father Huard the -- the events had occurred.

14 Q. And you told me, I think, that you did not
15 consider the information given you -- you
16 considered it to have been suspicious of
17 sexual abuse, but not mandated as a report, is
18 that correct?

19 A. I'm not sure if I'm following you, but the
20 fair reading of what Father Huard was
21 describing was sexual abuse.

22 Q. Yes.

23 A. But I didn't view it as falling within the
24 statutory language to require mandated
25 reporting.

1 Q. Did you communicate that to Father McDonough?

2 A. I don't recall that I did. I know we
3 certainly would have discussed the idea of
4 reporting it to the police.

5 Q. And was a report made to the police?

6 A. Yes.

7 Q. By whom?

8 A. Me.

9 Q. How long after Father Huard gave you the
10 information was the report made to the police?

11 A. Yeah, again, I don't recall exactly how long.
12 And there was some problem because there was
13 some confusion where the family lived at the
14 time, so we reported it to one police
15 department, who then did some investigation
16 and found out it was actually under the
17 jurisdiction of another one, and I think they
18 actually referred it to the appropriate
19 jurisdiction.

20 Q. So how long after you received the information
21 from Huard did you first make the effort to
22 report to any law enforcement agency?

23 A. I -- I don't know. I -- I don't recall the
24 amount of time. I mean, I think it was just
25 days.

1 Q. Do you know if you made any record of when the
2 report was actually made?

3 A. Again, I -- I -- there's a possibility that an
4 e-mail or a memorandum exists about when that
5 was made, but I -- as I sit here, I don't
6 recall that.

7 Q. And when you said you had a practice to -- you
8 may have made notes of what Father Huard told
9 you, did you make notes of having made a
10 report to law enforcement?

11 A. Again, I don't know if I made notes or if I
12 would have memorialized that in a memorandum
13 or an e-mail. Normally I -- normally
14 something like that I would create something
15 to -- to inform the vicar general, the
16 archbishop or whoever else would need to be
17 informed about what action steps I would -- I
18 had taken.

19 Q. When you said it was your practice to throw
20 away notes, why would you do that?

21 A. Well, again, they were really just a quick,
22 you know, couple of key words or something
23 like that. It isn't something you could
24 necessarily follow or understand. It would be
25 more to help me put it in a form that others

1 could follow and understand.

2 Q. Well, as a chancellor for civil affairs and
3 given your history in this area, wasn't it
4 also -- weren't you also aware that when you
5 actually received the information that may
6 have triggered a report is important?

7 A. Oh, absolutely. And that's why I would
8 normally, then, memorialize that in a -- in a
9 fashion that then could be placed in a file to
10 -- to memorialize what I had done on what
11 particular date and -- and what action steps
12 had been taken.

13 Q. Beyond having made -- after you received the
14 information from Father Huard, you referred it
15 to Kevin McDonough because he was the vicar
16 general and the one charged by the archbishop
17 to basically be handling sexual abuse
18 allegations, correct?

19 A. Correct. And -- and let me correct something
20 now that I'm recalling better the memory of
21 that event. I think originally I didn't hear
22 from Father Huard. I think I actually
23 originally heard from Father Andrew Cousins at
24 some point, who was relating this stuff that
25 he had gotten from Father Huard. And if I

1 recall correctly, because of Father Huard's
2 relationship with the young woman, he want --
3 he wanted to step out of his leadership role
4 with the -- I can't remember the servants of
5 whatever that group was that they all belonged
6 to, I can't remember the name of it.

7 Q. Companions of Christ?

8 A. Companions of Christ.

9 Q. Yeah.

10 A. And so I think he asked Father Cousins to
11 actually be in touch with me, so I think the
12 information I got was probably even secondhand
13 from Father Cousins.

14 Q. In any case --

15 A. I ultimately did talk to Father Huard.

16 Q. In any case, it was that information from
17 Father Cousins and/or Huard that it was a
18 report of suspicions of sexual abuse of the
19 girl, correct?

20 A. Correct.

21 Q. Okay. And if I'm hearing you correctly, you
22 may have made notes, but you don't recall
23 today whether you did or not of the
24 conversation you had with Cousins and/or
25 Huard, correct?

1 A. Correct.

2 Q. And was it a routine practice for you to
3 memorialize information like -- received by
4 you like this?

5 A. Well, as I said, these -- these events were
6 unfolding within days or certainly a couple of
7 weeks of my starting that position, but
8 certainly as time went on, that was the
9 practice that I had was to do something, and
10 then if it was important that we needed to
11 keep a record of that, I would, then, put it
12 in either a memorandum or an e-mail of some
13 sort. At the time we're talking about in late
14 2005, I don't think Father McDonough was using
15 e-mail at that time, so more than likely I
16 would have done something in the form of a
17 memorandum as opposed to an e-mail to him.

18 Q. Would that have been copied to the archbishop,
19 it would have then been Flynn?

20 A. If it was copied to the archbishop, it would
21 have been Archbishop Flynn. Whether I copied
22 him, I would not have a recollection at this
23 time.

24 Q. In any case, you do recall having turned it
25 over to Father McDonough, correct?

1 A. Well, I wouldn't say turned it over to him. I
2 -- I took it to him for some direction. What
3 did he want to do? How did he want to do it?
4 There's a, you know, variety of issues that
5 needed to be addressed and so, he's the person
6 I would take that work direction from. He's
7 both the vicar general, in essence, the chief
8 of staff, he's also the moderator of the
9 curia, which means he's responsible for the
10 archbishop's curial staff. I was a member of
11 the curial staff.

12 Q. Well, this is a report of sexual abuse --
13 possible sexual abuse of a minor?

14 A. Correct.

15 Q. Who, if any, is charged with investigating
16 that at that time?

17 A. Well, clearly I think it's up to Father
18 McDonough to decide, you know, what that --
19 you know, what should be done in terms of any
20 investigation of it at that time.

21 Q. Do you recall what information you actually
22 gave to Father McDonough when you initially
23 imparted it to him?

24 A. I think I probably would have shared with him
25 virtually everything I would have gotten from

1 either Father Huard or Father Cousins.

2 Q. And what happened?

3 A. Father McDonough and I decided it would be
4 appropriate to report it to the police
5 authorities. And then relative to the status
6 of Father Keating, I think Father McDonough
7 took that over, I didn't have any
8 responsibility for those decisions.

9 Q. And so did you have any other involvement in
10 the Keating matter after having discussed it
11 with McDonough and made the decision with him
12 to report?

13 A. Well, I think there was a number of occasions
14 that I was dealing with the police. And then
15 there was this question about who's -- who had
16 the jurisdiction, so that was a few things.
17 Ultimately, I was actually talking, I think,
18 with the family themselves. And, ultimately,
19 the archbishop decided to refer the matter to
20 the clergy review board to help him ascertain
21 the credibility of the allegations or the
22 substance of the allegations, and part of my
23 job was to serve as staff liaison to the
24 clergy review board, so I would have been
25 involved at that point in time as well.

- 1 Q. Right. I'm not going to use the name of the
2 girl, but do you remember the name of the
3 girl?
- 4 A. I don't at this point.
- 5 Q. You don't need to state it.
- 6 A. Yeah, I -- yeah.
- 7 Q. You did mention that you did interview some of
8 the family members. Did you actually
9 interview the girl who he was alleged to have
10 abused?
- 11 A. Well, I was present when she spoke to the
12 clergy review board. I don't know that I
13 talked with her directly. I did view a
14 videotape that she had prepared.
- 15 Q. And as you testify today, you don't recall
16 actually having interviewed her?
- 17 A. I'm certain I would have not asked her
18 specifics about the events in question. You
19 know, I didn't question her, I didn't
20 interrogate her, I would not have had any
21 conversation of that nature with her.
- 22 Q. You did mention that you interviewed some
23 family members, however. And what --
- 24 A. Well, I think --
- 25 Q. -- purpose did you do that?

1 A. And again it wouldn't have been -- it would
2 have been just in terms of what are we doing,
3 the police are involved, et cetera, et cetera,
4 it wasn't trying to get further information or
5 any interrogation kind of stuff. It was more
6 of what's -- what's the status, what's
7 happening, et cetera, et cetera.

8 Q. So was your purpose in contacting the family
9 members to report the status of the
10 archdiocese's investigation and what was going
11 to be done or what?

12 A. I think as time went on, it was more them
13 contacting me saying, "What is the archdiocese
14 doing?" I think they were also working with
15 Greta Sawyer, who was the director of advocacy
16 and the victims assistance coordinator, so I
17 think largely they were dealing with her, but
18 at times I would get a call from the young
19 lady's father inquiring about what we were
20 doing and what the status was. And at some
21 point in time they learned that the matter had
22 gone to the clergy review board, and so I
23 think they were anxious to find out, you know,
24 when they would have an opportunity to meet
25 with the clergy review board and set up those

1 kinds of things.

2 Q. So there was -- did you interview Father
3 Keating to find out his version of the sexual
4 abuse allegations?

5 A. I did not interview Father Keating. Again, I
6 was present, I believe, when he spoke to the
7 clergy review board and discussed that.

8 Q. But before he appeared before the clergy
9 review board where you were present, do you
10 know if anybody ever asked Keating from the
11 archdiocese if he had abused this girl?

12 A. I don't know what the police might have asked
13 him, you know, whether he spoke to the police.

14 Q. From the archdiocese.

15 A. Yeah, I -- I -- I don't know that. I mean, I
16 became aware in some fashion that he was
17 denying that he had had any sexual contact
18 with her, but that's all I learned. And I
19 didn't learn that from him until he actually
20 spoke to the review board.

21 Q. You did do some investigation, however, and
22 made an effort to contact some of these other
23 potential victims of Keating that had been
24 mentioned as potential victims, did you not?

25 A. There was one woman that there was a

1 suggestion that he may have been involved with
2 in some fashion that lived in Italy, so I
3 tried to contact her.

4 Q. And you did contact her in some manner, did
5 you not?

6 A. By e-mail, I did.

7 Q. And you asked her if she had been sexually
8 abused by Keating, did you not?

9 A. Well, yeah, she -- she sent me a message,
10 asking me what -- I wanted to talk with her on
11 the telephone. She sent me a message asking
12 what I was inquiring about and so I sent her a
13 message back, I think, telling her that I -- I
14 wanted to find out about the nature of her
15 relationship with Father Keating and whether
16 there was anything inappropriate about that
17 relationship.

18 Q. Well, did it occur to you, given your
19 experience in this area, that sending an
20 e-mail to a stranger, you being an official,
21 then, of the archdiocese, is not going to open
22 her up to actually invite her to really tell
23 the truth about what happened to her?

24 A. Well, I didn't want to speculate about that.

25 I mean, what I want -- what I wanted to do was

1 to talk with her and see if we could arrange
2 for somebody to speak with her. I mean, she
3 was in Italy, I didn't know if she spoke
4 English or how well she spoke English, so I,
5 you know, initially was trying to get some
6 contact with her so we could get further
7 information.

8 Q. She did respond to the e-mail, though, and in
9 English --

10 A. She did.

11 Q. -- did she not?

12 A. She did.

13 Q. So that told you she spoke English?

14 A. I -- I had the sense that she did, yes.

15 Q. And then did you after -- after she responded
16 to your e-mail, did you make any effort to
17 actually interview her to make her feel safe,
18 to make her feel like she could open up, make
19 her feel like there wouldn't be retaliation,
20 to make her feel like, you know, she can tell
21 you what really happened to her?

22 A. After I got her response, I had no further
23 contact with her.

24 Q. Why not?

25 A. I -- it was just -- by then I think the matter

1 was being referred to the clergy review board
2 and it was gonna be up to them to decide what
3 they wanted to do.

4 Q. You reported to the clergy review board, did
5 you not, your interactions with the girl in
6 Italy?

7 A. I assume I did, yes.

8 Q. And in her e-mail responsive to the one you
9 sent to her, she denied having -- denied that
10 Keating had had any inappropriate sexual
11 contact or abuse of her, correct?

12 A. I think that's a fair reading of her response,
13 yes.

14 Q. And that went to the board, did it not?

15 A. I assume it did.

16 Q. And the board ultimately found that the
17 allegations that had been made by -- we'll
18 call her Doe -- what's --

19 MR. FINNEGAN: Twenty.

20 BY MR. ANDERSON:

21 Q. We're going to call her Doe 20 --

22 A. Okay.

23 Q. -- because she brought suit --

24 A. Sure.

25 Q. -- against Keating. Did you know that?

- 1 A. I knew that.
- 2 Q. We're going to call her Doe 20. You're aware
3 that the review board ultimately did find that
4 it wasn't -- the claim she had made was not
5 substantiated?
- 6 A. I think that's a fair characterization of
7 their decision -- determination.
- 8 Q. So Keating was the first that you had made any
9 report to law enforcement concerning. Who
10 would have been the next?
- 11 A. I'm assuming the next one would have -- would
12 have either been Father Gerry Grieman or
13 Father Freddy Montero, although technically
14 Father McDonough was the one that reported
15 Father Montero to the police authorities.
- 16 Q. Tell me about Father Gerry Grieman. When did
17 you get information that caused you to believe
18 that a report was appropriate?
- 19 A. I don't know exactly when that information
20 came.
- 21 Q. After Keating?
- 22 A. It -- I'm pretty certain it was after Keating
23 because Keating happened almost simultaneous
24 with my coming into the office and Father
25 Grieman was at some later point.

1 Q. And what was the source of the information?

2 And if you don't want to use the name, we'll
3 use the Doe list here.

4 A. Yeah. No. I -- the source of the
5 information, I -- I learned about it from
6 Greta Sawyer, who in turn had gotten, I think,
7 an e-mail from this individual who lived out
8 of the country.

9 Q. Do you remember the name of the individual?

10 I'm not going to ask --

11 A. I don't remember the name.

12 Q. Okay. And what did you learn from Greta
13 Sawyer about what had happened or what was --

14 A. Well, I think Greta actually shared his e-mail
15 with me, and so I think virtually everything I
16 learned initially was in that e-mail.

17 Q. And what do you recall about this, what had
18 been claimed to have happened?

19 A. If -- if I recall it, he was doing something
20 like yoga with a yoga master, like some yoga
21 training with a yoga master, and the yoga
22 master had told him, "The way you hold your
23 body, you must have been sexually abused."
24 And he said that subsequent to that, he began
25 to recover some memories that he might have

1 been abused by Father Grieman.

2 Q. And as a child? The e-mail reports that he
3 was abused as a youth --

4 A. I think that was --

5 Q. -- by Father Grieman?

6 A. I -- I don't know that it was necessarily
7 clear, but I think it -- it -- it was pretty
8 obvious.

9 Q. And when you received the information that the
10 individual, whose name you don't remember at
11 the moment, is reporting abuse by Grieman,
12 what did you do with that?

13 A. Again, I quickly conferred with Father
14 McDonough. I knew that the events that this
15 gentleman was describing had occurred when
16 Father Grieman was pastor of the Church of St.
17 John the Baptist in New Brighton, so Father
18 McDonough and I quickly determined to report
19 it to the polices in New Brighton.

20 Q. And how soon after having received the
21 information did you and Father McDonough
22 decide to report and actually make the report?

23 A. And, again, I think that was probably within
24 days is my recollection.

25 Q. What is your understanding about how quickly a

1 report should be made upon receiving
2 information suspicious of sexual abuse?

3 A. Well, if it's information that's covered by
4 the mandatory reporting statute 626.556, the
5 statute says it should be reported
6 immediately, and they define "immediately" as
7 being reported within 24 hours.

8 Q. And did you consider this to be under the
9 purview of 626.559 (sic)?

10 A. 556. I do not.

11 Q. 556.

12 A. I did not.

13 Q. Was it you or McDonough that actually made --
14 imparted the information to law enforcement?

15 A. I was the one that called the police.

16 Q. What did you tell them?

17 A. Basically what I had learned from this e-mail.

18 Q. What action was taken by the police?

19 A. Well, they very quickly said that because it
20 was so old, they weren't gonna do anything
21 about it. And the -- the officer, a female
22 officer, said that she would give me a case
23 number to prove that I had reported it, but
24 that they -- she was not gonna take any
25 action. Apparently she felt that we didn't

1 have enough information to give them and --
2 and I said, "Well, I'm giving you everything I
3 have."

4 Q. Well, you imparted to them what you had
5 learned in the e-mail from Greta Sawyer,
6 correct?

7 A. Correct.

8 Q. And that's everything you gave to law
9 enforcement, correct?

10 A. Correct.

11 Q. Did you go back to the Grieman file and review
12 the Grieman file to see if there had been
13 other complaints and/or reports made
14 concerning him?

15 A. I don't know if I did that or not.

16 Q. Do you remember having done that today at all?

17 A. I don't remember one way or the other whether
18 I did that.

19 Q. Did you tell law enforcement, "We keep priest
20 files, some of which are secret, but
21 nonetheless, we keep priest files and we're
22 prepared to turn that file over to you to see
23 if there are other instances of sexual
24 misconduct"?

25 A. Well, I -- first of all, I don't understand

1 the characterization "secret." But I -- I
2 would not have discussed with the police
3 officer anything about the file.

4 Q. Have you at any time ever turned any files
5 concerning priests accused of sexual abuse
6 over to any law enforcement agencies, either
7 at the time you made reports or subsequent to
8 having made the reports?

9 A. Yes.

10 Q. When is the first time you ever turned a file
11 over to law enforcement?

12 A. I think during the period of time that I was
13 chancellor, probably involving Father Wenthe.

14 Q. Any other files that were turned over to law
15 enforcement by you?

16 A. I think that since January 1st of 2013, when I
17 switched my status from being the chancellor
18 for civil affairs to being a consultant, there
19 have been a number of occasions where we've
20 turned files over to the -- to the police in
21 one way, shape or form. I haven't been
22 directly involved in that, other than I was
23 involved somewhat in matters pertaining to
24 Father Shelley.

25 Q. We'll get to that.

1 (Discussion out of the hearing of
2 the court reporter)

3 BY MR. ANDERSON:

4 Q. Is it correct to say, then, that the only file
5 that you turned over to law enforcement while
6 chancellor would be -- have been that Wenthe
7 file?

8 A. That's -- as I sit here, that's the only one I
9 recall, yes.

10 Q. And what's the next report in time, then, made
11 by you, if any others --

12 A. Well, I was --

13 Q. -- other than Keating and Grieman?

14 A. -- I was somewhat involved in the reporting of
15 the matters involving Father Freddy Montero.

16 Q. Before we get to Montero then, did you
17 confront Father Grieman and ask him if he in
18 fact had engaged the youth in sexual abuse as
19 had been reported?

20 A. I -- I wouldn't describe it as confronting
21 Father Grieman. There was at least a couple
22 of occasions where I talked with Father
23 Grieman by telephone. He was living in
24 Arizona, I believe.

25 Q. Did you ask him if he had abused that kid or

1 any others?

2 A. I did, and I think he was also interviewed by
3 Richard Setter, if I recall correctly.

4 Q. Did you ask him before it was turned over to
5 Setter or after it was turned over to Setter?

6 A. Well, I think we gave him a heads-up that the
7 matter was going to be investigated by Mr.
8 Setter.

9 Q. And Setter was a private investigator retained
10 by the archdiocese --

11 A. Correct.

12 Q. -- to do investigations?

13 A. Correct.

14 Q. When you first asked him, did you ask him if
15 he had abused this kid or any others?

16 A. Correct, and -- and I don't know that I asked
17 him that question. I think I shared with him
18 the information that we ob -- had obtained.
19 We had spent a fair amount of time trying to
20 get additional corroborating information from
21 the individual, but Greta Sawyer had
22 communicated with him, sending a list of
23 questions, helping us to get further
24 information, none of which was forthcoming. I
25 had at some point in time met with the man's

1 father, who had no further information that
2 was helpful to either corroborate it or -- or
3 refute it. So at some point in time I would
4 have notified Father Grieman of what we were
5 dealing with and he would have volunteered
6 that he never abused that individual or any
7 other individual.

8 Q. Well, you had dealt with clerical offenders
9 before and you knew, even if they had
10 offended, more often than not they denied
11 having offended when confronted, correct?

12 A. Actually, in my experience it's more often
13 than not they've admitted it as opposed to
14 denied it.

15 Q. How many have admitted it to you that they --

16 A. Well, if -- if you're talking about matters
17 that have been in litigation since about 1985,
18 I would say probably 90 percent of 'em have
19 admitted it in some fashion.

20 Q. Well, our experience differs very dramatically
21 there.

22 Did you tell anybody in Arizona --
23 Father Grieman was out of ministry when you
24 made the call, wasn't he?

25 A. I'm not sure what his status was down there.

1 He had -- he was on a -- some kind of like --
2 I don't know that medical retirement was a
3 good word for it, but I think he was doing
4 some ministerial work in Arizona, but I -- I
5 wasn't certain what.

6 Q. Did you or anybody from the archdiocese notify
7 anyone in Arizona to whom he was doing
8 ministry that an accusation of childhood
9 sexual abuse had been made against him?

10 A. It's my recollection that somebody, Father
11 McDonough or Archbishop Flynn, notified them
12 of what, you know, we had learned and I -- if
13 I recall correctly, there was at least a
14 letter as well that conveyed some of that
15 information.

16 Q. Notified whom, the pastor with whom he was
17 working?

18 A. No. I think the bishop of the diocese.

19 Q. And do you know if the bishop notified the
20 parishioners or the public or anybody else?

21 A. I don't know what they did in Arizona.

22 Q. And after you spoke with Grieman, you indicate
23 that Setter became involved, that means that
24 the archdiocese retained Setter to do an
25 investigation, correct?

- 1 A. Correct. Since the police were not gonna
2 investigate it and -- and, thus, we wouldn't
3 have the opportunity to have some
4 determination by -- by the police of -- of
5 whether the matter had occurred or not, we
6 engaged the services of Richard Setter to
7 conduct an investigation.
- 8 Q. Because you hadn't looked at the file, did it
9 occur to you that there may have been
10 information in the file that, if known to the
11 police, may have caused them to be more
12 interested in investigating it because there
13 could be evidence of other crimes or evidence
14 of other reports of misconduct in the file?
- 15 A. I -- I don't know that I made -- I don't know
16 that I looked at the file, quite frankly. I
17 -- I don't recall one way or the other whether
18 I looked at the file, so I didn't make that
19 determination.
- 20 Q. Did you at any time -- what was your
21 involvement concerning the Grieman matter
22 after it got turned over to Setter for
23 investigation?
- 24 A. Well, I think ultimately Richard Setter wrote
25 a report that was returned to the archdiocese.

1 And subsequent to that, I think that it may
2 have been reviewed by the clergy review board
3 to determine whether they thought any further
4 steps needed to be taken.

5 Q. And what finding did the clergy review board
6 make?

7 A. I don't know that it made a finding. It
8 didn't have any -- I don't recall it making
9 any recommendations about any further action
10 steps.

11 Q. Well, do you recall it having made the same
12 finding they did in Keating, that the
13 allegation was unsubstantiated?

14 A. I don't think it was referred to them for that
15 purpose as it had been in the Keating matter.

16 Q. Well, what purpose was it referred to them for
17 then?

18 A. I think just to have another set of eyes look
19 at it to see if there were any further steps
20 the archdiocese should be taking.

21 Q. In any case, no restriction was placed on
22 Grieman as a result of the report, the
23 investigation or the review by the review
24 board, correct?

25 A. To the best of my knowledge, there was no

1 restriction placed on Father Grieman by the
2 archdiocese or its archbishop. I don't know
3 what they did in Arizona.

4 One other thing that I did, which
5 may come within your question, is, I
6 ultimately had a meeting with the pastor --
7 the then pastor and staff -- some of the staff
8 at the Church of St. John the Baptist. I
9 shared with them, you know, what had been
10 done, what was going on.

11 Q. Who, if anybody else, have you reported, then,
12 to law enforcement?

13 A. As I mentioned a moment ago, Father Montero.

14 Q. When would that have been?

15 A. You know, I don't recall what year that was.
16 I can't remember what year it was.

17 Q. How did the information come to you?

18 A. Father Montero was apparently engaged in a
19 relationship with an adult woman. And she
20 came in to see Father McDonough and told him
21 about that relationship, and apparently in
22 telling Father McDonough this, she also
23 described her belief that she -- she didn't
24 know if she'd observed it or if it was a dream
25 or what, but she thought that Father Montero

1 may have sexually abused her daughter. While
2 Father McDonough was meeting with the woman,
3 he came up to my office and related this to me
4 and said, "I'm assuming this is a mandatory
5 reporting situation," because it was something
6 that had occurred, you know, shortly before
7 his meeting with this woman, so it was well
8 within that three-year period. And so we
9 discussed that briefly in terms of whether or
10 not the woman was imparting this to him as
11 part of any pastoral relationship that might
12 be privileged. And he said it was not, she
13 was reporting this to report it. And so I
14 said, "Well, it clearly appears to fall within
15 the mandated reporting statute and we should
16 get it reported." And he said, "Who should we
17 report it to?"

18 Q. And he asked you that?

19 A. He asked me that.

20 Q. Okay. And you answered?

21 A. Well, I told him that I thought it was very
22 helpful if we could get it reported to
23 somebody that would take immediate action.
24 You know, if you've read newspaper reports
25 recently, the talk's about the number of child

1 abuse reports that nothing ever happens, I
2 think the recent statistic they were talking
3 about in the state of Minnesota some 68,000
4 child abuse reports are made each year, about
5 48,000 are dismissed with nothing being done.
6 We -- we wanted --

7 Q. So no action taken --

8 A. Right.

9 Q. -- they're not dismissed?

10 A. Right.

11 Q. -- but oftentimes the statute of limitations
12 and a lot other reasons. So let me get back
13 to the question, Mr. Eisenzimmer, and that is
14 this. What police agency was the report made
15 to?

16 A. Well, ultimately, to the Minneapolis Police
17 Department.

18 Q. And by whom?

19 A. Father McDonough is the one that actually
20 talked to the officer.

21 Q. Any other situations where you have made a
22 report to law enforcement?

23 A. Well, I was involved in the report that was
24 made regarding Father Wehmeyer.

25 Q. Any others?

1 A. Not that I recall as I sit here. There was
2 others, I think, that came to the attention of
3 the police in some way, shape or form, but
4 they had already been reported by the time we
5 became aware of that.

6 Q. You made mention of Richard Setter &
7 Associates and it's also evident that they
8 have been retained and had been retained by
9 the archdiocese to do investigation a number
10 of times, correct?

11 A. Correct.

12 Q. Concerning allegations of childhood sexual
13 abuse and do some investigation for and hired
14 by the archdiocese, correct?

15 A. And it's not been limited to that subject
16 matter, Richard Setter's investigated other
17 things for us as well.

18 Q. Sure. But let's talk about the childhood
19 sexual abuse ones then.

20 A. Okay.

21 Q. Can you give me a gross estimate of how many
22 times you're aware they got hired to
23 investigate childhood sexual abuse
24 allegations?

25 A. While I was chancellor for civil affairs?

1 Q. At any time.

2 A. Well, I mean, I know that during the period of
3 time I was outside legal counsel for the
4 archdiocese, Mr. Setter's services were used
5 at times as well.

6 Q. Can you give us a gross estimate of how many
7 times?

8 A. I -- I can't, no.

9 Q. It's more than a dozen, is it not?

10 A. I would guess it would be more than a dozen if
11 you count all the kinds of things he handled,
12 yeah.

13 Q. As it pertains to childhood sexual abuse
14 allegations, can you recall any time in which
15 Setter & Associates as having investigated
16 found that there was evidence of childhood
17 sexual abuse --

18 A. Well, I don't --

19 Q. -- that did not exonerate the cleric?

20 A. I -- Richard Setter was never asked to either
21 substantiate -- necessarily substantiate it
22 and reach his own conclusion or exonerate it
23 and reach his own conclusion. He was asked to
24 investigate and provide us with the
25 investigative information so that someone

1 could make that determination based upon the
2 facts as he found them.

3 Q. Can you name any instance in which Setter &
4 Associates were hired to do that for the
5 purpose you described in which he provided
6 evidence that concluded that childhood sexual
7 abuse had occurred by a cleric?

8 A. I don't think in the ones that I worked with
9 him on, but he was doing other cases that I
10 think that there was some substantiation, but
11 I don't remember what they were.

12 Q. Can you name any case in which he was retained
13 to do this investigation regarding childhood
14 sexual abuse where the report he provided
15 indicated there was evidence of a crime having
16 occurred --

17 A. No --

18 Q. -- and if so, can you name them?

19 A. I don't think so, no.

20 Q. Can you identify any instances in which Setter
21 & Associates were retained to investigate a
22 cleric suspected of childhood sexual abuse
23 where any disciplinary action was taken by the
24 archbishop against the cleric investigated by
25 Setter & Associates?

1 A. Well, I think -- I don't recall any while I
2 was chancellor, no.

3 Q. Well, at any time?

4 A. Well, I -- I -- I mean, I can't discuss what
5 might have been done while I was outside legal
6 counsel. That would have been covered by the
7 attorney/client privilege.

8 Q. Well, you can discuss what Setter did and what
9 action was taken -- disciplinary action was
10 taken against any cleric. I'm asking, was any
11 disciplinary action taken against any cleric
12 as a result of any investigation by Setter &
13 Associates concerning childhood sexual abuse
14 at any time?

15 A. Let me clarify that. There was things that
16 Mr. Setter would have done for the archdiocese
17 when I was outside legal counsel that I would
18 not have been involved in, so I can't answer
19 that question.

20 Based upon my knowledge, I don't
21 know that I can recall at the moment where
22 there was a case he investigated that resulted
23 in disciplinary action.

24 Q. Okay. Are you aware of him having
25 investigated any child pornography allegations

1 by any clerics?

2 A. Well, first of all, let's clarify the language
3 here. Are you using the term --

4 Q. Possession of child pornography.

5 A. I'm sorry.

6 Q. Possession of child pornography.

7 A. Okay. If we're talking about child
8 pornography or alleged child pornography, I
9 think there was a case involving Father
10 Shelley where Richard Setter was retained
11 apparently by the archdiocese in some fashion.

12 Q. Were you involved in that?

13 A. I was not at the time he was retained, no.

14 Q. When did you first become involved?

15 A. In probably early 2012.

16 Q. And when did you first learn that he had been
17 -- Setter & Associates had been retained at
18 all in connection with evaluating that?

19 A. I probably learned that, I'm guessing,
20 sometime in either late 2011 or early 2012.

21 Q. Do you and did you consider, either while
22 chancellor or any official capacity within the
23 archdiocese, possession of child pornography
24 the equivalent of also childhood sexual abuse?

25 A. Well, I think if you look at the language of

1 the Minnesota child abuse reporting statute,
2 that child pornography is considered a form of
3 abuse, sexual abuse of a child. It can fall
4 within that statute.

5 Q. And the possession of it is illegal, is it
6 not?

7 A. The possession of child pornography is
8 illegal.

9 (Discussion out of the hearing of
10 the court reporter)

11 BY MR. ANDERSON:

12 Q. Are you aware of any other investigations done
13 by Setter & Associates into allegations of
14 possession of child pornography by clerics,
15 besides Shelley?

16 A. I am not.

17 Q. The last one you mentioned that you were
18 involved in having made a report concerning
19 abuse was Wehmeyer. Let me ask you questions
20 about that.

21 A. Okay.

22 Q. When did Wehmeyer first come onto your radar
23 as somebody who engaged or may have engaged in
24 inappropriate conduct towards youth?

25 A. If -- if it relates to youth, that would have

1 been in June of 2012.

2 Q. And --

3 A. And by "youth," I'm assuming we are talking
4 about a person under the age of 18.

5 Q. Yes.

6 A. Yeah, June of 2012.

7 Q. Okay. And what information did you receive or
8 from whom did you receive information in June
9 of 2012?

10 A. And that I can't tell you because that would
11 be covered by attorney/client privilege. I
12 can tell what action steps I took subsequent
13 to that, any communication I received, but I
14 can't discuss the communication.

15 Q. In 2012, you're the chancellor?

16 A. Correct. Chancellor for civil affairs.
17 There's more than one chancellor.

18 Q. So to the question -- so first we have to lay
19 a foundation to see if there's a privilege.

20 A. Sure.

21 Q. You understand why we have to ask you these
22 questions.

23 A. Sure, that's fine.

24 Q. Okay. First, in June of 2012, you received
25 some information concerning a suspicion of

1 sexual abuse of youth by Wehmeyer, correct?

2 A. Well, I'm -- I'm not gonna discuss the
3 substance of the information I learned. I
4 will tell you that in June of 2012, I learned
5 some information that caused me to take
6 certain actions relative to that and that
7 those actions related to Father Wehmeyer and
8 the question of whether or not he had sexually
9 abused a minor.

10 Q. Before June of 2012, had you ever reviewed --
11 before receiving that information, had you
12 ever as chancellor or otherwise reviewed the
13 file of Wehmeyer?

14 A. I had reviewed some information in his file,
15 yes.

16 Q. Why?

17 A. In, I think it was, 2009, there was a
18 question -- I think ultimately there was gonna
19 be a merger of two parishes, Blessed Sacrament
20 and St. Thomas in St. Paul. Father Wehmeyer
21 was the pastor of one of them or parochial
22 administrator or something, and the archbishop
23 was apparently considering naming him pastor
24 of the other one or parochial administrator or
25 something. And the archbishop raised the

1 question about whether the matter should go to
2 the clergy review board. And so I didn't know
3 anything about Father Wehmeyer at the time, so
4 I was trying to determine what was the
5 situation and I was also trying to determine
6 for the archbishop's benefit whether his
7 appointment to the one parish he was then at
8 had gone through the clergy review board.

9 Q. And had it gone through the clergy review
10 board?

11 A. As near as I could determine, it had not. The
12 assignment that he was in had occurred prior
13 to my becoming chancellor, so it was prior to
14 my being -- being involved with the clergy
15 review board. And certainly he -- no matters
16 involving him had come to the clergy board
17 during the period of time that I'd been there
18 from late 2005 to this point we're talking
19 about in 2009, so I -- I also contacted Father
20 McDonough to find out what he could tell me
21 about the matter and whether it had gone to
22 the review board or not.

23 Q. And when --

24 A. And so -- and, excuse me, so, then, I reported
25 this all back to the archbishop.

1 Q. And when in 2009 you did look at the Wehmeyer
2 file to make the kind of determination you
3 were trying to make, did you see in the file
4 anything that concerned you about his fitness
5 to be in ministry and around youth?

6 A. Certainly there was questions that had been
7 raised about his conduct. I -- I didn't
8 perceive myself as being the person
9 responsible to determine fitness for ministry,
10 and certainly there was nothing in there that
11 suggested that he had behaved inappropriately
12 with youth under the age of 18. And, again,
13 this is information that -- I took some of
14 that out of the file, put it in a memorandum,
15 I believe, to the archbishop to help him
16 decide what he wanted to do had with Father
17 Wehmann (sic) relative to referral to the
18 clergy review board.

19 MR. WIESER: Wehmeyer.

20 A. Or, excuse me, Wehmeyer.

21 BY MR. ANDERSON:

22 Q. Do you recall noting in the file there were
23 concerns about him controlling his sexuality
24 in the seminary?

25 A. Could you repeat the question?

1 Q. Do you recall on review of the Wehmeyer file
2 noting that there were concerns about him
3 being able to control his sexuality in
4 seminary?

5 A. I don't recall specifically what was in that
6 file, what -- you know, I would have imparted
7 certain information to the archbishop.

8 Q. Do you recall in review of that file that
9 there was documentations that he had tried to
10 pick up 18- or 19-year-olds at Barnes & Noble,
11 asking if they were horny?

12 A. I don't know what his purpose was. I do
13 recall there a description in the file of a
14 matter at Barnes & Noble.

15 Q. Do you recall in the file that it reflected he
16 had actually been sent to St. Luke's for
17 evaluation?

18 A. I believe that the file contained information
19 indicating he had gone to St. Luke.

20 Q. Do you recall that the file reflected there
21 was a diagnosis of a sexual disorder?

22 A. I don't recall what the diagnosis was.

23 Q. Do you recall that in the file it reflected
24 the archbishop in 2005 had been informed of
25 another similar incident to the ones at Barnes

1 & Noble that had been reported earlier
2 occurring in Jerusalem?

3 A. Occurring in?

4 Q. Egypt or Jerusalem.

5 A. I don't recall that.

6 Q. Do you recall on review of the file that in
7 2006, he was -- he was noted to have been
8 cruising to pick up people for sex at parks?

9 A. What I recall is, is a description in the file
10 that he was seen around a park that was a
11 known hangout for people cruising for same-sex
12 relations. If I -- I -- I -- if I recall the
13 description, they weren't describing him as
14 cruising, necessarily, or that he had made any
15 attempts to pick up somebody, but I do recall
16 a discussion of some park in St. Paul.

17 Q. Do you recall that he had been identified as a
18 sex addict?

19 A. I do not.

20 Q. Do you recall that he was on monitoring at the
21 time you reviewed that file?

22 A. I do recall that he was on monitoring because,
23 if I'm recalling correctly, I think the
24 memorandum I wrote to the archbishop mentioned
25 that he was being monitored by Tim Rourke.

1 Q. And the monitoring program was -- what did
2 that signify to you, that he was being
3 monitored by Tim Rourke?

4 A. Just that, that -- there was a lot of people
5 that were monitored by Tim Rourke for a
6 variety of reasons to help them maintain
7 whatever aftercare requirements they would
8 have. It depended on what the situation was
9 and so that told me that, you know, they were
10 working with Tim Rourke and the promoter of
11 ministerial standards office.

12 Q. Based on your review of that file and what you
13 saw in it, did you tell the archbishop or any
14 other top official maybe Wehmeyer should not
15 be active in ministry?

16 A. Nobody was asking me to impart any judgment
17 regarding those things. That's not a function
18 that I would have ever fulfilled within the
19 archdiocese. No one -- no one included me in
20 any discussion of anyone's fitness for
21 ministry.

22 Q. Well, did you think it?

23 A. I -- it wasn't -- that wasn't the -- the
24 purpose for which I was reviewing the file.
25 If that was the purpose, I would have probably

1 reviewed, you know, far more of the file. The
2 limited review that I was performing at the
3 time was to answer the archbishop's question
4 in terms of, you know, referring the matter to
5 the clergy review board.

6 Q. Yeah, the ultimate question was, should we
7 continue this guy in ministry and place him
8 into a parish?

9 A. I didn't know what the ultimate question was,
10 other than that they were considering putting
11 him in a second parish, he was already in one.

12 Q. So the question was ultimately, is he safe,
13 right?

14 A. No. That wasn't in my mind the question. The
15 question was, is this a matter that, you know,
16 should go to the review board. In fact, what
17 I was trying to tell the archbishop was, is
18 this a matter you want to go to the clergy
19 board if it didn't go to the clergy board when
20 he had the -- the first parish, in essence.

21 MR. KINSELLA: Excuse me, off the
22 video record to change media.

23 MR. ANDERSON: Want to take a break?

24 THE WITNESS: No. That's fine.

25 (Recess taken)

1 MR. KINSELLA: Back on the video
2 record.

3 BY MR. ANDERSON:

4 Q. All right. I had asked you if on review of
5 the file you had concerns about the safety of
6 Wehmeyer and youth and did you tell anybody
7 about that, and I think you said it wasn't
8 your job.

9 A. Well, and what I'm saying --

10 MR. HAWS: Object to the form.
11 That's not what he testified to.

12 A. Yeah, what I'm saying here -- well, let me --

13 BY MR. ANDERSON:

14 Q. Well, let me ask you a question and we can
15 see.

16 A. Okay.

17 Q. First, after you reviewed the file of
18 Wehmeyer, at that time you knew he was being
19 considered for ministry, correct, and there
20 was a question whether he should continue in
21 ministry as a pastor or as an administrator or
22 be removed, correct?

23 A. It -- it -- no. That wasn't the question.

24 Q. Well --

25 A. I -- I wasn't being asked to express any

1 opinion about his fitness for ministry or
2 continuing in ministry. The only question
3 that was being asked of me was relative to the
4 status of referring his appointment to the
5 clergy review board.

6 Q. And the purpose of the clergy review board and
7 the purpose of the archbishop asking you to do
8 that was to determine whether or not he should
9 continue in ministry and in what capacity,
10 correct?

11 A. No.

12 Q. You knew that --

13 A. Again, the archbishop was talking about
14 referring him to the clergy review board and
15 so I knew that it was -- be important for the
16 archbishop to know whether or not his previous
17 appointment had gone to the clergy review
18 board. So I reported to the archbishop the
19 matter didn't go to the clergy review board
20 the last time, so what do you want to do this
21 time? That was the sole purpose of my going
22 back, and I put that all in a memorandum, I
23 believe, to the archbishop.

24 Q. So did you, when you reviewed the file before
25 you reported that to the archdiocese,

1 archbishop, have concerns about Wehmeyer's
2 sexual history --

3 A. Again --

4 Q. -- and safety --

5 A. Again --

6 Q. Did you have concerns is the question.

7 A. That wasn't -- that wasn't something I was
8 looking at the file for, so --

9 Q. I know, but you may not have been asked to
10 look at the file, but when you looked at the
11 file, didn't it raise red flags to you and
12 say, "Wait a minute. There are a number of
13 things in this file that cause me concern,"
14 yes or no?

15 A. Well, that was -- there was certainly history
16 in that file. I didn't -- I didn't
17 characterize it, I didn't evaluate it, I
18 didn't make a judgment call in terms of what
19 was going on, that wasn't what I was being
20 asked to do. The archbishop was not seeking
21 any input or any opinion from me relative to
22 his fitness in ministry, so that wasn't a
23 matter that I, you know, I mean, devoted any
24 attention to. That was not ever something the
25 archbishop ever asked me about, someone's

1 fitness for ministry.

2 Q. I'm not talking about fitness of -- about
3 ministry, I'm talking about safety here.

4 A. Well, again, to me those are -- somebody who's
5 not safe is not safe for ministry or fit for
6 ministry.

7 Q. Did you have concerns about the safety of
8 Wehmeyer based on that review of him being in
9 ministry?

10 A. Concerns about what?

11 Q. About him being around youth.

12 A. No. I did not.

13 Q. Not at all?

14 A. I -- no. There was no indication in the file
15 that he had -- that he had been involved with
16 youth inappropriately.

17 Q. And did it occur to you that you -- you knew
18 the archbishop had not reviewed the file,
19 correct?

20 A. I did not know that.

21 Q. Did you tell the archbishop, "I've reviewed
22 this file, there's some information in there I
23 think you should know and so you should go
24 back and look at it," or, "I need to tell you
25 about it"?

1 A. What I told the archbishop is in a -- is in a
2 memorandum.

3 Q. When -- I may have asked you this, but did the
4 Wehmeyer matter go before the clergy review
5 board at that time?

6 A. No.

7 Q. Why not?

8 A. The archbishop apparently decided not to send
9 it to the clergy review board.

10 Q. Did you disagree with that decision?

11 A. I didn't agree or disagree with the decision.
12 It was his decision. I don't decide, you
13 know, whether his decision is right or wrong.

14 Q. Actually, the archbishop is the one that can
15 decide whether to send it to the review board
16 or not?

17 A. Correct.

18 Q. The archbishop --

19 A. He's the only one that can decide that.

20 Q. And he doesn't actually have to even send it
21 to the review board if he doesn't want to,
22 correct?

23 A. That's correct.

24 Q. They're simply advisory, appointed by him,
25 correct?

1 A. They are advisory, appointed by him.

2 Q. And, again, you as chancellor are in a similar
3 role, advisory, appointed by him?

4 A. Correct.

5 Q. Did he tell you why he chose not to send him
6 to the review board?

7 A. He did not share that with me. In fact, I --
8 I never spoke to him nor did he necessarily
9 ever share with me his reasons for making
10 whatever decision he made.

11 Q. At that time there was a dispute among some of
12 the officials about whether he should be
13 actually continued in ministry at all, wasn't
14 there?

15 A. I don't know that.

16 Q. Do you recall Jennifer Haselberger raising
17 concerns?

18 A. I only learned of that more recently,
19 probably, you know, since she resigned that
20 she had -- she had apparently raised some
21 concerns about Wehmeyer. I did not know that
22 at the time.

23 Q. Did anybody raise concerns about him
24 continuing in ministry or being a pastor at
25 that time?

1 A. In 2009 when he was being considered for that
2 appointment?

3 Q. Yes.

4 A. I don't think any -- I -- I didn't hear any
5 concerns raised at that point in time.

6 Q. Was Father Laird involved in the process at
7 that time?

8 A. I don't know that. I didn't have any
9 involvement with Father Laird in -- in 2009
10 when they were considering Father Wehmeyer for
11 that appointment.

12 Q. Do you recall there was actually a decree by
13 then by archbishop Nienstedt appointing
14 Wehmeyer to be pastor of Blessed Sacrament?

15 A. Well, at some point I learned that he was
16 appointed to the second parish. I don't know
17 when I learned that. I think he probably
18 would have been appointed, I'm guessing, July
19 1 of 2009, but I don't know when I learned
20 that.

21 (Discussion out of the hearing of
22 the court reporter)

23 BY MR. ANDERSON:

24 Q. Did you or, to your knowledge, anybody from
25 the archdiocese inform the folks at Blessed

1 Sacramento what had been known about Wehmeyer's
2 history?

3 A. I don't know anything about that. I wouldn't
4 have been involved in that. Except let me
5 clarify that. Once the police were involved
6 in 2012, I did have communication with
7 trustees at that point in time.

8 Q. Okay. We'll to get that. We're in the 2009
9 period.

10 A. Yeah. No. I was not aware of any
11 communication to the trustees. I wouldn't
12 have been involved with that.

13 Q. So in any case, you learned that he had been
14 continued in ministry with full faculties,
15 even though he was under monitoring, correct?

16 A. Well, I don't know that I would have known he
17 had full faculties. I knew -- I would have
18 known he had some kind of faculties, but what
19 restrictions were on him and -- and the like I
20 -- I was not fully aware of those probably.

21 Q. Do you recall if he was appointed as pastor or
22 business administrator?

23 A. I'm -- I think he was probably appointed as
24 pastor because those parishes subsequently
25 merged and he was pastor at the time of their

1 merger.

2 Q. Did Archbishop Nienstedt express to you
3 concerns or that he was weighing conflicting
4 opinions about Wehmeyer's safety to be in
5 ministry at that time?

6 A. If we're talking about 2009 --

7 Q. Yes.

8 A. -- there was never a discussion with
9 Archbishop Nienstedt about anything related to
10 the fitness in ministry of Father Wehmeyer.

11 (Discussion out of the hearing of
12 the court reporter)

13 BY MR. ANDERSON:

14 Q. Did Archbishop Nienstedt tell you then or at
15 any time why he didn't turn Wehmeyer over to
16 the clergy review board for their
17 consideration?

18 A. I've never had a discussion with him where
19 he's imparted any information to me about
20 that.

21 Q. Were you able to discern from your experience
22 and your position what criterion he used to
23 turn a matter over to the review board or not
24 turn it over to the review board as he chose
25 to in the case of Wehmeyer?

1 A. No. I could not ascertain any criteria that
2 he would use for that purpose. There was very
3 few occasions where things were referred to
4 the board.

5 Q. In 2009 on the question of sexual abuse and
6 clerics and continuation in ministry, who was
7 Archbishop Nienstedt's, in your view, primary
8 consultant or advisor?

9 MR. HAWS: Talking about sexual
10 abuse of minors?

11 MR. ANDERSON: Yes.

12 BY MR. ANDERSON:

13 Q. To whom did he look the most?

14 A. Well, I would say both his vicar general as
15 well as Father McDonough, who was then serving
16 as delegate for safe environment. Father
17 McDonough was vicar general for a short period
18 of time after Archbishop Nienstedt became
19 archbishop of St. Paul and Minneapolis, but
20 then he was replace by, first then Father
21 Piche, now Bishop Piche, at which time Father
22 McDonough was delegate for safe environment.
23 So typically it would have been the vicar
24 general and Father McDonough.

25 Q. McDonough went from vicar general to delegate

1 for safe environment and I at least
2 interpreted him to say that he pretty much
3 looked to McDonough for the handling and
4 advising of matters pertaining to sexual
5 abuse. Is that your experience?

6 A. Well, there's probably two experiences. One
7 was with respect to matters that had already
8 arisen prior to Father McDonough becoming
9 delegate for safe environment, so everything
10 up to sometime in what, 2008, I suppose. Then
11 there was new things that would occur after
12 Father McDonough was no longer vicar general.
13 Certainly for that earlier period of time, he
14 would look to Father McDonough. So, for
15 example, with questions would come up about
16 Father Wehmeyer, since those events had
17 occurred prior to 2009, he would look to
18 Father McDonough. If mat -- new matters had
19 come up subsequent to that time, he might look
20 to either his then current vicar general or if
21 it was a legal question, he would look perhaps
22 to me.

23 Q. And an example of a legal question would be,
24 "Do we have to report or not?"

25 A. I don't know that I ever recall having a

1 conversation with Archbishop Nienstedt about a
2 matter of whether we had to report or not. I
3 think that I've described most of those cases
4 here and -- and it's -- typically was before
5 him, with the exception of Father Wehmeyer and
6 there I simply informed the archbishop what we
7 were doing.

8 Q. Going back to 2009, then, at that time what
9 was Father Laird's involvement in the
10 hierarchy?

11 A. He wasn't. I think that -- I think Father
12 Laird became vicar general in November of
13 2009, if memory serves me correctly, so at the
14 time that Father Wehmeyer would have been
15 given that appointment, which I believe was
16 probably July of 2009, Father Laird was not
17 yet on -- on the scene.

18 Q. After Wehmeyer got that appointment to -- or
19 was given the appointment by the archbishop to
20 Blessed Sacrament -- it's Blessed Sacrament,
21 wasn't it?

22 A. Yeah, I can never remember which one he was --
23 he was at one of these, it's Blessed Sacrament
24 and St. Thomas, he was at one and then he was
25 made pastor of both of 'em.

1 Q. Yeah, I got Blessed Sacrament, but it could
2 have been both.

3 In any case, sometime after that,
4 did you become aware that he was arrested for
5 a DUI?

6 A. At some point I became aware of that, but I
7 don't recall. I think that was -- you know, I
8 -- I don't know that I knew that before
9 probably June of 2012.

10 Q. Did you learn in 2009 that or hear anything
11 that he'd not only been arrested for a DUI,
12 but that while on monitoring, Joe Kueppers --
13 or is it Kueppers or --

14 A. Kueppers.

15 Q. -- Kueppers was the attorney that he called
16 for that advice?

17 A. I -- I never knew that while I was chancellor
18 for civil affairs.

19 Q. Did you become aware that at the time of his
20 arrest, it got reported in the police report
21 that Wehmeyer had been trying to pick up
22 teenagers to get them to go back to the
23 campground?

24 A. At some point I learned about something
25 relating to a campground and the only thing I

1 remember learning was that he had said to some
2 young men, "Where is the party?" That's what
3 I remember about that.

4 Q. And what was your source of having learned
5 that?

6 A. I don't even know that. I couldn't tell you
7 that. I probably learned that, again, as we
8 looked at the matter in June of 2012.

9 Q. Have you ever seen that police report?

10 A. I don't recall that I have, no.

11 Q. In September of 2009, there's indications that
12 Father Scerbo was involved with Wehmeyer and
13 under the supervision of Archbishop Nienstedt.
14 Did you have any involvement with Father
15 Scerbo and Wehmeyer in 2009?

16 A. I recall Father Scerbo sharing with me briefly
17 some matter he dealt with with Father
18 Wehmeyer.

19 Q. And what did Father Scerbo tell you?

20 A. I think he told me that Father Wehmeyer had
21 gone camping, that there was supposed to be
22 another adult there, that the other adult
23 didn't show up and so Father Wehmeyer was
24 camping with a youth and that he was gonna
25 talk with the youth's mother as well as with

1 Tim Rourke.

2 Q. And he told you that before he actually talked
3 to the youth's mother?

4 A. I think that he was reporting that that's what
5 he had done.

6 Q. And he told you that he was taking a youth,
7 that is, a minor, camping?

8 A. The impression I had it was a -- it was a
9 person under 18, yes.

10 Q. Did he identify the kid to you?

11 A. No.

12 Q. Did you, then, know who it was?

13 A. No. I still don't know who it was.

14 Q. Did you tell Archbishop Nienstedt about that?

15 A. I did not.

16 Q. Why not?

17 A. I -- it -- Father Scerbo at the time was his
18 vicar general, I assume he shared that with
19 Archbishop Nienstedt.

20 Q. Do you know if he did?

21 A. I don't know that.

22 Q. When he told you that, as one of the advisors
23 and given your experience, did you tell him,
24 "That is serious information that needs to go
25 to the archbishop right away"?

1 A. I did not make any comment of that nature.
2 Father Scerbo knew that he was concerned about
3 it, he shared that concern with me.

4 (Discussion out of the hearing of
5 the court reporter)

6 BY MR. ANDERSON:

7 Q. Did you tell Father Scerbo about what you had
8 found in the file when you reviewed it earlier
9 about Wehmeyer's history that there were --

10 A. No.

11 Q. -- concerns?

12 A. I did not.

13 Q. Do you know if Father Scerbo did call the
14 mother?

15 A. Not of my own knowledge. I know that only
16 from news reports that I've read.

17 Q. But at the time?

18 A. Oh, I did not know it at the time. I -- I
19 believe that he was reporting to me that he
20 had talked with the mother, although I'm less
21 than completely certain about that, but I
22 believe he had talked with the mother about it
23 at the time.

24 Q. Actually, Mr. Eisenzimmer, you reported he
25 told you initially on questions that he was

1 going to call the mother, so he must have
2 talked to you before -- about this before he
3 called the mother --

4 A. Again --

5 Q. -- do you recall saying that?

6 A. -- I -- yeah, I'm not certain of the sequence
7 there.

8 Q. Okay. You are certain that he told you that
9 Wehmeyer was taking a kid camping, correct?

10 A. That it --

11 Q. And he was concerned about that, correct?

12 A. There was gonna be at least one youth and one
13 adult is what I recall, but the -- that the
14 adult was not there for whatever reason and
15 Father Scerbo felt that that was something
16 that was not appropriate; you know, it didn't
17 pass the appearance of propriety test, so to
18 speak.

19 Q. Well, given Wehmeyer's history, it was
20 suspicious of sexual abuse, wasn't it?

21 A. I, you know, wouldn't wanna speculate to that.
22 There had never been any indication that
23 Father Wehmeyer had had sexual contact with
24 anyone, adult or youth.

25 (Discussion out of the hearing of

1 the court reporter)

2 BY MR. ANDERSON:

3 Q. Do you think it is -- Wehmeyer or a priest
4 taking a kid camping is suspicious of sexual
5 abuse?

6 A. Not necessarily. But the training that we've
7 provided to priests and lay people make it
8 clear that you shouldn't be in those kinds of
9 situations, if for no other reason than it
10 does raise the appearance of impropriety and
11 people will question it.

12 Q. Okay. Take the fact that you learned that
13 he's taking the kid on camping trips and you
14 also knew what had been reflected in the file,
15 some of which we had covered earlier, given
16 that, isn't those two things together in
17 itself suspicious of sexual abuse?

18 A. Again, I -- I wouldn't wanna speculate today
19 about it. I know that Father Scerbo --

20 Q. I'm asking your opinion.

21 A. Well, I didn't have -- I didn't form an
22 opinion about it. Father Scerbo had his own
23 concerns about it. He wasn't asking me to do
24 anything. He was simply sharing the
25 information with me and he was gonna take

1 whatever actions that he decided he would
2 take.

3 Q. Didn't that alarm you, knowing what you knew
4 and had read about Wehmeyer?

5 A. Well, I didn't -- again, alarm wasn't
6 something that I was, you know, determining.
7 He -- he was already expressing his own
8 concerns. I didn't have to have my own alarm
9 raised. He wasn't asking me to -- you know,
10 "Should I be alarmed about this?" He was
11 simply reporting it to me.

12 Q. But you knew he didn't have the benefit of
13 having reviewed the file the way you had,
14 correct?

15 A. Well, he knew that Father Wehmeyer was on
16 monitoring and things like that, so he
17 obviously had the background information.

18 Q. Well, you didn't know if he had reviewed the
19 file, but you do know that he knew that
20 Wehmeyer was on monitoring, correct?

21 A. Yeah, because he was -- told me he was gonna
22 talk to Tim Rourke and that's the only reason
23 he would know that Tim Rourke would be
24 involved is he knew he was on monitoring.

25 Q. So, then, let's just take those two facts, the

1 knowledge that he's on monitoring for a sexual
2 history, that was known to both you and
3 Scerbo, correct?

4 A. Well, again, I -- he hadn't been sexual with
5 anybody, so I would disagree with the sexual
6 history part of it.

7 Q. Why was he on monitoring?

8 A. Well, I don't know. I -- I wasn't involved
9 when he was put on monitoring. There was a
10 number of incidents where he had engaged in
11 conduct that is probably not appropriate for a
12 priest to be engaged in.

13 Q. It was sexual conduct?

14 A. Well, no. Asking -- he asked somebody if he
15 was horny. That's not sexual contact. He
16 asked somebody where the party is, so that's
17 disturbing, but it's not sexual abuse or it's
18 not sexual activity, but certainly raised
19 enough concerns apparently in someone's mind
20 to put him on monitoring and have him
21 evaluated.

22 Q. The report from St. Luke's was in the file
23 that you reviewed, wasn't it?

24 A. Yes, it was.

25 Q. And it said a lot more than what you just

1 described, didn't it?

2 A. Correct.

3 Q. It described him as having been a sexual
4 addict and having impulse control issues,
5 didn't it?

6 A. Well, it said what it said. I don't recall as
7 I sit here what all it said.

8 Q. Okay. Let's take the fact that you knew he
9 was on monitoring, let's take the fact that
10 you knew it had to do with sexual issues and
11 let's take the fact, then, that you now are
12 hearing from Father Scerbo that he has taken a
13 kid camping. Doesn't those three things
14 together in itself set off an alarm for you
15 that says, "That's suspicious of sexual abuse
16 and this has got to be reported today"?

17 MR. HAWS: I'll object to the form.
18 It also misstates facts in evidence.

19 A. There was no discussion about reporting
20 anything. It was -- Father Scerbo was simply
21 informing me of the actions he was gonna be
22 taking.

23 BY MR. ANDERSON:

24 Q. But you knew the law. My question to you is,
25 then, why didn't you tell Scerbo more about

1 what you knew that you knew he didn't?

2 A. Again, I didn't need to tell Father Scerbo.
3 He knew the man was on monitoring. If Father
4 Scerbo felt he needed any information, he
5 could either get it from the file or he could
6 ask me.

7 Q. In any case, Wehmeyer was not reported to law
8 enforcement at that time, correct?

9 A. Well, there was no -- there was no -- nothing
10 to report. There was no, you know,
11 impropriety that was being shared with me that
12 had occurred.

13 Q. The statute says "suspicions of sexual abuse,"
14 doesn't it, "suspicions of sexual abuse"? You
15 cited the statute a number of times here.

16 A. Yeah, I don't know that it uses the word
17 "suspicions," but it -- it knows or has reason
18 to believe.

19 Q. Scerbo was then, when he had this
20 conversation, a mandated reporter, is he not?

21 A. If it was a non-privileged communication to
22 him, he would have been a mandated reporter.

23 Q. Well, he was sharing it with you, so you knew
24 it was a non-privileged communication,
25 correct?

1 A. I assume that, sure.

2 Q. And you're, then, the advisor to the
3 archbishop and his delegates, which includes
4 Scerbo?

5 A. Well, I was an advisor, yes.

6 Q. So answer this yes or no. Didn't this
7 information that you had from Scerbo and your
8 knowledge of the file from your review of it
9 in 2009 concern you, yes or no?

10 MR. HAWS: Objection, asked and
11 answered several times now.

12 A. I -- I can't answer that yes or no.

13 BY MR. ANDERSON:

14 Q. Well, did you have concerns?

15 MR. HAWS: Same objections.

16 A. He -- he -- I said this repeatedly. Father
17 Scerbo had his own concerns. I didn't have to
18 have my own independent concerns. He -- he --
19 he was not asking me to share my concerns. He
20 was simply reporting to me what he was -- what
21 he learned and what he was doing, that was it.

22 Q. Wehmeyer's taking kids camping, you heard
23 that, Scerbo reported that to you?

24 A. Well I didn't hear that it was kids. I heard
25 -- I heard there was a youth.

1 Q. Well, okay. A youth then.

2 A. Yeah.

3 Q. Okay.

4 MR. HAWS: Counsel, are we at a
5 point we can take a restroom break?

6 MR. ANDERSON: Sure.

7 MR. KINSELLA: Off the video record.

8 (Recess taken)

9 MR. KINSELLA: Back on the video
10 record.

11 BY MR. ANDERSON:

12 Q. Okay. Mr. Eisenzimmer, going back to the
13 conversation with Father Scerbo about
14 Wehmeyer, him sharing with you Wehmeyer's
15 taking a kid camping and him having told you
16 that he learned that, correct?

17 A. Well, I don't know about taking a kid. He was
18 camping with a kid and that Father Scerbo had
19 learned that.

20 Q. And he told you that?

21 A. He told me that, that's correct.

22 Q. And did he tell you from whom he had learned
23 that?

24 A. He might have, but I don't recall how he
25 learned it.

1 Q. Did you make any recording or memo or take any
2 notes of the conversation between yourself and
3 Father Scerbo concerning Wehmeyer camping with
4 this kid or taking this kid camping?

5 A. I did not.

6 Q. Why not?

7 A. Just -- it wasn't something that was coming to
8 me from an outside party. I assumed he was
9 already doing whatever was gonna be necessary
10 to memorialize that in Father Wehmeyer's file.

11 Q. You made reference to some appearance of
12 impropriety. Did this information that you
13 got, standing alone from Father Scerbo and
14 Wehmeyer, raise an appearance of impropriety
15 to you?

16 A. Well, I -- I didn't, again, make a value
17 judgment about that. What we tried to
18 teach --

19 Q. Well, just listen to the question, did it or
20 didn't it, yes or no? Did that raise an
21 appearance of impropriety to you as chancellor
22 then when he raised it?

23 A. Well, I -- no. Because I didn't have enough
24 information.

25 Q. Did it raise an appearance of an imminent

1 danger to that child --

2 A. No.

3 Q. -- yes or no?

4 A. No.

5 Q. Did it raise a suspicion that required further
6 investigation?

7 A. There was no thought given to that by me.

8 Q. Well, weren't you concerned about the safety
9 of the kid who he had either taken camping or
10 was camping with? Weren't you concerned about
11 that kid's safety, yes or no?

12 A. I shared the concern that Father Scerbo was
13 sharing with me was that Father Wehmeyer had
14 been camping with a youth alone and that that
15 raised this question about what's the
16 appearance of that and is that a proper
17 appearance.

18 Q. Well, appearance is one thing, that's what it
19 looks like, but appearances can also be
20 indications of things. So my question to you
21 is, didn't it alarm you, knowing what you
22 know, that this kid was in danger or may have
23 already been hurt by Wehmeyer?

24 A. I didn't -- I -- it didn't raise an alarm, no.

25 Q. And Father Scerbo -- did Father Scerbo tell

1 you that he was bringing this information to
2 the archbishop or he already had brought it to
3 the archbishop?

4 A. He didn't express anything about what he had
5 done with the archbishop.

6 Q. Did you tell him to bring it to the
7 archbishop?

8 A. I did not.

9 Q. Why not?

10 A. I -- I -- I didn't have to tell Father Scerbo
11 what he needed to do.

12 Q. Okay. As vicar general, you knew that he --
13 that was something that is -- it's his job to
14 bring it to the archbishop?

15 A. Well, if he was bringing it to me, I was
16 assuming he was bringing it to the archbishop.

17 Q. Okay. And do you know if he did?

18 A. I don't know that.

19 Q. Do you know what further action Father Scerbo
20 took concerning this information about the
21 kid, Wehmeyer and camping?

22 A. I believe that I learned at some point in time
23 that Tim Rourke was aware of that, so I
24 assumed Tim Rourke had heard it from either
25 Father Scerbo or someone.

- 1 Q. Tim Rourke was aware of what, that the kid --
- 2 A. About this camping thing with the youth.
- 3 Q. Tim Rourke was the then monitor?
- 4 A. Correct, his title was promoter of ministerial
5 standards, P-O-M-S.
- 6 Q. And my question, then, is, do you know what
7 Father Scerbo did with the information that he
8 reported to you that he had?
- 9 A. I don't know that.
- 10 Q. Did he make mention to you of the fact that he
11 was going to call the mother of the kid and --
12 did he tell you that?
- 13 A. Well, as I think I mentioned earlier, he
14 either told me he was doing that or had done
15 it and I don't remember which it was.
- 16 Q. And if he hadn't called the mother when he
17 raised this with you and he told you he was
18 going to, why didn't you tell him to tell the
19 mother what you knew by reason of your review
20 of that file and a possible danger to this
21 kid?
- 22 A. There was no indication on his part that he
23 wanted any input from me about anything. He
24 was simply informing me of what he either was
25 gonna do or --

1 Q. So he didn't --

2 A. -- or had done.

3 Q. He didn't ask you?

4 A. He did not ask me.

5 MR. HAWS: I also object to the
6 form, it misstates the evidence.

7 BY MR. ANDERSON:

8 Q. And you didn't volunteer it?

9 A. I didn't give him any information at that
10 point in time about Father Wehmeyer.

11 Q. If you assume that he had already called the
12 mother, what do you know about what he told
13 the mother?

14 A. I -- the only thing I recall is, is that there
15 -- you know, that he wanted her -- that he
16 either had made her aware or wanted her to be
17 aware that it -- it didn't look right for a
18 priest to be alone with youth, which was
19 consistent with the training that we were
20 providing to everyone.

21 Q. When you used the terms "it didn't look right
22 to be alone with youth," that implies a
23 perception, doesn't it? It doesn't look
24 right?

25 A. Well, I think the same can be true of any --

1 Q. Well, do you agree with that?

2 A. Yeah. Yeah. Right.

3 Q. Okay. Wouldn't you also agree that in 2009,
4 it not only doesn't look right, it's wrong for
5 any priest to be alone with a youth camping?

6 A. And I think that's consistent with what we
7 were providing in training, that priests
8 should not be alone with children, either
9 because of the appearance of impropriety or
10 because it might be improper, yes.

11 Q. That given the history of this archdiocese
12 known to you and other officials, it's also a
13 known danger --

14 MR. HAWS: Object to the form.

15 BY MR. ANDERSON:

16 Q. -- for priests to be alone with youth?

17 MR. HAWS: Object to the form.

18 A. Well, certainly sexual abuse takes place in
19 the absence of other people, so, yes, it --
20 it's something that we trained priests like
21 Father Wehmeyer that they should not be doing
22 those kinds of things.

23 BY MR. ANDERSON:

24 Q. So after this information came to you from
25 Father Scerbo, you are aware, are you not,

1 that Father Wehmeyer continued in ministry
2 without further restriction?

3 A. I don't know about further restriction. I
4 would not have been aware of any restrictions
5 that were placed on him. I do know that he
6 remained as the pastor of those two parishes.

7 Q. And do you know if -- what Scerbo told the
8 mother?

9 A. I don't, other than I've seen, I think, her
10 description of that in a news report.

11 Q. Knowing what you knew about what Scerbo told
12 you and the history that you knew about this
13 archdiocese and the fact that Wehmeyer was
14 perhaps camping with this youth, do you think
15 the mother should have been told of Wehmeyer's
16 history?

17 A. I can't speculate to that.

18 Q. You're the chancellor, that's not speculation.
19 Shouldn't the mother have been told exactly
20 what the archdiocese knew about this guy and
21 his history?

22 A. It wasn't my function to determine what she
23 should be told. Father Scerbo was deciding
24 that.

25 Q. You're an advisor to the archbishop. Wasn't

1 it your function to advise the archbishop of
2 what should be done when there's a risk of
3 harm to children?

4 A. Nobody was seeking my opinion relative to that
5 question.

6 Q. That's why Scerbo sought you out, he was
7 seeking your guidance about what to do?

8 A. No. He was not. He was not asking for any
9 advice. If he was, quite frankly, I would
10 claim it was attorney/client privilege.
11 Father Scerbo was simply informing me of what
12 he was doing or had done.

13 Q. You're the chancellor.

14 A. I recognize that.

15 Q. And it's your job to report to the archbishop
16 suspicions of dangerous conduct by priests
17 that are brought to you, correct?

18 A. Well, I certainly think the archbishop
19 expected me to share with him if I had
20 concerns about danger to children.

21 Q. The records reflect that Wehmeyer was
22 continued in ministry after you had this --
23 Scerbo had this conversation with you.

24 (Discussion out of the hearing of
25 the court reporter)

1 BY MR. ANDERSON:

2 Q. Did you provide any guidance to Father Scerbo
3 or the archbishop about warning the parent,
4 the parish or those in it concerning Wehmeyer,
5 now knowing what you knew and what the file
6 reflected?

7 A. Nobody asked me to share anything about any of
8 those questions.

9 MR. HAWS: And you're referring to
10 2009, I assume?

11 MR. ANDERSON: Yes, at the time, at
12 this time, yeah.

13 A. Nobody asked me to share anything about
14 anything.

15 BY MR. ANDERSON:

16 Q. Did you share it with anybody?

17 A. I did not.

18 Q. As chancellor, why not? It sounds like it
19 is --

20 A. Father Scerbo was simply telling me what he
21 was doing. That was the sole purpose for him.
22 He wasn't seeking my opinion. They certainly
23 would never ask me about someone's fitness for
24 ministry. That's the exclusive purview of the
25 archbishop. So Father Scerbo was simply

1 telling me the action steps he was taking.

2 Q. But you are advising them on matters of sexual
3 abuse and you're taking calls yourself when
4 the reports are being made, are you not --

5 A. Well, at --

6 Q. -- as chancellor?

7 A. At times I did receive calls about matters of
8 concern, sure.

9 Q. So it's a part of your job to help handle the
10 safety of children and employ the zero
11 tolerance as promised and to make sure that
12 priests are not posing a risk of harm to kids,
13 correct?

14 A. Well, that would certainly would be true if
15 information was coming directly to me. But in
16 this instance, Father Scerbo already had the
17 information, he was already embarking on or
18 had embarked on an action plan in terms of
19 what he was gonna do and he was simply
20 informing me of that. Nobody was asking me to
21 do anything or my opinion about anything. I
22 think I've said that repeatedly here this
23 morning.

24 Q. Scerbo was new on the job, wasn't he, at the
25 time he came to you?

1 A. Well, I don't know exactly when this occurred
2 in 2009, but I think he had started as vicar
3 general on July 1st of 2009, so he was there a
4 short period of time.

5 Q. So what experience did he have in sexual abuse
6 and handling sexual abuse matters?

7 A. I -- I don't know what he -- what involvement
8 he had prior to being vicar general. I knew
9 he also had a delegate for safe environment
10 and I don't know what he did with Father
11 McDonough in terms of communicating any of
12 this information to Father McDonough.

13 Q. So knowing what you do know and what you did
14 know in 2009 about the problem of sexual
15 abuse, having handled it as chancellor and in
16 your role prior to that, what should Scerbo
17 have done with the information he shared with
18 you?

19 A. I -- I can't -- I can't answer that. I -- I
20 mean, he did whatever he did. I don't know
21 what -- you know, what -- all I'm saying is
22 all I know about is what he told me. He --
23 and which included that he was gonna be
24 talking with Tim Rourke about it.

25 Q. And Rourke was a monitor, a deacon, was he

- 1 not?
- 2 A. He was not a deacon.
- 3 Q. Well, he was a monitor employed by the
4 archdiocese to monitor Wehmeyer, correct?
- 5 A. As I said a moment ago, he's the promoter or
6 was the promoter of ministerial standards.
- 7 Q. But that's also called a monitor, isn't it?
- 8 A. Well, that's the function he performed was to
9 monitor the guys that were being monitored.
- 10 Q. And the purpose of monitoring in the case of
11 Wehmeyer was to keep the people and the
12 parishioners safe from harm, correct?
- 13 A. Well, I think that was the ultimate goal, but
14 the responsibility was to see that a priest
15 adhered to the monitoring plan that was
16 developed for that priest. Each priest that
17 was on monitoring had a plan.
- 18 Q. But the purpose of monitoring was to keep the
19 people safe, correct?
- 20 A. Again, that's the ultimate goal, yes.
- 21 Q. Okay.
- 22 A. But that's not the only goal.
- 23 Q. Well, what is it, to protect the priest?
- 24 A. No. I mean, some guys, for example, were
25 chemically dependent, so that --

1 Q. Well, we're talking about sexual abuse here.

2 A. Well, you didn't limit your question to sexual
3 abuse. Some of the guys were -- were
4 chemically dependent, so part of their action
5 plan was to keep them -- help them maintain
6 their sobriety, the same as --

7 Q. Was Wehmeyer chemically dependent?

8 A. Was he what?

9 Q. Chemically dependant?

10 A. Not to my knowledge, although he apparently
11 had a DIW -- DUI at some point in time.

12 Q. He was a sexual addict, as reflected in the
13 file?

14 A. I don't know that he was diagnosed as a sexual
15 addict. Was that a diagnosis that was reached
16 at St. Luke?

17 Q. Sexual compulsion, inability to control his
18 sexual impulses and at one point sexual
19 addiction, yes.

20 A. I -- I don't know that that was the diagnosis.
21 I haven't -- I -- I looked at that report in
22 -- sometime in the middle of 2009, I haven't
23 seen it since then.

24 Q. Well, in any case, when you had the
25 conversation with Scerbo, then, did you feel

1 confident that he was properly qualified to
2 deal with this in a way that would protect the
3 safety of the child that he had either camped
4 with or was camping with?

5 A. I knew that when Father Scerbo became vicar
6 general, he had obtained a briefing from
7 Father McDonough about various matters. Just
8 like Father McDonough had briefed Bishop Piche
9 before Bishop Scerbo. So Bishop Scerbo, or
10 Father Scerbo at the time, would have known
11 about the monitoring program, he would have
12 known about Father McDonough's work as
13 delegate for safe environment, so it would be,
14 you know, something that Father Scerbo would
15 be familiar with, with what resources were
16 available to him should he choose to avail
17 himself of those resources.

18 Q. The mother of that child reports that Father
19 Scerbo called her and said that, "In today's
20 climate we have to be worried about," the word
21 you used, "the appearance of impropriety and
22 scandal and it doesn't look right for your son
23 to camp with him, with Wehmeyer, and so you
24 should have other adults present." Is that an
25 appropriate way for Father Scerbo to have

1 dealt with the information?

2 A. Again, I can't speculate as to what might have
3 been the appropriate way for Father Scerbo to
4 have dealt with that situation. I don't know
5 that there's a, you know, a hard and fast
6 guideline to that. He -- he certainly needs
7 to both talk with the mother and share with
8 her his concerns, but he also has to take
9 other actions, such as, you know, looking at
10 what -- how it relates to Father Wehmeyer and
11 his monitoring and -- and other related
12 things.

13 Q. Don't you think the mother had some right to
14 know about what you knew about the review of
15 Wehmeyer's file, that he had a history of
16 sexual addiction, impulse control?

17 A. I don't know what -- you know, I -- I don't
18 want to characterize what should have been
19 shared with the mother at the time. I can't
20 put myself in Father Scerbo's place in terms
21 of what he felt he should do.

22 Q. You're aware that Wehmeyer sexually abused
23 that child and others after that call was
24 made, aren't you?

25 A. I -- I know that Father --

1 Q. He's in prison for it.

2 A. I know that Father Wehmeyer abused a couple
3 youth that he pled guilty to. I don't know if
4 it's the same child or not.

5 Q. It is.

6 A. Okay. I don't know -- I don't know that. I
7 didn't know that until now.

8 Q. Having heard that now today and having now
9 reflected on what Father Scerbo told you,
10 either before he made that call or right after
11 it, does that lead you to the conclusion that
12 that mother deserved to know much more than
13 what she was told?

14 A. I'm not gonna second guess what he did at this
15 point in time.

16 Q. Do you feel that you had an obligation, as the
17 chancellor, to do more than what you did with
18 the information given you by Father Scerbo and
19 the history you knew both about Wehmeyer on
20 review of the file and the problems in this
21 archdiocese?

22 A. No.

23 MR. HAWS: Objection, asked and
24 answered multiple times.

25 BY MR. ANDERSON:

1 Q. So after Father Scerbo shared this information
2 with you, what is the next time you had any
3 dealings pertaining to Wehmeyer?

4 A. At some point in time we merged the two
5 parishes, Blessed Sacrament and St. Thomas,
6 and then I can't remember exactly when that
7 occurred, but in the run-up to that, there
8 were some issues that were raised.

9 Q. And tell me what those issues were and did it
10 pertain to the concerns about Wehmeyer being
11 in ministry?

12 A. No. It didn't.

13 Q. Anything to do with safety?

14 A. No. It simply was his capacity to manage the
15 merger and the conflict that would develop
16 among his staff relative to how they would
17 merge the parishes, some people might lose
18 their jobs, et cetera, et cetera.

19 Q. And your role was to do what, help guide that,
20 help advise?

21 A. Right, to provide assistance, because if there
22 was gonna be employment-related issues, I
23 would need to address employment-related
24 issues. I was the one that was responsible
25 for seeing that all the documents were

1 prepared to accomplish the merger. We would
2 have to work with the trustees, who would have
3 to vote in favor of that parish merger, along
4 with the archbishop, the vicar general and
5 Father Wehmeyer. So I did have responsibility
6 to see that the mergers were accomplished and
7 to deal with whatever legal issues might arise
8 out of that merger.

9 Q. And at that point in time, to your knowledge,
10 had any parishioner in the parish where
11 Wehmeyer was assigned been told about the
12 history known to the archdiocese as reflected
13 in the file or what Father Scerbo had learned
14 about Wehmeyer and the kid and camping? Had
15 anybody been told about that?

16 A. I don't know that.

17 Q. To your knowledge. Nobody beyond Rourke had
18 been told, correct?

19 MR. HAWS: Object to the form,
20 misstates his testimony.

21 A. I don't know who else Father Scerbo talked
22 with, other than myself, and he said he was
23 gonna talk with Tim Rourke. I don't --

24 Q. Okay. So the answer is?

25 A. Yeah, I'm not aware. If there was some

1 disclosure made in the parish, for example,
2 I'm not aware of that.

3 Q. So after the merger issues that you just
4 described, what, then, is the next encounter
5 or dealing you had pertaining to Wehmeyer?

6 A. And that would have been in June of 2012.

7 Q. Okay. And you said at that time you received
8 a report of some kind. From whom?

9 A. I -- I received a communication.

10 Q. Yes. And the communication is from whom?

11 A. I'm not gonna tell you that. It's attorney/
12 client privilege.

13 Q. Yeah, but who it comes -- what may have been
14 said maybe, but we have to lay a foundation
15 for this, and first wait, just --

16 A. Okay.

17 Q. -- listen to the question, in order to see if
18 it is a privileged communication, we have to
19 determine from whom it comes because you can't
20 know until the person who communicates
21 identifies that. So to assert the privilege
22 as you know, you have to identify who
23 communicated it. So the first question
24 just --

25 A. I, first of all, would disagree with that.

1 Q. Okay.

2 MR. HAWS: And I disagree as well,
3 that's just incorrect.

4 BY MR. ANDERSON:

5 Q. So let's just get the question and then we can
6 have the objection if there is one.

7 A. Okay.

8 Q. So first let's get the date. What is the
9 date?

10 A. June 19, 2012.

11 Q. Okay. And by what means is this communication
12 made?

13 A. I'm not gonna tell you that, either. It's a
14 communication made to me.

15 MR. HAWS: Because of
16 attorney/client privilege?

17 THE WITNESS: Yeah.

18 A. I'm not gonna tell you anything about the
19 communication.

20 BY MR. ANDERSON:

21 Q. What time of day or night?

22 A. Early evening.

23 Q. Can you be more specific?

24 A. I would say somewhere around 5:30, six o'clock
25 in the evening.

1 Q. Where were you when you received it?

2 A. In Minneapolis.

3 Q. Doing what?

4 A. I was waiting for a meeting to start.

5 Q. And in what capacity or role? You were then
6 chancellor, correct?

7 A. I was chancellor for civil affairs at the
8 time, yes.

9 Q. And so I get the legal objection to this, who
10 is the person that communicated information to
11 you at 5:30 on June 19th?

12 A. Well, again, I -- it was -- I didn't say
13 exactly 5:30. It was approximately 5:30 and
14 I'm not gonna tell you who it was that
15 communicated it to me.

16 MR. HAWS: Based on attorney/client
17 privilege?

18 THE WITNESS: Based on
19 attorney/client privilege.

20 BY MR. ANDERSON:

21 Q. And you're going to refuse to answer that, the
22 identity of the person that communicated it?

23 A. I will tell you that a person known to me
24 communicated with me, that it was clearly
25 within the attorney/client privilege because

1 they were seeking my legal advice about a
2 matter. That's all I'm gonna tell you.

3 Q. How can one determine whether there's an
4 attorney/client privilege unless they know who
5 the communicator is, and then you have to go
6 to the next step to make the determination?

7 A. Well, it's --

8 MR. HAWS: Well, object. That's not
9 for this witness to determine, counsel.
10 That's your issue to raise, if you need to,
11 and research the law on it. This witness has
12 raised an attorney/client privilege for his
13 communication. He need not answer further
14 information about how you figure it out.

15 MR. ANDERSON: And your instruction
16 is not answer?

17 MR. HAWS: I'm not instructing him
18 one way or the other. I don't know the
19 attorney/client privilege. Mr. Eisenzimmer
20 has asserted attorney/client privilege and you
21 don't get to continue to badger him on that
22 issue.

23 MR. ANDERSON: Well, I get to ask
24 questions for foundation, if you're going to
25 assert such a privilege, to see if one exists.

1 A. Well, and that's why I --

2 BY MR. ANDERSON:

3 Q. I just want -- I just want the record here. I
4 don't want an argument. I just want to make a
5 record, so let's --

6 A. If you want the record, counsel, you should
7 let me answer the question.

8 Q. Okay. So the question is, who and the answer
9 is?

10 A. A person. A human person contacted me,
11 seeking my legal advice.

12 Q. And the means and the manner of that
13 communication?

14 A. I'm not gonna tell you that.

15 Q. And the reason for refusing to answer that is?

16 A. That could potentially lead to the identity of
17 the person who sought my legal advice.

18 Q. The length of the communication, how long?

19 A. I don't know.

20 Q. Best estimate.

21 A. Well, it was less than an hour.

22 Q. The relationship of the person that
23 communicated to you, what was it?

24 MR. HAWS: Relationship to whom?

25 BY MR. ANDERSON:

- 1 Q. You.
- 2 A. It -- at that point it was a client.
- 3 Q. Is it somebody working for the archdiocese?
- 4 A. I'm not gonna answer that. It's a client.
- 5 Q. Do you as a chancellor for the archdiocese
6 consider every hierarch in the archdiocese
7 also to be a client if they seek your advice?
- 8 A. Yes. That's part of my job as the chancellor
9 was to provide legal advice to people within
10 the archdiocese and its parishes, so that's
11 thousands of people.
- 12 Q. There were predecessors to you as chancellor;
13 Bill Fallon was a lawyer and chancellor, but
14 the prior chancellors were clerics, were they
15 not?
- 16 A. Correct.
- 17 Q. Mike O'Connell and Kevin McDonough and --
- 18 A. Father O'Connell --
- 19 Q. -- Bob Carlson?
- 20 A. Father O'Connell was never --
- 21 Q. He was vicar general I guess.
- 22 A. He was vicar general and moderator of the
23 curia.
- 24 Q. So Bob Carlson and Kevin McDonough?
- 25 A. There was others as well, Tom Vowell.

1 Q. Cleric?

2 A. They were all clerics. Vowell, V-o-w-e-l-l.

3 Q. Did you have discussions prior to your
4 appointment with the archbishop that it would
5 be legally wise to have a civil lawyer such as
6 yourself in this position as chancellor so
7 that you could protect these communications
8 from discovery and avoid liability?

9 A. Not at all.

10 (Discussion out of the hearing of
11 the court reporter)

12 BY MR. ANDERSON:

13 Q. Did you have such a discussion with the
14 archbishop or anybody else like that?

15 A. No. I -- the change became part of the 1983
16 code of canon law. Prior to that, the 1917
17 code, clerics needed to be -- chancellors
18 needed to be clerics. After the '83 code came
19 into place, laypersons, including women, could
20 be chancellor. So, for example, Sister
21 Dominica Brennan was a chancellor, Jennifer
22 Haselberger was a chancellor, Bill Fallon was
23 a chancellor, Andy Eisenzimmer was a
24 chancellor, Joe Kueppers is a chancellor.

25 Q. Did you tell this person, who you refuse to

1 identify, that communicated with you
2 concerning Wehmeyer that he or she is a
3 mandated reporter and needs to report this?

4 A. I'm not gonna tell you what I told my client,
5 that's the advice, that's what's privileged
6 under the statute.

7 Q. Do you know if this person made a report as
8 the mandated reporter?

9 A. Again, I'm not gonna tell you anything I
10 learned from this client.

11 Q. Well, I'm talking about independent of what
12 you learned from that person. Do you know if
13 that person ever made a report to law
14 enforcement?

15 A. I don't know that. If we're talking about
16 from sources other than the client, I don't
17 know that.

18 Q. Was Wehmeyer reported to law enforcement?

19 A. Was it?

20 Q. Was Wehmeyer reported to law enforcement?

21 A. He was.

22 Q. When?

23 A. On June 20th.

24 Q. By whom?

25 A. Deacon Jon Vomastek.

1 Q. By what means?

2 A. Telephone.

3 Q. At what time?

4 A. Approximately five p.m.

5 Q. And to whom did he make such a report?

6 A. I believe it was to a watch commander named

7 Axel, A-x-e-l.

8 Q. What did he communicate?

9 A. That he was reporting the priest that he
10 apparently had given Commander Axel a heads-up
11 on earlier.

12 Q. And what information did he report?

13 A. I'm not certain of that because I think later
14 that evening Deacon Vomastek, I think, had
15 some e-mail communication with Commander Axel,
16 too.

17 MR. KINSELLA: Excuse me, off the
18 video record to change media.

19 (Recess taken)

20 MR. KINSELLA: Back on the video
21 record 12:18 p.m.

22 BY MR. ANDERSON:

23 Q. How did Vomastek get the information that
24 there was a suspicion of childhood sexual
25 abuse that required such a report?

1 A. I don't believe it required a report. We
2 reported it voluntarily.

3 Q. Okay. When you say "we," who is the we?

4 A. The archdiocese.

5 Q. Who in the archdiocese is the we?

6 A. Well, I gave the information to Father -- to
7 Deacon Vomastek and he reported it to the
8 police.

9 Q. What did you tell Vomastek?

10 A. Well, I talked with him at various times
11 throughout that day of June 20th.

12 Q. How many times?

13 A. Two, three, four, five.

14 Q. Walk through what you told him and the order
15 in which you told it and the events as they
16 unfolded on that day of June 20th.

17 A. Well --

18 Q. -- between yourself and Vomastek.

19 A. Just the two of us or you want it -- the
20 entire chronology?

21 (Discussion out of the hearing of
22 the court reporter)

23 BY MR. ANDERSON:

24 Q. I'm going to walk you through that, but before
25 I do, let's go back to the 19th.

- 1 A. Okay.
- 2 Q. And on that day at 5:30, after you received
3 the call from the person whom you refused to
4 identify and refused to identify the contents
5 of and/or any other details on the assertion
6 of privilege, what did you do?
- 7 A. First of all, I didn't say it was a call.
- 8 Q. Okay. Well, let's just say communication.
- 9 A. And I didn't say it was 5:30.
- 10 Q. Approximately 5:30.
- 11 A. Right.
- 12 Q. Okay. Let me rephrase the question.
- 13 A. Okay.
- 14 Q. Directing your attention to June 19th,
15 approximately 5:30 --
- 16 A. Okay.
- 17 Q. -- you received a communication --
- 18 A. Correct.
- 19 Q. That you're claiming a privilege?
- 20 A. Yes.
- 21 Q. Correct?
- 22 A. Correct.
- 23 Q. What did you -- what action, if any, did you
24 take responsive after that?
- 25 A. I communicated to two of my colleagues, Father

1 Kevin McDonough and Jennifer Haselberger, that
2 we may have a situation involving a charter
3 offense by a priest who is in active ministry
4 and that we would likely need to report it
5 immediately and remove the priest from his
6 position.

7 Q. And you communicated that to both Haselberger
8 and to McDonough?

9 A. Yes.

10 Q. And by what --

11 (Discussion out of the hearing of
12 the court reporter)

13 BY MR. ANDERSON:

14 Q. Was what was your -- was your only source of
15 -- was the privileged communication your only
16 source of information for having made that
17 report to Haselberger and McDonough?

18 A. Yes.

19 Q. And a charter offense means sexual abuse of a
20 minor by a priest, doesn't it?

21 A. That's one of the charter offenses, yes.

22 Q. Well, in this case, that's the charter offense
23 you're referring to that you reported to
24 Haselberger and McDonough, correct? We have a
25 charter offense, correct?

1 A. I'm thinking about that a minute. Again, I
2 don't want to get into the substance of the
3 communication I had with my client, but when I
4 said charter offense, my intent there was to
5 communicate that it involved sexual abuse of a
6 minor.

7 Q. Right. In fact, you said that the victim was
8 a minor?

9 A. I don't know that I said that. I said a
10 charter offense by an active priest or
11 something like that or a priest in ministry.

12 Q. You communicated to Haselberger and/or
13 McDonough that it will need to be reported
14 immediately, did you not?

15 A. Correct.

16 (Discussion out of the hearing of
17 the court reporter)

18 BY MR. ANDERSON:

19 Q. Did you document that June 19th communication?

20 A. I believe -- I believe that it was by e-mail,
21 so there likely is an e-mail that would
22 document that.

23 (Discussion out of the hearing of
24 the court reporter)

25 BY MR. ANDERSON:

1 Q. I'm talking about the earlier one with the
2 client.

3 A. No. I did not prepare a memorandum of that
4 conversation.

5 Q. Of any kind?

6 A. Of any kind.

7 Q. No notes?

8 A. No. I did not take notes.

9 Q. After you reported that there is a charter
10 offense, that is, the sexual abuse of a minor
11 in this case, it was by Wehmeyer, correct?

12 A. I did not communicate that -- the identity of
13 the priest to Father McDonough or Jennifer
14 Haselberger at that time.

15 Q. Why not?

16 A. I didn't think it was appropriate to do it by
17 e-mail at that point in time. I -- I was
18 simply inquiring of their availability in the
19 morning so that we could take the steps
20 necessary that we needed to take.

21 Q. Why not appropriate by e-mail? I mean, you
22 have a charter offense, that is, an adult
23 priest suspected of abusing a minor; isn't the
24 identity of the priest who is the possible
25 offender the most important thing

1 communicated?

2 A. No. I was simply determining their
3 availability in the morning to -- to work with
4 me to deal with what we needed to do and
5 decide what we needed to do.

6 Q. So at that point in time, Haselberger and
7 McDonough are not informed by you that
8 Wehmeyer is the subject of --

9 A. And that's correct, in part, that was covered
10 by whatever privilege I had with the person
11 who had communicated with me.

12 Q. Did you tell Haselberger and McDonough you
13 couldn't tell them more because of some kind
14 of privilege you're asserting here today?

15 A. No. I simply put in an e-mail, I believe,
16 what I said.

17 Q. Have you asserted with Kevin McDonough or
18 Jennifer Haselberger some kind of privilege,
19 attorney/client privilege like you asserted
20 with us here today?

21 A. No. That hasn't been necessary.

22 Q. Why hasn't it been necessary with them?

23 A. Because I -- I haven't shared with them the --
24 the contents of the communication I had with
25 the client.

1 (Discussion out of the hearing of
2 the court reporter)

3 BY MR. ANDERSON:

4 Q. Did you tell them -- ever tell Haselberger or
5 McDonough the identity of the client?

6 A. The identity of the client?

7 Q. Yes.

8 A. No.

9 Q. That communicated to you?

10 A. No. I -- no. I think -- no. I did not.

11 Q. As chancellor, are you allowed to represent
12 priests?

13 A. Assuming there's not a conflict, yes.

14 Q. So you provided the e-mail on the evening --
15 what was the date of the e-mail to Haselberger
16 and --

17 A. June 19th, it was a Tuesday, 2012. There's --
18 there's been a lot of confusion, counsel, and
19 I'll point this out to you because it might be
20 helpful. I think there's been a lotta
21 confusion about the chronology here, I -- I
22 think part -- in part, from what I understand,
23 your client may be confused about the
24 chronology. I know Father McDonough was wrong
25 in his deposition about the chronology and I

1 believe the archbishop is wrong about the
2 chronology. I will tell you I am certain of
3 the chronology. So it was June 19th, it was a
4 Tuesday.

5 Q. So first tell me how is McDonough wrong about
6 the chronology?

7 A. I think that Father McDonough used a date of
8 June 21st as when it was reported to the
9 police or something like that. I'm not -- I'm
10 not sure what it -- there was a mistake in his
11 deposition and in his testimony.

12 Q. And how is the archbishop wrong about his
13 chronology?

14 A. Because I think the archbishop used June 22nd
15 or something like that in his deposition.
16 Then, of course, there's a question of the
17 date of the decree he signed.

18 Q. First let's get the date of the report. So
19 are you saying that they are wrong about the
20 date of the report made?

21 A. I don't know -- I don't recall what they
22 testified. I can tell you that the report
23 that I had Father -- Deacon Vomastek make was
24 made on June 20th.

25 Q. And was McDonough involved in the conversation

1 with Vomastek before he made the report?

2 A. No.

3 Q. Who else was involved besides you?

4 A. No one, that I'm aware of.

5 Q. Was the archbishop consulted?

6 A. At some point the archbishop was informed, but
7 I don't know if someone informed him of -- or
8 I shouldn't say that. I know the archbishop
9 was informed by me at some point in time. I
10 don't know who might have informed him of what
11 prior to the time I talked to the archbishop.

12 Q. When was the archbishop informed and by whom?

13 A. I don't know that. I assume -- I assume that
14 on the 20th, Father Laird was in communication
15 with the archbishop. At some time on either
16 the 20th or the 21st, I talked to the
17 archbishop.

18 Q. What did you tell the archbishop?

19 A. That we either had or were reporting sexual
20 abuse to the police --

21 Q. And what was --

22 A. -- by one of his priests.

23 Q. What was the source of the information? Did
24 you tell Archbishop Nienstedt the source of
25 the information that caused you --

- 1 A. No.
- 2 Q. Did you tell him it was Wehmeyer?
- 3 A. At some point I would have communicated it was
4 Father Wehmeyer.
- 5 Q. Well, would you withhold that information from
6 him?
- 7 A. No. Not at all.
- 8 Q. So you told him you were reporting Wehmeyer?
- 9 A. At some point I would have told him it was
10 Wehmeyer.
- 11 Q. Well, at your first conversation about this?
- 12 A. I don't know that I -- I don't know that I
13 told him that in the first conversation.
- 14 Q. Why would you withhold that?
- 15 A. I wouldn't have withheld it.
- 16 Q. Well, then why do you say you might have?
- 17 A. Because he would have either already been
18 aware of it or I wasn't free to disclose it to
19 him at the first conversation because I'm not
20 certain exactly when I had my first
21 conversation with him about it.
- 22 Q. Which is it?
- 23 A. I don't know. I don't recall.
- 24 Q. Is this -- I mean, why are you confused about
25 something as important as making a report and

1 when you made it and --

2 A. I don't -- I'm not confused about when I made
3 a report to the police.

4 Q. Well, you're confused about what you told the
5 archbishop and when you told him.

6 A. Well, right.

7 MR. HAWS: And, counsel, you're
8 arguing with the witness.

9 A. I don't recall exactly what I needed to tell
10 the archbishop because I -- I -- I don't
11 recall what he already knew when I began
12 talking with him.

13 BY MR. ANDERSON:

14 Q. Well, when you first talked to the archbishop,
15 what did you tell him?

16 A. I -- just confirming the fact that we had
17 reported something or were preparing to report
18 something to the police.

19 Q. Okay. Did he act surprised?

20 A. No. Because I think he was already aware of
21 what was unfolding.

22 Q. Okay. And who made him aware --

23 A. I don't --

24 Q. -- that it pertained to Wehmeyer?

25 A. I don't know that. I'm assuming that it was

1 Father Laird, but I don't know that for
2 certain.

3 Q. Okay. And you testified that he was already
4 aware because of the way he acted, so you
5 could tell that he already had been informed?

6 A. Yeah. At some point in time on the 20th, he
7 also had been reviewing, I assume, some
8 decrees drafted by Jennifer Haselberger.

9 Q. Were you aware that she was drafting decrees
10 for his signature?

11 A. (No response).

12 Q. That was a decree for investigation, right?

13 A. I don't know that I was aware of the decree
14 for investigation. There was a second decree
15 that was gonna impose restrictions on
16 Wehmeyer. I was aware of that decree.

17 Q. Did you make any notes of the conversation
18 with Archbishop Nienstedt?

19 A. No.

20 Q. How many conversations did you have at around
21 that time with him about the Wehmeyer matter
22 and whether it should be reported or had been
23 reported?

24 A. I -- I only recall one conversation with him
25 and --

1 Q. And where were you when you had that?

2 A. I believe it was in his office.

3 Q. And who else was there?

4 A. No one.

5 Q. And what was the date of that?

6 A. Again, I -- it was either the 20th or 21st, I
7 don't know which.

8 Q. Did he take notes?

9 A. Best of my knowledge, he would not have.

10 Q. And it was evident to you that he already had
11 been looking at or had already made a decree
12 concerning Wehmeyer?

13 A. Yes, that -- that he -- yes, it was my
14 assumption that he had already seen a decree
15 because it -- there was the conversation about
16 what we would need to do to remove the priest
17 and that my assumption was that he had already
18 talked with Father Laird more than likely,
19 too.

20 Q. And did you get any indication about him
21 having any other source of information about
22 Wehmeyer, other than from Father Laird?

23 A. No. I don't -- no. I wasn't aware that he
24 had information from anyone else.

25 Q. Okay. So --

1 A. He didn't impart any information to me. I
2 simply reported to him where we were at, it
3 was basically a status update on something
4 that someone had already made him aware of.

5 Q. Okay. And so tell us what you told him and
6 then what he told you.

7 A. Again, I told him that we -- we either were
8 preparing to report it to the police and were
9 waiting for an event to happen so that we
10 could do that or that we already reported it
11 to the police. And, again, it depends on
12 whether I talked to him on the 20th or 21st.

13 Q. What was the event you were waiting to have
14 happen?

15 A. Greta Sawyer was gonna have a meeting on the
16 afternoon of the 20th with the victim's
17 mother.

18 Q. Why would you and the archbishop wait for such
19 an interview with the victim and/or the mother
20 before a report would be made?

21 A. Because we had no non-privileged information
22 that would allow us to report until we got the
23 information from the mother to allow us to
24 report.

25 Q. The archbishop's not a lawyer, he doesn't have

1 a privilege?

2 A. Right. But -- but I was bringing the
3 information and it was in a -- it was in a
4 privileged fashion.

5 Q. Laird doesn't have a privilege, he's not a
6 lawyer, right?

7 A. Right -- oh, actually, he is a lawyer. I
8 don't know if he's admitted to practice, but
9 he's a trained lawyer.

10 Q. But he wasn't operating as a lawyer in his
11 capacity as the vicar general?

12 A. Correct.

13 Q. He was operating as the vicar general and a
14 mandated reporter, correct?

15 A. Yeah.

16 Q. Okay. Who made the decision to interview the
17 mother and the victim before the law
18 enforcement were to be notified?

19 A. I don't know that.

20 (Discussion out of the hearing of
21 the court reporter)

22 BY MR. ANDERSON:

23 Q. How did you find out about that decision?

24 A. The decision to interview the mom?

25 Q. And the victim, the kid.

1 A. Okay. I never learned that the kid was gonna
2 be interviewed.

3 Q. Then the mom.

4 A. I learned that Greta Sawyer was meeting with
5 the mom the afternoon of June 20th.

6 (Discussion out of the hearing of
7 the court reporter)

8 BY MR. ANDERSON:

9 Q. Have you seen any notes or recordings of Greta
10 Sawyer's interview?

11 A. I have not.

12 Q. Do you believe that she conducted such an
13 interview?

14 A. I know she met with the mother, that's all I
15 know.

16 Q. And --

17 A. Well, I -- excuse me. I know some of the
18 substance of that meeting, but all I know is
19 she met with the mother. I didn't -- was not
20 aware that she met with the child as well.

21 Q. What were you told about that?

22 A. About what?

23 Q. Greta Sawyer's meeting with the mother.

24 A. I just knew that Greta was meeting with the
25 mother.

1 Q. You said you knew something about the
2 substance of it. What did you know?

3 A. Oh, what substance did I learn?

4 Q. Yes.

5 A. That the mother was agreeable that we could
6 report Father Wehmeyer to the police as having
7 abused her child.

8 Q. What communications on June 19th and 20th and
9 at the time you talked to -- did you learn
10 that the mother had reported to John Paul
11 Erickson?

12 A. I can't answer that.

13 Q. Why not?

14 A. As I told you, I received a privileged
15 communication on the evening of the 19th. I
16 alerted Father McDonough and Jennifer
17 Haselberger. On the morning of the 20th, I
18 contacted Greta Sawyer and said, "Are you
19 meeting with somebody to talk about matters
20 that pertain to abuse?" And she said yes.
21 And I said, "We need to report that, and if
22 you can get the mother to allow us to report
23 it to the police, we can do that immediately."
24 And that's what Greta did, she met with the
25 mother. I didn't know the woman's identity.

1 But Greta got the green light for us to report
2 it, which permitted me, then, to go back to
3 Father -- or Deacon Vomastek and say, "Call
4 the police."

5 Q. And do you to this day know what exact -- what
6 Vomastek actually reported to law enforcement
7 the first time contact was made?

8 A. I know he left a voicemail message for
9 Commander Axel. I don't know that I know the
10 substance of that. And then I believe I've
11 seen an e-mail exchange later that evening
12 with -- with providing him with phone numbers
13 and stuff, but the -- the e-mail that I've
14 seen was redacted, so I don't know what
15 information was in that. I never -- I never
16 got a copy of that e-mail.

17 Q. You said you had five or more conversations
18 with Vomastek that day. Why so many?

19 A. No. I said two, three, four, five, I'm not
20 sure exactly how many. Well, first of all,
21 because of the privileged nature, I knew we
22 wanted to -- to find a means to report it
23 because I couldn't report it based upon the
24 privileged communication. And so when I
25 learned that Greta was meeting with the

1 mother, I thought, this is the way we can get
2 it reported if Greta can get the mom's
3 permission to report it. Because it was my
4 understanding that the mom was reporting it to
5 someone that, according to Greta, was in a
6 pastoral relationship. So I said, "Well, will
7 she allow us to report it?" And I also said,
8 "Secondly, the priest likely will be -- need
9 to be removed from the parish. Is that gonna
10 create some problems for her if we remove the
11 priest from the parish right away?"

12 Q. Are you certain that Greta Sawyer met with the
13 mother on June 20th, rather than June 19th?

14 A. Yes.

15 Q. What --

16 A. Now, wait.

17 Q. -- makes you certain of that?

18 A. Well, I'm not saying there was not a meeting
19 on the 19th, there could have been a meeting
20 on the 19th that I don't know about. But I
21 know that I talked with Greta Sawyer on the
22 morning of the 20th, she said that she had a
23 meeting, and I believe it was three o'clock
24 that afternoon. I then gave Greta the
25 instructions I just described about getting

1 mom's permission to report this to the police.
2 I later conferred with Greta Sawyer and she
3 confirmed that mom gave us the green light to
4 report it to the police, so I had Deacon
5 Vomastek call the police.

6 Q. How many meetings were there between Sawyer
7 and the mother?

8 A. I don't know that. I believe that Greta had
9 been talking to the mother earlier about a
10 matter that was unrelated -- well, I shouldn't
11 say unrelated -- that -- that involved some
12 problem between her children, some
13 interfamilial problem, and so I believe the
14 mom had been talking to Greta about that. But
15 I don't know what meetings Greta had prior to
16 the one on the 20th. I learned from Greta on
17 the morning of the 20th that she was meeting
18 with the mom that afternoon.

19 Q. Is Jennifer Haselberger a mandated reporter,
20 as you understand the law?

21 A. No.

22 Q. You're not a mandated reporter, as you
23 understand the law?

24 A. Correct.

25 Q. Kevin McDonough is a mandated reporter?

1 A. He can be a mandated reporter if he receives
2 information that's not privileged.

3 Q. Not received in the priest/penitent?

4 A. Right.

5 Q. Archbishop Nienstedt a mandated reporter?

6 A. With the same condition, if it's
7 non-privileged.

8 Q. Laird a mandated reporter?

9 A. Again, if it's non-privileged.

10 Q. Erickson a mandated reporter?

11 A. As a cleric, he would be a mandated reporter
12 if he received information in a non-privileged
13 setting.

14 MR. ANDERSON: Should we take a
15 lunch break?

16 MR. KINSELLA: Off the video record.

17 (Recess taken)

18 MR. KINSELLA: Back on the video
19 record, 1:30 p.m.

20 BY MR. ANDERSON:

21 Q. All right. Back on Wehmeyer. And when I
22 looked at some documents, there were some
23 e-mails between you and Jennifer Haselberger
24 on June 19th, right?

25 A. Well, one can say that about just about every

1 day with Jennifer Haselberger.

2 Q. Concerning the Wehmeyer situation.

3 A. Well, again, as I described, on the evening of
4 the 19th, I believe I sent her an e-mail that
5 said we had a possible charter offense by an
6 active priest and we'd have to report it and
7 remove the priest.

8 Q. And then on the 20th is when you said that you
9 had the conversations with Vomastek, right?

10 A. Correct.

11 Q. And on the 20th, why don't you walk us through
12 what you did on the 20th responsive to the
13 Wehmeyer situation and what needed to be done?

14 A. Okay. On the 20th, I talked with Greta Sawyer
15 and learned that she was gonna be talking with
16 the mother. And so my feeling was, is that
17 that would allow us to report it to the police
18 if the mother was willing to the allow that.
19 So I urged Greta to get the mother's consent
20 to that.

21 Q. What made you think it hadn't already been
22 given by the mother? The mother reports --

23 A. I -- I had --

24 Q. -- that she had made a report?

25 A. I had no information about that. I mean, I've

1 -- I've seen subsequent news reports saying
2 that she was advised to report it to the
3 police, but I had no information suggesting it
4 had been reported to the police with this
5 exception. When I talked with Greta on the
6 20th, the impression I got was that the mom
7 had been talking with Greta or somebody, I
8 don't know for certain who, about one child
9 being involved with another child. And I -- I
10 understood that Greta had helped the mom do
11 something about that, report it to
12 Neighborhood House or some agency that was
13 gonna help them. So Greta kind of gave me
14 some quick background, which wasn't
15 necessarily relevant to what I was dealing
16 with, but apparently that was part of the
17 trigger that resulted in mom learning that her
18 son had been abused by Wehmeyer.

19 So when Greta gave me the
20 information about the earlier incident and
21 that she was gonna be talking with mom, and I
22 said, "Well, is mom gonna identify some abuse?
23 I want to get mom's permission to report that
24 and also talk to mom saying, 'We're gonna have
25 to move Father Wehmeyer out of the parish more

1 than likely, and will that create some
2 problems for her?'"

3 Q. Just a moment. Greta already knew there had
4 been abuse before she interviewed the mom?

5 A. I don't know. No. She -- she knew that --
6 she knew there was something between the two
7 children, but she hadn't talked to the mom, to
8 my -- the way Greta was telling me, about any
9 abuse by Wehmeyer, so --

10 Q. Okay. So --

11 A. So I asked Greta, then, you know, "When are
12 you meeting?" "This afternoon." So I told
13 Greta what I wanted her to get from the mom.
14 I said, "Let me know once you've had that
15 meeting so we can report it to the police if
16 mom's willing to allow us to do that." So --
17 so following that, then, I talked with Deacon
18 Vomastek because I wanted to make sure that we
19 got it reported to somebody in the police
20 department who would do something with it,
21 rather than just clear it without taking any
22 action. So I -- and Deacon Vomastek at one
23 point in time had been on the sex crimes unit.
24 I said, "So who can we get this to?" So he
25 said, "You know, I've got the guy." I said,

1 "Can you give him a heads-up that we might be
2 reporting this?" So my understanding was,
3 Deacon Vomastek that -- late that morning was
4 gonna call somebody to let them know that if
5 we got the green light, we were gonna get them
6 that information as soon as we could.

7 Q. So did you tell Vomastek that you had a
8 mandatory report of sexual abuse --

9 A. No.

10 Q. -- that needed to be made?

11 A. No. Because at that point in time there was
12 no mandatory report of abuse that needed to be
13 made. Everything was privileged.

14 So, then, that afternoon, after
15 Greta met with the mom and gave us the green
16 light to report it, I, then, went back to
17 Vomastek late that afternoon, right before
18 five o'clock, and said, "Make the call.
19 Here's the information. Make the call." And
20 he made the call. And then it's my
21 understanding, although --

22 Q. And he reported what?

23 A. I -- I don't know. He left information for
24 this -- I think it was Commander Axel. I
25 don't know exactly what information he

1 provided to them.

2 Q. So is it your belief that an actual report of
3 abuse identifying the offender and the
4 necessary information had been made on that
5 date by Vomastek?

6 A. Well, he reported the information, whatever he
7 had that I had given him and that -- he -- he
8 was already familiar, apparently, with the
9 earlier situation involving the children. I
10 don't know how Deacon Vomastek was aware of
11 it.

12 Q. I'm talking about the abuse of the kid now.

13 A. I know that. But it -- but it's a necessary
14 prerequisite to that because, apparently,
15 sometime earlier, Vomastek had been in touch
16 with the same watch commander about the
17 involvement of the two children. He had
18 talked to the commander about that in some
19 fashion.

20 Q. Okay. Listen to this question now, listen to
21 this question. Is it your belief that
22 Vomastek made the report, as required by law,
23 on the 20th of the --

24 A. Is it -- is it my belief that he made that
25 report?

1 Q. Yes.

2 A. Yes.

3 Q. And what information did he report on that
4 date that makes you believe it was made?

5 A. I -- I believe he provided the name of the
6 priest and the name of the mother.

7 Q. On the 20th?

8 A. Yes.

9 Q. And he got that information from whom?

10 A. And that's what I was just trying to explain.

11 Q. No. No. Who did he get that information --

12 A. Well, part of it he got from me, but part of
13 it he already knew.

14 Q. Then my question is, what did you tell
15 Vomastek?

16 A. That -- that the mother was claiming that
17 Father Wehmeyer had abused one of her
18 children.

19 Q. And where did you get that information?

20 A. Greta.

21 Q. You had been involved with the Montero
22 situation before and you were aware that in
23 the case of Montero, McDonough had
24 specifically talked to the police about
25 contacting the offender, Montero, before the

1 police investigation? Were you aware of that?

2 A. I'm not sure I'm following the question.

3 Q. Okay. Never mind.

4 A. Okay.

5 Q. Going back to the 20th, then --

6 A. As far as I know, Father McDonough never
7 talked to Montero before he talked to the
8 police.

9 Q. Well, we'll go back there.

10 A. Okay.

11 Q. I digressed for a minute.

12 Okay. So Vomastek makes the report,
13 as you understand it, based on information you
14 gave him and what was the other source of the
15 information that you based it on?

16 A. He had some knowledge from someplace before
17 about the two kids, so he knew the -- he knew
18 the mother, he knew who she was or something.

19 Q. I'm just trying to get from you, besides you
20 being the source of the information, who else
21 was the source of the information upon which
22 Vomastek is now making a report you believe
23 was made on the 20th?

24 A. Well, as to the allegation against Wehmeyer,
25 he was only getting that part of it from me.

1 But he was already aware of something
2 involving that family and the two children. I
3 don't know where he got that.

4 Q. Okay. So as far as you know as to Wehmeyer,
5 he had no other information source, other than
6 you?

7 A. Correct.

8 Q. So what happened on the 20th then?

9 A. He made the call and I, then, informed --

10 Q. Were you there when he made the call?

11 A. Yeah, but I wasn't -- I wasn't necessarily
12 listening to him. I was around his office.

13 Q. Did he actually tell somebody that he had to
14 make a report as mandated and that Wehmeyer
15 was the offender and he had credible
16 information?

17 A. As I said, I had asked him to give the police
18 a heads-up earlier that we'd be making this
19 report. So when he called, I think he said,
20 "I'm calling about the matter we discussed
21 before, I left a message for you before,"
22 something along those lines.

23 Q. So did he actually talk to the investigator?

24 A. I don't know that. He may have been leaving a
25 voicemail message, I'm not certain of that. I

1 think he had the commander's cell phone
2 number.

3 Q. And you were present when he was --

4 A. Well, I was around, but I wasn't just standing
5 there listening to every word he was saying.

6 Q. Who else was engaged in the decision and the
7 conversation that he had with the police,
8 besides yourself?

9 A. Just me.

10 Q. Okay.

11 A. I mean, I had informed Father Laird that we
12 would be making a report as soon as we got the
13 green light from Greta.

14 Q. And had Haselberger and McDonough been told
15 also this was going to be happening?

16 A. They knew that as soon as we got the okay from
17 Greta that the mom would -- had given her the
18 okay, that we would be reporting it.

19 Q. Were you in direct contact with Haselberger at
20 that time?

21 A. Yeah, her office is just right near mine.

22 Q. Was she urging a report be made before it was
23 actually made?

24 A. At some point she questioned when we needed to
25 make a report or by -- if there was a

1 deadline. And -- and I said something about
2 -- I can't remember how I responded to her.
3 She -- she asked --

4 Q. You said, "It can wait"?

5 A. You what?

6 Q. You said, "It can wait"?

7 A. Well, I think she was asking whether we needed
8 to make it on the 19th or the 20th and I said,
9 "Tomorrow is fine," or something like that.

10 Q. So on the 20th, any other interactions
11 pertaining to Vomastek making the report and
12 your involvement in it?

13 A. Once I knew Vomastek had made the report, I
14 think I then sent an e-mail, probably just to
15 Father McDonough, although it's possible that
16 I could have copied Jennifer Haselberger as
17 well. But I informed Father McDonough that
18 the matter had been reported to the police and
19 that we would need to remove Father Wehmeyer
20 the following day and would he be available to
21 do that. I mean, there was other interactions
22 during that day because we were meeting with
23 Father Laird and letting him know what we were
24 doing, and Jennifer, I think, was preparing
25 some decrees, so there was other things

1 happening that day as I was waiting for Greta
2 to have this meeting to -- to allow us to
3 report it.

4 Q. Were you the one making decisions on behalf of
5 the archbishop in connection with this?

6 A. Well, I can't say that I was making the
7 decisions. I was informing Father Laird
8 beginning on the evening of the 19th what I
9 was doing and we got no indication from him
10 that he wanted me to do anything different
11 than what I was doing.

12 Q. You put a litigation hold on this matter on
13 June 21st, didn't you?

14 A. I don't know that. I'm not certain that. Is
15 there a document or some source for that?

16 Q. Yes.

17 A. What?

18 Q. There's a document that says, "Andy is going
19 to issue a litigation hold for Father Curtis
20 Wehmeyer personnel file."

21 A. Is going to?

22 Q. Yes.

23 A. So that means I hadn't yet done it?

24 Q. That's right.

25 A. Okay.

1 Q. Why would you be putting a litigation hold?
2 Why would you be doing that? It says, "Cannot
3 be destroyed." Why would you be issuing an
4 order not to destroy documents?

5 A. We would, first of all, never destroy
6 documents.

7 Q. Then why would you be issuing an order not to
8 do it if you --

9 A. Okay. Counsel, I haven't seen an order that I
10 issued saying there's a litigation hold and
11 don't destroy documents, I haven't seen that.
12 So if you can show me that, I'll review it.
13 But I don't recall issuing any kind of
14 litigation hold regarding Father Wehmeyer at
15 any point in time. Now, litigation holds are
16 all --

17 Q. Did you tell anybody that?

18 A. I don't -- I don't recall that, no. In fact,
19 Jennifer Haselberger is the one that typically
20 would discuss the -- our need to do litigation
21 holds. So if there's an e-mail or something
22 to our archivist to --

23 Q. I'm just asking --

24 A. Yeah, I don't -- I don't recall. I don't
25 think I put a litigation hold on anything.

1 Q. Do you deny issuing a litigation hold?

2 A. Since I don't recall it, I'm -- I'm gonna deny
3 it, yes, until presented with a document to
4 the contrary, then I'll re-evaluate my
5 response.

6 Q. Do you recall issuing any instruction to not
7 destroy documents?

8 A. No. We didn't have to issue such an
9 instruction because we don't destroy
10 documents.

11 Q. Do you recall suggesting that the matter be
12 kept quiet?

13 A. No. I would not have. We were gonna remove
14 -- we were gonna remove the pastor and
15 announce it to the parish and that's exactly
16 what we did. I went out with Father Laird,
17 met with the trustees, we removed the pastor
18 and made an announcement that weekend.

19 Q. McDonough went out and met with Wehmeyer
20 before the law -- the police officers could do
21 that. Why was that permitted?

22 A. Jennifer issued -- or had -- Jennifer
23 Haselberger drafted the decrees and -- and
24 indicated that they needed to be served on
25 Father Wehmeyer when he was removed.

1 Q. Did you, knowing what you know as the
2 chancellor and having worked in this area as
3 long as you had, did you say, "No. Don't go
4 out there and interview Wehmeyer and tip him
5 off before the police can get out there and
6 interview him, seize the evidence and do what
7 they had to do"?

8 A. He didn't go out there to interview him. He
9 went out there to serve a decree removing him
10 as pastor.

11 Q. Well, that's what you call it, but he went out
12 there and interviewed him, didn't he?

13 A. No. I don't think he did. That isn't --
14 wasn't his testimony in his deposition, the
15 way I read it.

16 Q. He said he and Vomastek went out there and
17 talked to him for an hour and told him the
18 police were coming.

19 A. Well, they served the --

20 MR. HAWS: He testified to what he
21 testified. I don't think he said he talked
22 with him for an hour.

23 A. They served the decree on him and apparently
24 seized his gun and a computer.

25 BY MR. ANDERSON:

1 Q. So why -- why was it -- why was he directed to
2 have seized his gun before the police got
3 there?

4 A. I don't know anything about why they obtained
5 the gun from him.

6 Q. Why was he directed to have seized the
7 computer before the police could get there?

8 A. And, again, I think Jennifer Haselberger was
9 the one that said, "Get his computer."

10 Q. The --

11 A. So you'll have to ask her that.

12 Q. Well, there's some records that indicate the
13 archbishop had directed Father McDonough to
14 get the gun; and what do you know about that?

15 A. Nothing. I -- I had no knowledge of any
16 directives from the archbishop about Wehmeyer
17 through that entire period of time.

18 (Discussion out of the hearing of
19 the court reporter)

20 BY MR. ANDERSON:

21 Q. Well, you had a meeting with Jennifer
22 Haselberger, Kevin McDonough, yourself, I
23 think -- who else was in attendance at that
24 meeting before McDonough went out there?

25 A. There was a variety of us meeting all during

1 the 20th and again on the 21st regarding these
2 matters. I don't think Father McDonough was
3 there on the 20th, but he was there on the
4 21st because he's the one that went with
5 Father Vomastek -- excuse me, Deacon Vomastek
6 to serve the decree on Father Wehmeyer.

7 Q. Right. So he indicated that there was a
8 meeting, you were in attendance.

9 A. On the 21st?

10 Q. Well, there was a meeting in attendance before
11 he went out there. And did you, knowing that
12 he was going to go out there for whatever
13 purpose before the police could, say, "Hey,
14 don't do that? That's getting in the way of a
15 police investigation"?

16 A. Just the opposite, counsel. We had informed
17 the police that we were gonna remove him and
18 it's my understanding that Deacon Vomastek
19 called the police as they were going out
20 there. So the police were given a heads-up
21 beginning the evening of the 20th and again
22 the 21st.

23 Q. So what did Vomastek tell the police as they
24 were going out there?

25 A. Well, I don't know exactly what he told them

1 because I wasn't there, but he --

2 Q. Then why --

3 A. -- he called the police.

4 Q. Why do you make such an assertion that you
5 weren't there and you can't testify to that?

6 A. Because he told me, he called the police on
7 his way to serve the decree on Wehmeyer. And
8 there's also an e-mail trail from the evening
9 of the 20th where Vomastek is e-mailing back
10 and forth with Commander Axel and in one of
11 those e-mails, Vomastek's telling Axel, "We're
12 removing the priest tomorrow."

13 Q. You're pretty much in charge of, on behalf of
14 the archbishop, in dealing with a lot of this
15 and you've been around this stuff a long time.
16 As far as you're concerned, it's appropriate
17 for the archdiocese personnel to have
18 interviewed the victim and/or the victim's
19 mother before the police did, is that your
20 view?

21 A. It's -- it was not my -- it was not my
22 knowledge that the victim was going to be
23 interviewed. I had no knowledge whatsoever
24 that the victim was gonna be interviewed.

25 Q. What about the victim's mother, who --

1 A. And, again, the -- my understanding was all we
2 were gonna get from her was the permission to
3 report it to the police.

4 Q. You also did know that McDonough and
5 Vomastek -- Vomastek is a deacon working for
6 the archdiocese, correct?

7 A. Correct.

8 Q. Okay -- were going to see Wehmeyer before the
9 police could, correct?

10 A. I wouldn't agree that before the police could.
11 The police had had that information for over
12 12 hours.

13 Q. You know that they had not interviewed
14 Wehmeyer before McDonough went there, though?

15 A. I didn't know that, but that was what --
16 again, Vomastek was gonna call them on the way
17 out there.

18 Q. Well, you're just telling me that they had
19 already had it for 12 hours, now you're saying
20 that Vomastek called them on the way there.

21 A. But he had -- he had also communicated with
22 them the evening before. But what I'm saying
23 is, the -- the matter was reported to the
24 police approximately five p.m. -- p.m. on the
25 evening of the 20th. Now it's sometime mid-

1 morning on the 21st. They were going out
2 there, Vomastek again calls the police and
3 says, "We're going out there."

4 Q. Are you telling the archbishop what's going
5 on?

6 A. No. Not all those details.

7 Q. What are telling him?

8 A. Well, I simply, as I said earlier, informed
9 him, gave him a status update at some point in
10 time.

11 Q. Did he give the go-ahead to allow McDonough to
12 go out there and interview and serve the
13 decree before the police could?

14 A. I don't know that he --

15 MR. HAWS: Objection, misstates
16 testimony.

17 A. I don't know that he knew what -- how -- what
18 the sequence would be. He obviously had
19 signed the two decrees prior to that time
20 because one was a decree removing Wehmeyer and
21 the other one was a decree imposing certain
22 limitations.

23 BY MR. ANDERSON:

24 Q. Well, one was a decree ordering an internal
25 investigation?

1 A. Correct, yeah. Yeah.

2 Q. That means internal, archdiocese, right?

3 A. Well --

4 Q. To be shared with the archdiocese only, right?

5 A. No.

6 Q. That's what internal is, inside, right?

7 A. He had appointed -- for canonical purposes, he
8 had appointed Father Laird to be the
9 investigator. That -- that's not just for the
10 inside. That's misstating what the canonical
11 steps are that are involved in something like
12 this. And, again, Jennifer Haselberger is the
13 one that prepared the decree pursuant to canon
14 law. She's the canon law advisor, not me.

15 Q. Well, you don't share it with anybody from the
16 outside, it's internal, isn't it, it's inside?

17 A. Is what internal?

18 Q. The investigation.

19 A. Well, we didn't know what was gonna be
20 investigated at that point because we didn't
21 know what the police were gonna do.

22 Q. So why was the gun taken?

23 A. I don't know. It wasn't -- I wasn't involved
24 in the question about the gun.

25 Q. When they came back, they brought the gun back

1 and the computer and turned it over to you,
2 didn't they?

3 A. Not the gun. The computer they did -- well,
4 actually, they put 'em both in the vault.

5 Q. And you had something to do with what, though?

6 A. Something to do with what?

7 Q. The gun and the computer.

8 A. I never saw the gun. I never had anything to
9 do with the gun. They put -- they put that in
10 the -- in the vault along with the computer,
11 and a day or two later, Officer Gillette came
12 to get the computer, yeah, to get the
13 computer.

14 Q. Why did they take the computer?

15 A. I don't know. Jennifer Haselberger apparently
16 instructed him to get his computer.

17 Q. And why do you put that on her?

18 A. Because it wasn't my recommendation.

19 Q. Well, then why do you pick her out? Why do
20 you select her as the one who made that
21 decision?

22 A. Well, she was part of the discussion and she
23 said, "Get his computer."

24 Q. Did you hear her say that?

25 A. Yeah.

1 Q. To whom?

2 A. McDonough and Vomastek.

3 Q. When?

4 A. Well, it had to be on the 21st.

5 Q. Where was that?

6 A. Well, it was somewhere within the Chancery
7 offices. I mean, our discussions were
8 somewhat fluid between my office, Father
9 Laird's office and Jennifer Haselberger's
10 office.

11 Q. Who was present when you made the assertion
12 that she ordered the computer be seized by
13 Kevin McDonough?

14 A. I don't know where we were.

15 Q. Who else was present when you claim she made
16 that order?

17 A. I don't know who else was present. I know I
18 didn't make the instruction and I know that
19 they -- they took the computer and she said,
20 "Get the computer."

21 Q. When the computer was taken by McDonough and
22 brought back to the Chancery, it was turned
23 over to you in your chain of custody, so to
24 speak, right?

25 A. It was put in the vault. I was aware that the

1 gun and the computer were put in the vault.

2 Q. Did you look at the computer?

3 A. No. The only thing I looked at the computer
4 was when Officer Gillette came to pick it up,
5 I think I prepared a receipt that probably
6 identified it as an X brand computer, maybe
7 serial number, model number, something like
8 that. That's -- I -- I didn't open the
9 computer up, I didn't turn it on. I believe
10 it was a laptop computer. I certainly didn't
11 look at anything on the computer. I
12 physically looked at that -- a closed laptop
13 computer, turned it over to the police
14 officer.

15 Q. When you heard, as you claim, Jennifer
16 Haselberger order the computer be seized, as a
17 lawyer and as the chancellor, didn't you say,
18 "Hey, wait a minute. Wait a minute. That's
19 not our job"?

20 A. No, I didn't.

21 Q. Why not?

22 A. I didn't.

23 Q. Why didn't you see it that way?

24 A. It didn't even dawn on me. She was saying,
25 "Get his computer."

1 (Discussion out of the hearing of
2 the court reporter)

3 BY MR. ANDERSON:

4 Q. When did you tell the police that you had the
5 computer?

6 A. I don't know how the police learned that we
7 had the computer. All I know is that within a
8 day or two, they came to get the computer.

9 Q. In fact, it was not volunteered by you that
10 you had used it and taken possession of the
11 computer to police, correct?

12 A. Well, I certainly didn't call the police, no.

13 Q. Why not? Were you concealing it?

14 A. No. Not at all.

15 (Discussion out of the hearing of
16 the court reporter)

17 BY MR. ANDERSON:

18 Q. Did you at the time you gave them the
19 computer, did you give them Wehmeyer's file?

20 A. No.

21 Q. Why not?

22 A. They didn't -- nobody asked for Wehmeyer's
23 file.

24 Q. Well, you knew that there was information in
25 Wehmeyer's file that could be helpful to a

1 police investigation?

2 A. I didn't necessarily know that, no.

3 Q. And you reviewed that file?

4 A. Well, I had some three years ago earlier, yes.

5 Q. Didn't you think that would be valuable to the
6 police in investigating a crime that had
7 already been reported against a minor by
8 Wehmeyer?

9 A. I was prepared to re -- to cooperate with the
10 police and provide them whatever information
11 they want, but they weren't -- they weren't
12 asking me for a file, they weren't asking me
13 for anything other than the computer.

14 Q. The fact is, you or no officials from the
15 archdiocese has ever turned over a file to the
16 police or volunteered to do so, correct?

17 A. Oh, well, I just think I told you earlier
18 today we turned a file over involving Father
19 Wenthe to the police.

20 Q. Yeah, that's because the police demanded it.

21 A. Well, they came and sought the -- I don't know
22 that "demanded" is the right word. They came
23 in and asked for us to provide them with
24 Wenthe's file.

25 Q. What did you know about Wehmeyer's camper and

1 how he had used it to access the kids?

2 A. I knew nothing about that prior to his arrest.
3 I -- I knew he had a camper on the 20th
4 somehow, and I don't know how, I learned that
5 he was out of town. I think that somebody had
6 communicated with the parish and learned that
7 Father Wehmeyer was outta town, he had his
8 camper with him and would not be returning
9 until the 21st. That's all I knew about a
10 camper.

11 Q. There's on June 21st an e-mail or that
12 Haselberger sends an e-mail to you and there's
13 a -- it says, "How did it go?" Do you recall
14 that?

15 A. What time is the e-mail?

16 Q. 8:33 p.m.

17 A. I -- then I -- I -- it would be pure
18 speculation. I'd have to maybe look at the
19 context or my response, but I'm guessing she
20 was asking about the removal of Wehmeyer.

21 Q. It says, "I assume the trailer was gone."

22 A. I don't know.

23 Q. Question mark, question mark. What do you
24 know about that?

25 A. Nothing.

1 Q. When you're sending e-mails to her at that
2 time, is that from your office in the
3 Chancery?

4 A. At what time?

5 Q. 8:33, June 21st.

6 A. I thought this was an e-mail from her to me.

7 Q. Okay. When you're receiving it then.

8 A. Oh, it could be either in the office or on my
9 phone.

10 Q. So you're receiving them on your smart phone
11 or at the office?

12 A. Correct.

13 Q. Do you have another computer at your house or
14 any other computer that you use at your office
15 besides the one in your office?

16 A. Not for purposes -- well, okay. Let me
17 explain that perhaps. I have a computer in my
18 office -- at the time, if you're talking about
19 June of 2012, I have a computer in my office,
20 I had an iPhone that would sync with that
21 computer, so any message that was sent to my
22 e-mail address would be on both, and any
23 message that I sent out from either one would
24 be on both. I also had a computer at home
25 that would allow me to go in remotely and

1 access my office and my e-mail account, but
2 those e-mails would again stay on that
3 archdiocesan account. It wouldn't be on a
4 personal e-mail account in my home computer,
5 if that makes sense.

6 Q. Yup, it does. On January 29th of 2014, it
7 appears that Joe Kueppers is forwarding an
8 e-mail chain concerning this stuff kind of
9 after the fact. Do you know -- setting forth
10 a timeline. Do you know anything about that?

11 A. Setting forth a timeline?

12 Q. Yeah, of various events that we've been
13 talking about.

14 A. Hum. I know that there was some question at
15 some point in time about the police
16 investigation and what the timeline was in
17 terms of our reporting it to the police.

18 Q. Had the police interviewed you concerning your
19 knowledge of these events?

20 A. No. They've never asked.

21 Q. Have you ever volunteered to speak with them,
22 knowing that there's an ongoing investigation
23 that you may have knowledge of?

24 A. I haven't.

25 Q. Why not?

1 A. I just -- I assume if they wanted to speak
2 with me, they'd speak with me.

3 Q. Don't you want them to know what happened and
4 whether or not crimes occurred here --

5 A. Well --

6 Q. -- be helpful with the investigation?

7 A. The priest -- the priest pled guilty, so it
8 made the question of his guilt or innocence
9 moot, so at that point in time I don't
10 understand.

11 Q. Well, you're aware there's an investigation of
12 the archdiocesan officials and their role in
13 the Wehmeyer matter as well as others, are you
14 not?

15 A. Right. And I'm also aware of the fact that
16 apparently the police or the -- the county
17 attorney chose not to prosecute that.

18 Q. Well, are you also aware that the county
19 attorney reopened that investigation?

20 A. Well, I've seen reports of that. I -- I don't
21 know that for certain.

22 Q. Well, you're basing it on reports they closed
23 it, so you must --

24 A. Well, I saw -- I saw the county attorney on
25 television saying he closed it, but I didn't

1 see him on the television saying he reopened
2 it.

3 Q. So how do you know he reopened it then?

4 A. Because -- only from what I've read in the
5 newspaper, I've learned that it's been
6 reopened.

7 Q. So it's from the media you rely on in both
8 instances, right, that they closed it --

9 A. Yes.

10 Q. -- and reopened it?

11 A. One was the official county attorney saying we
12 closed it, the other one was a news report
13 saying the county attorney's office reopened
14 it.

15 Q. Mr. Eisenzimmer, why haven't you chosen to
16 bring the information in your knowledge, in
17 your possession to law enforcement? Why have
18 you made that choice?

19 A. Well, I don't know that I have made that
20 choice. I just simply haven't done it.

21 Q. Don't you think you're possessed of
22 information that could be helpful to an
23 investigation?

24 A. Not that's -- not that's non-privileged.

25 Q. Are you concerned that you could be implicated

1 in a failure to report and an obstruction of
2 justice or an interference with law
3 enforcement?

4 A. I'm not. I've told you here today what
5 happened. We reported it.

6 Q. The archbishop compiled a task force, given
7 public pressure and the like, recently and I
8 think Father Witt was kind of the point on
9 that and had a number of people interviewed.
10 Did you get interviewed for that task force?

11 A. I did. The report reflects that.

12 Q. Okay. And who interviewed you?

13 A. Brian Short.

14 Q. And on one occasion or more than one?

15 A. Single occasion.

16 Q. And how long have you known Brian?

17 A. Well, I think I met him years ago, but I don't
18 know him. He might have -- I'm not -- yeah, I
19 think he mediated a case I was involved in
20 once years and years ago.

21 Q. We've referred to the Wehmeyer file. I want
22 to ask you some questions about the file
23 protocols, as you understand them to be, and
24 how they are to be stored.

25 Is it correct to say that there is

1 an upstairs file, which is on the main level
2 of the Chancery, called a -- it's also known
3 as a vault with a lock on it?

4 A. Okay. First of all, there is a vault with a
5 lock on it.

6 Q. Okay.

7 A. Okay.

8 Q. And where is that?

9 A. Well, it's in the Chancery complexes, back by
10 some of the staff cubicles.

11 Q. And who has access to that combination?

12 A. The combination?

13 Q. Or the lock --

14 A. The two --

15 Q. -- to unlock it.

16 A. The two chancellors, the people in the records
17 and archives office and I suspect that if they
18 needed to get it, the archbishop and vicar
19 general would have the combination, too.

20 Q. And that file -- what files are contained in
21 that vault?

22 A. Just about all of the active files of the
23 archdiocese. So if you want me to give you a
24 narrative of those.

25 Q. No. I just need to know, that would be the

1 personnel files of the priests, right?

2 A. That would be one of the categories of files,
3 but not the only category of files in the
4 vault.

5 Q. There's also a file cabinet in the vicar
6 general's office, is there not?

7 A. At what point in time are you talking about?

8 Q. Well, at the point in time in which you're
9 chancellor, let's go with that one.

10 A. Well, there was some files, not in the vicar
11 general's office, but in his -- his
12 administrative assistant's office.

13 Q. Judy Delaney?

14 A. Judy Delaney. It was actually a shared -- a
15 -- one cubicle that had two work stations in
16 it, and it was in that cubicle. It's not an
17 office, it's a cubicle. And that was true
18 during the period of time that Father
19 McDonough was the vicar general.

20 Q. And that contained complaints of inappropriate
21 conduct --

22 A. It contained --

23 Q. -- against priests?

24 A. Excuse me, I'm sorry, I interrupted you.

25 Q. That contained complaints of inappropriate

1 conduct against priests?

2 A. Not -- well, in -- some of 'em would have,
3 sure.

4 Q. And who had access to that?

5 A. Well, the same people that would have access
6 to the vault files had access to those files
7 as well.

8 Q. Chancellors, archbishop, yourself; who else?

9 A. Archive and record staff, director of clergy
10 services, vicar general, archbishop, if
11 anybody from the comprehensive assignment
12 board would need it, they would have access to
13 that.

14 Q. Is there also an archive in the basement that
15 contains a file pertaining to dead priests and
16 priests no longer active in the archdiocese?

17 A. Correct. As I said, the vault contains active
18 files. Once the priest is inactive through
19 death or if they're not a priest of this
20 diocese and they've moved or if they're an
21 order priest that's moved, the files then are
22 marked "inactive" and moved to the storage in
23 the basement.

24 Q. And then there's also a secret archive in the
25 basement, which is a small room with a safe in

1 it?

2 A. It's a large room with a small safe.

3 Q. Okay. And what's contained in that?

4 A. Nothing.

5 Q. Are there other files that pertain to or have
6 information pertaining to potential sexual
7 misconduct by priests, specifically sexual
8 abuse of minors that we haven't identified by
9 location or description?

10 A. Well, let me see if I can clarify and help you
11 out there. Each priest -- there's a file on
12 each priest. Now, where that file is depends
13 on what's going on. So they're either in the
14 vault or for some period of time some priests
15 that had any kind of disciplinary issue, and
16 it could be sexual abuse of minors, it could
17 be sexual involvement with consenting adults,
18 it could be chemical dependency, whatever the
19 issue was, some of those were kept in that
20 area I described that was in Judy Delaney's
21 work station. But any of those files, if they
22 became inactive through death or something,
23 then they would be moved downstairs because it
24 would then be more of archival status as
25 opposed to an active file. Does that help?

1 Q. I think so. Is there any other -- other
2 locations where files pertaining to priests
3 would be located who are either accused or
4 engaged in sexual misconduct?

5 A. Well, just temporarily if -- if -- if, for
6 example, this afternoon as I was working as
7 chancellor, I received some report and I was
8 preparing a memorandum, that might be kept in
9 my office for a period of time till I could
10 move it into the priest file. But,
11 eventually, everything should end up in the
12 priest file was the process.

13 Q. Does Archbishop Nienstedt keep any of his own
14 files?

15 A. Not to my knowledge.

16 Q. Did Archbishop Flynn?

17 A. Not to my knowledge -- well, Archbishop Flynn
18 did keep files on his own personal affairs.

19 Q. But I'm talking about in a sexual abuse --

20 A. Oh, not at all. Not at all.

21 MR. KINSELLA: Excuse me, off the
22 video record to change the media.

23 (Recess taken)

24 MR. KINSELLA: Back on the video
25 record at 2:59 p.m.

1 A. Let me also clarify, Mr. Anderson, that within
2 the Chancery there would also be some other
3 miscellaneous files that pertain to priests,
4 for example, there would be a file relating to
5 their pension; there might be a file that was
6 in the office of the director of clergy
7 services for some reason for some period. But
8 anything relating to disciplinary matters
9 should end up in the priest file.

10 BY MR. ANDERSON:

11 Q. You made a reference to the comprehensive
12 assignment board and what is that and what
13 files do they keep or where are they?

14 A. Again, I don't know necessarily what files
15 they would keep, but if -- if -- if something
16 would exist that they would produce, it would
17 end up in the priest file, I presume. The
18 comprehensive assignment board was a group of
19 people, mostly priests, I believe, who would
20 be available to the archbishop to advise him
21 on assignments of priests. So sometimes the
22 archbishop would utilize this group to help
23 him make a decision relative to assignment of
24 a priest. I was never in their meetings, so I
25 don't know, you know, what kind of things they

1 produced.

2 Q. What about the priest personnel board, how was
3 that different from the comprehensive
4 assignment board?

5 A. Really, just a difference in terminology. I
6 think earlier they referred to the clergy
7 assignment board, later on it was
8 comprehensive assignment board, same -- same
9 group.

10 Q. Okay. That's what it sounded like. Okay.

11 Have you ever seen minutes or
12 records from the priest personnel board
13 formerly, now the comprehensive assignment
14 board?

15 A. I have not, no. I had no involvement with
16 that process whatsoever. As I indicated
17 earlier, my counsel or -- or advice relative
18 to assignment of priests was never sought in
19 any way, shape or form in my work as
20 chancellor.

21 Q. Well, you'll recall just from the Adamson
22 cases alone, the bishops used to use the
23 priest personnel board --

24 A. Right.

25 Q. -- for, you know, making assignments and

1 getting guidance and they kept minutes and
2 records like that. Do you know if that --

3 A. And they may well have minutes, I -- I've
4 never seen any that I can recall.

5 Q. Okay.

6 A. Typically what would happen is, when the
7 archbishop was ready to make an assignment,
8 Jennifer Haselberger, during the time she was
9 there, or before her Sister Dominica Brennan,
10 would prepare, in essence, a decree, simply
11 saying that, you know, this priest is being
12 assigned there, but that wasn't a -- those
13 weren't minutes. That's the only documents
14 that I saw -- ever saw that came as a result
15 of that process, but the fact that there was a
16 decree doesn't necessarily mean that they went
17 through the CAB, as we called it, C-A-B.

18 Q. Did you ever become aware of discussions
19 between Archbishop Nienstedt and Father
20 McDonough about not making certain -- or
21 creating certain records so that they could
22 avoid being discovered?

23 A. The only time I've ever seen that was in the
24 archbishop's deposition testimony. I have no
25 idea where that's coming from. There's never

1 been a discussion of that nature. And it
2 should be rather obvious from the files that
3 people put everything in writing and never
4 destroyed it.

5 Q. Well, you and I would disagree on that because
6 that's not obvious, but, you know, that's not
7 a question.

8 A. Yeah, I -- I never heard any discussion like
9 that whatsoever. Both of them had been
10 involved in litigation, Kevin McDonough here
11 and I think he described it in his deposition;
12 Archbishop Nienstedt was involved in
13 litigation, both here as well as in New Ulm,
14 they knew that documents were discoverable, so
15 I -- I -- I'm astonished that the archbishop
16 described the conversation like that with
17 Father McDonough.

18 Q. Well, knowing that they'd be discoverable and
19 knowing that there's certain things you don't
20 want discovered, you wouldn't put it in
21 writing if that was your intent, right?

22 A. Well, I -- I suppose. I'm not aware of
23 anybody who ever was hesitant to put something
24 in writing.

25 Q. Father McDonough referred to disciplinary

1 files in his deposition. Do you know what
2 he's referring to, disciplinary files?

3 A. I -- I -- I don't. Again, sometimes when you
4 were dealing with something you might, you
5 know, have a, you know, a working file. I
6 mean, some of the priest files were rather
7 voluminous. So if he were working on
8 something, you might start, you know, keeping
9 this document, keep 'em writing that memo or
10 whatever and keep 'em in there till they got
11 into the priest file. But there was not a
12 file known as a disciplinary file that were
13 kept separate from the priest file. I think
14 what he's simply referring to is a priest file
15 that was kept in a separate cabinet because it
16 was a priest involved in some disciplinary
17 issue. So I think he's referring there to the
18 files of Judy Delaney that were in Judy
19 Delaney's office.

20 Q. There's also reference to "restricted files."

21 A. Same files, those are the files that --
22 restricted was a common term. Those files
23 were the ones that were kept in Judy Delaney's
24 work space. So if you went into the vault and
25 you looked for a file on Father X, if his file

1 was one of the restricted disciplinary files,
2 there would be a notation in the vault saying
3 that that file is in the vicar general's
4 office. So if you needed that file and you
5 went into the vault and it wasn't there, there
6 would be a notation telling you it's in the
7 other -- it's in the other set of files. So
8 then you just -- you would go back to a
9 different area and get it.

10 Q. Any files kept by victims assistance ministry?

11 A. I -- I don't know what files she kept. You'd
12 have to ask Greta Sawyer.

13 Q. Okay. When a victim or victim's family member
14 calls in to make a report of sexual abuse to
15 the archdiocese, is it correct to say that
16 over time and during your tenure as
17 chancellor, there were certain designated
18 people to take those reports or complaints --

19 A. Usually --

20 Q. -- is that correct?

21 A. Yes. I mean, they could call the -- Greta
22 Sawyer's office.

23 Q. Well, if they just called the archdiocese,
24 they're usually directed --

25 A. Yeah.

1 Q. -- there's, you know, a practice?

2 A. Yeah, and normally that would -- those calls
3 would come either to me or to Father -- or to
4 the vicar general.

5 Q. Yeah, that's what I was getting at.

6 A. But some people would -- would deliberately
7 call the advocacy office because our website
8 has, you know, "Here's the advocacy phone
9 number." So they might call Greta directly
10 without going through the vicar general or the
11 chancellor's office.

12 Q. So you don't know if Greta keeps separate
13 files or that office keeps separate files?

14 A. I don't know what she kept.

15 Q. Okay.

16 A. And at some point in time there was also files
17 if -- if they were paying bills for a victim,
18 like counseling bills, accounting would have
19 to keep some record of that in some fashion.
20 I -- what -- how they were doing that, I don't
21 know.

22 (Discussion out of the hearing of
23 the court reporter)

24 BY MR. ANDERSON:

25 Q. There is some indication that there are files

1 kept pertaining to individual victims
2 somewhere by the archdiocese. Do you know
3 anything about that?

4 A. Those -- if they're -- they existed, I think
5 Greta Sawyer would have then, I don't know. I
6 -- I didn't maintain files on victims.

7 Q. Is, to your knowledge, anybody in the
8 archdiocese?

9 A. No. Not to my knowledge.

10 Q. There is --

11 A. Again, with the exception of these financial
12 things that would need to get paid.

13 Q. There's some indication somewhere that there
14 are some lists that have been prepared of
15 victims of abuse. Are you aware of such a
16 compilation --

17 A. No.

18 Q. -- or its existence?

19 A. No.

20 Q. The list of the accused offenders or those
21 that ultimately were deemed credibly accused,
22 when, to your knowledge, was such a list first
23 compiled by the archdiocese?

24 A. I don't know. I -- I'm not sure a list ever
25 has been prepared, quite frankly.

1 Q. Well, you're aware that reports were made
2 under the Charter for the Protection of
3 Children in 2002 that lists were going to be
4 compiled and that reports were made to John
5 Jay College of credibly accused offenders,
6 correct?

7 A. I know that information was going to be -- I
8 -- I've learned that information was submitted
9 to the John Jay study, but as far as I know,
10 it wasn't a list of names. It was numbers of
11 credibly accused priests or -- and I don't
12 think credibly accused was the word that was
13 actually used by John Jay.

14 Q. Well, in order to compile the numbers, you
15 have to compile the names, correct?

16 A. I don't know how they did it. I wasn't there
17 at the time.

18 Q. So you had no role in that --

19 A. No -- well --

20 Q. -- or knowledge of it, is that what you're
21 saying?

22 A. -- I -- I take that I back, I take that back.
23 I know that when they were compiling that, I
24 received a call from Bill Fallon, I was still
25 in my law firm at the time, and Bill asked me

1 for some information about matters that I had
2 handled as their outside legal counsel and
3 that's all I can really tell you about it.

4 Q. Has there been a practice where certain files
5 get moved over to your former law office, now,
6 you know, Tom's office, that, in anticipation
7 of litigation, they're housed there as opposed
8 to in the archdiocese?

9 A. Only for the limited purpose, for example, of
10 copying them so they could be produced in
11 litigation. He would -- his office would get
12 files, make the necessary copies, Bates stamp
13 them or whatever else, and then send those
14 files back to us. So there was times, and,
15 again, it would depend on the lawsuit, so to
16 give you a prime example of that, you sued
17 out, I think, about 12 to 14 claims on behalf
18 of victims of Thomas Stitz. So we would have
19 directed our archives and records people to
20 get all of the Stitz material together and
21 send that over to Tom's office for, again,
22 photocopying, Bates stamping and then send
23 those back to us at some point in time.

24 Q. In 1998, the Pioneer Press reported and quoted
25 Father McDonough as saying there are 15

1 priests have been credibly accused of
2 molesting minors in the archdiocese within the
3 last 50 years. Do you know on what he based
4 that public statement?

5 A. This is in 1998?

6 Q. Yes.

7 A. I don't have a clue.

8 Q. He also stated publicly and to the reporter as
9 reported that this number is slightly higher
10 than the national average. Do you know on
11 what he based such a statement or anything
12 about that?

13 A. I -- I do not.

14 MR. HAWS: And, counsel, you went
15 over that with Father McDonough and you are
16 taking much of that out of context. The
17 report says what it says and this witness
18 obviously didn't have anything to do with it,
19 so I'm not sure its purpose here.

20 A. And if I might follow up to your earlier
21 question, counsel.

22 BY MR. ANDERSON:

23 Q. Well, follow up to which question?

24 A. Well, about lists and whether lists existed.
25 I'm also aware that -- and I think it was

1 largely in connection with the John Doe 76C
2 case.

3 Q. Yes.

4 A. That in responding to discovery, it was
5 discovery sought relative to the priests that
6 were identified related to the John Jay, so I
7 know I was involved with outside legal counsel
8 to produce that information as part of that
9 litigation.

10 Q. And in the John Doe 76C, which became publicly
11 the case of Jim Keenan versus the Archdiocese
12 of St. Paul and Minneapolis and the Diocese of
13 Winona involving Adamson, you did become
14 involved in the compilation of the list for
15 purposes of that litigation, is that what
16 you're saying?

17 A. Well, I mean, I -- I mean, we were preparing
18 that in anticipation of litigation. I was
19 mostly a bystander to that because the John
20 Jay list had been pre -- prepared before I was
21 at the Chancery, so that was really Father
22 McDonough that was working mostly with Tom
23 Wieser on that.

24 Q. Have you ever seen a list of priests accused,
25 just priests accused?

1 A. Just as part of the discovery and whatever has
2 been produced here recently pursuant to Judge
3 Van de North's orders.

4 Q. But before recently, had you ever seen a list?

5 A. No.

6 Q. As chancellor?

7 A. I mean, I -- I had some sense of disciplinary
8 files that were back in the vicar general's
9 office, but those, again, were a -- a wide
10 array of problems, could be financial, could
11 be chemical dependency, whatever, so that
12 didn't necessarily identify them as sexual
13 abusers. And some names, of course, I would
14 recognize, so if Gil Gustafson's file was
15 there, for example, and I can't remember
16 whether it was or not, I would recognize,
17 well, yes, Gil was at one point in time
18 accused -- or multiple times accused of abuse.
19 But other files were there and I wouldn't
20 recognize who they were or what they were
21 there for.

22 Q. Well, you quite obviously know that various
23 archbishops take over the archdiocese and have
24 worked with and for Archbishop Roach and Flynn
25 and now Nienstedt. So, in your experience,

1 hasn't anybody ever sat down to prepare a list
2 for anyone of the incoming archbishops newly
3 appointed to this geographical area of those
4 priests who have been accused, so that that
5 incoming archbishop, be it Nienstedt, Flynn,
6 can know who it is they have to be aware of?

7 A. The only -- the only experience I had was when
8 Archbishop Nienstedt came in and I'm not aware
9 whether anybody prepared a list for him. I
10 never saw a list.

11 Q. And nobody asked you, as far as you know,
12 asked you to do that or, as far as you know,
13 Archbishop Nienstedt never asked that it be
14 done?

15 A. Nobody ever asked me to prepare any kind of
16 list. And I'm not aware of Archbishop
17 Nienstedt asking anybody for such a list.

18 Q. Did Archbishop Nienstedt ever ask you, given
19 your history, both as the chancellor and your
20 history with this archdiocese, to brief him
21 fully on who the priests were that had been
22 accused of offenses and who may pose a risk of
23 harm?

24 A. No. He never asked me for that information.

25 Q. Do you know if he asked anybody?

1 A. Well, I -- I -- I'm aware that in his
2 deposition testimony he --

3 Q. Well, now I don't want you to go to his
4 deposition. I'm talking about your personal
5 experience now.

6 A. No.

7 Q. So let's get the question --

8 A. Okay.

9 Q. -- so we get on the same page.

10 A. Okay. I just want to clarify that. He said I
11 was in such a meeting with him and I was not.

12 Q. Okay. Well, I was going to go there but I
13 wanted to find out first.

14 A. No. I'm not aware of he ever asking anybody
15 to brief him.

16 Q. Let me ask the question and then I'll let you
17 answer it.

18 A. Okay.

19 Q. My question is this, to your knowledge, has
20 any official of the archdiocese, including
21 yourself, at Archbishop Nienstedt's request or
22 for any reason, ever sat down with him and
23 identified for him who the potential risks
24 are, including those accused of sexual abuse
25 of minors, including those credibly accused of

1 sexual abuse of minors or anything like that,
2 to your knowledge?

3 MR. HAWS: Object to the form, it's
4 multiple, involves all kinds of people, other
5 than Mr. Eisenzimmer. I think he can testify
6 to his knowledge.

7 A. Let me see if I can respond to it in a
8 responsive manner. I'm not aware of anyone
9 doing that with him and I'm not aware of him
10 ever requesting that somebody do that with
11 him.

12 BY MR. ANDERSON:

13 Q. And then the next question is, because I think
14 you answered it, but I want to get it in
15 question and answer form, next question is,
16 did Archbishop Nienstedt ever sit down with
17 you shortly after his installation here and
18 ask you to identify for him the potential
19 risks in the archdiocese of priests sexually
20 abusing kids and who had a history or anything
21 like that?

22 A. No.

23 (Discussion out of the hearing of
24 the court reporter)

25 BY MR. ANDERSON:

1 Q. What is Archbishop Nienstedt's management
2 style? Is he a -- he's been described by a
3 number of folks as very hands-on, micro
4 manager-type. How would you have described --
5 how do you describe his management style of
6 the archdiocese?

7 A. I wouldn't describe him as a micro manager nor
8 would I necessarily describe him as hands-on.
9 In his view, he is the archdiocese. You
10 worked with him largely by written memorandum.
11 If he wanted some information, he would write
12 you a memorandum, you would be expected to
13 respond in memorandum.

14 At least with my work, he largely
15 let me do my work in an unfettered fashion,
16 but he certainly had high expectations for the
17 work I would do for him and that I would keep
18 him briefed. And it was also clear that
19 Archbishop Nienstedt was a guy that you didn't
20 want to hear him say, "Nobody ever told me
21 that," or, "You never told me that." So I
22 would always try to keep him abreast of
23 matters of particular importance that he was
24 seeking from me.

25 Q. Is sexual abuse by the clerics in the

1 archdiocese one of those matters that he
2 communicated to be of particular importance?

3 A. He never identified particular subject matter
4 in that regard. That was really just my
5 working observation of the man.

6 Q. After litigation involving Adamson, it
7 appeared to me that Archbishop Roach
8 implemented a lot of changes in policy,
9 protocol and practice and made some attempts
10 to do a better job. Would you -- is that a
11 fair characterization?

12 A. Well, I -- no. I don't think it's a fair
13 characterization. The way I think I would
14 describe that is, is during the period of time
15 that you're talking about, I think that the
16 church was undergoing a fair amount of
17 litigation and they were trying to use both
18 the litigation as well as other matters
19 involving sexual abuse to learn from to
20 develop better policies, better responses and
21 better best practices. And so I think a lot
22 of that stuff began when Archbishop Roach was
23 -- was archbishop, especially under the
24 direction of Father O'Connell and somewhat
25 Kevin McDonough.

1 Q. Did Archbishop Flynn make any improvements in
2 practice or protocol when it pertains to
3 sexual abuse and safety that Archbishop Roach
4 hadn't already?

5 A. Well, yes. I think Archbishop Flynn had been
6 in Lafayette, Louisiana, which had its own
7 experiences with sexual abuse litigation. He
8 also had been the chairman of the bishops' ad
9 hoc committee, which became the committee on
10 child abuse protection --

11 Q. I know he had titles, but what did he do --

12 A. Well, I think that --

13 Q. -- to improve it?

14 A. -- ultimately, during his tenure, the Charter
15 for Protection of Children and Young People
16 was passed so that resulted in doing some work
17 in terms of changing our policies and how we
18 handled abuse. And, of course, the charter
19 adopted the so-called zero tolerance policy,
20 and so those kinds of things were implemented
21 with Archbishop Flynn. Then his tenure also
22 saw the introduction of the Office of Child
23 and Youth Protection efforts, which was
24 educational and training and -- and the like.

25 Q. Archbishop Nienstedt was obviously quite

1 public about an accusation that had been made
2 against him that got reported and investigated
3 and that was reported in the newspapers, and
4 you're aware of that?

5 A. From what I read in the newspaper, yeah.

6 Q. Had you, before you read -- before that got
7 reported in the newspapers, had you any
8 information -- received any information from
9 any source that that complaint or that report
10 had been made years -- and known years before?

11 A. The complaint against Archbishop Nienstedt?

12 Q. Yes.

13 A. No. Not at all.

14 Q. Were you, yourself, involved in any of the
15 discussions about whether or not to release
16 the names of the priests accused of sexual
17 abuse of minors? Because that was the subject
18 of a lot of --

19 MR. HAWS: At what point in time?

20 MR. ANDERSON: Any time.

21 A. Yes, but those would be covered by
22 attorney/client privilege.

23 BY MR. ANDERSON:

24 Q. Anything in your capacity as chancellor?

25 A. Well, in order -- in order to really

1 articulate the privilege, during the John Doe
2 76C there was some discussion, including some
3 discussion in mediation, about that question
4 and I would have advised the archbishop at
5 that time on the legal status of some of those
6 issues, so let's leave it at that.

7 Q. So if I ask you questions about that, is it
8 your claim that it's privileged?

9 A. Yes, because it's not only within the context
10 of litigation, but it was legal advice.

11 (Discussion out of the hearing of
12 the court reporter)

13 BY MR. ANDERSON:

14 Q. Why didn't the Archdiocese of St. Paul and
15 Minneapolis release the list of credibly
16 accused priests until we forced it through
17 public pressure or litigation?

18 A. I think that's a question you'll have to
19 direct to the archbishop. It's -- it's his
20 decision what he wants to do with that
21 information.

22 (Discussion out of the hearing of
23 the court reporter)

24 BY MR. ANDERSON:

25 Q. How many conversations did you have with the

1 archbishop about whether that -- such a list
2 should be released?

3 A. I don't know that I can tell you that. I
4 don't know. More than one.

5 Q. And what time frame are we talking about?

6 A. Well, I think the first conversation would
7 have begun whenever we were litigating the
8 John Doe 76C case and thereafter up until the
9 time I retired as chancellor.

10 Q. And that list when it was first released in
11 the Keenan case was released to us, but under
12 a protective order by the archdiocese that was
13 sealed until more recently. Have any of the
14 officials of the archdiocese, to your
15 knowledge, advised Archbishop Nienstedt
16 against the position that he took in
17 connection with that list?

18 MR. HAWS: Just for the record, that
19 list was sealed pursuant to order of the
20 court, but go ahead.

21 MR. ANDERSON: Yeah, there was a
22 protective order from the archdiocese.

23 MR. HAWS: Signed by the court.

24 MR. ANDERSON: Yeah. Agreed.

25 A. I'm assuming you're not asking me what my

1 advice to the archdiocese was. I'm not aware
2 of anybody else within the archdiocese asking
3 him to do something different than what he
4 did. Is that responsive?

5 BY MR. ANDERSON:

6 Q. I think so.

7 (Discussion out of the hearing of
8 the court reporter)

9 BY MR. ANDERSON:

10 Q. To your knowledge was there anybody in the
11 archdiocese, including McDonough or other
12 officials, that were urging it not to be
13 released?

14 A. I'm -- I'm not recalling anybody who expressed
15 an opinion one way or the other. Any
16 discussions that were had reflected the fact
17 that many of the names on that list were
18 already out there in some fashion because of
19 prior publicity on bishop accountability, et
20 cetera. Other names weren't necessarily known
21 through those means, but there had been some
22 limited disclosure in various communities,
23 especially parish communities, that so-and-so
24 had abused and he was here this period of
25 time. So I think a lotta people were trying

1 to suggest that much of this information was
2 already out there in some way, shape or form.

3 Q. Well, are you aware of any effort by the
4 archdiocese to put that information out there
5 unless it was under pressure from us or as a
6 result of litigation?

7 A. Well, yes, as I say, if -- if -- if there was
8 an instance where there was some abuse, Father
9 McDonough or someone else might go out to a
10 parish and talk to the parish community, or
11 they might have the pastor speak to certain
12 people within the parish community to let them
13 know what the situation was or they might
14 talk to a parish trustees and do some form of
15 disclosure pursuant to, you know, a clergy
16 review board recommendation or somehow. So
17 there was some of those kinds of efforts that
18 were undertaken at various times by people.

19 Q. You're on the board of the religious council,
20 correct?

21 A. Well, I have attended the religious --
22 Minnesota Religious Council meetings. I don't
23 know that there's a -- I don't even know if
24 there's a board on -- I don't think I'm on the
25 board.

1 Q. And the religious council lobbied heavily
2 against statute of limitations reform, did it
3 not?

4 A. There was lobbying efforts made with respect
5 to statutory changes to the -- to the statute
6 of limitations involving sexual abuse. I
7 wouldn't say against it. They sought to have
8 a voice in how that statute was crafted over
9 the years.

10 Q. And the archdiocese largely funded that
11 effort, did it not?

12 A. I don't know how it was funded. It's my
13 understanding all of the denominations that
14 were involved helped fund it.

15 Q. The archbishop has been funding extra payments
16 to various offenders, including Kapoun and
17 others. What do you know about that?

18 A. Well --

19 Q. The practice of --

20 A. -- I know some and I know some things about
21 that.

22 Q. Why are offenders getting more money than
23 others?

24 A. I don't know that they're getting more money.
25 They -- canon law requires certain support

1 obligations financially to priests, even those
2 who have committed egregious acts, and so as
3 far as I know, at various times they've gotten
4 assistance to help them in some way, shape or
5 form.

6 Q. How many offenders are getting assistance?

7 A. I have no idea what that --

8 Q. How many offenders have been getting that kind
9 of assistance, would you estimate, while you
10 you've been chancellor -- while you were
11 chancellor?

12 A. I don't know. I -- I was not involved in
13 that, although I became aware of some of them.

14 Q. When did you become aware of the fact that
15 they were getting such assistance and getting
16 regular payments?

17 A. Well, I -- that would vary depending on who
18 the individual was. Some of them I learned
19 about things being paid to them, others I
20 didn't learn it until matters involving an
21 accountant who was embezzling came up.

22 Jennifer Haselberger --

23 Q. That's Scott Domeier?

24 A. Yeah. And Jennifer Haselberger also raised
25 some questions about that about the same time

1 based upon, I think, largely the information
2 that was coming out.

3 Q. Scott Domeier raised some objections and some
4 concerns about these payments being made to
5 offenders, did he not?

6 A. Not to my knowledge.

7 Q. To your knowledge, did he raise them to the
8 archbishop --

9 A. No.

10 Q. -- or any other official?

11 A. Not that I'm aware of. That never -- nobody
12 ever told me that.

13 Q. He was the one that was required to -- the
14 archbishop is the one that approves those
15 payments, but he was the one that would
16 ultimately do the financial accounting for it,
17 correct?

18 A. First of all, I don't know that the archbishop
19 approved those. I -- I don't have knowledge
20 of that.

21 Q. Well, who would have authority to approve such
22 payments if it wasn't the archbishop?

23 A. I don't know. Perhaps the vicar general, but
24 that would be up to the archbishop and the
25 vicar general what authority he would have in

1 that regard. But, also, and I'm not -- I'm
2 not positive that Mr. Domeier was the only
3 person that was authorized to cut those checks
4 or make those payments. My guess is, is
5 certainly if there was a regular payment, they
6 would put that in the accounting system and
7 that would be done proforma automatically
8 every month or whatever periodic payment was
9 made.

10 Q. The account is 1-515 under which payments to
11 those who have been accused or determined to
12 have abused children, but they're out of
13 ministry, but receiving payments. What do you
14 know about that account and who authorized
15 those payments?

16 A. Well, that's a mischaracterization. I think
17 the account was for, you know, whatever
18 payments were authorized. I don't know that
19 it was specifically limited to that purpose.
20 It was priests' support. That could come in a
21 variety of ways. But I don't really know
22 anything about it other than it -- that --
23 every time you expensed something at the
24 archdiocese, it had to have an account number,
25 you couldn't get a check issued without an

1 account number, so it could be, you know, kept
2 track of by the accountants. So 1-505 (sic)
3 was the account, that's what they've charged
4 against.

5 Q. What do you know about priests being put on
6 disability and qualifying for monthly payments
7 under the diagnosis of pedophilia and that
8 practice in the archdiocese?

9 A. I'm -- when you say "disability," what are you
10 referring to?

11 Q. Disability for pedophilia and receiving
12 disability payments by an internal insurance
13 company in the archdiocese.

14 A. I -- there's no such person that's ever
15 received money from a disability insurance
16 program within the archdiocese.

17 Q. Gil Gustafson?

18 A. No, he didn't.

19 Q. Where did he get the money that he gets paid?

20 A. Under his pension plan.

21 Q. Where did he get the money before he qualified
22 for pension?

23 A. I don't know.

24 Q. Are you aware that there's a disability policy
25 that's been written for him and the diagnosis

1 of that disability is pedophilia?

2 A. That's incorrect.

3 (Discussion out of the hearing of
4 the court reporter)

5 BY MR. ANDERSON:

6 Q. Why was Gustafson put on the disability?

7 A. He qualified for disability under the pension
8 plan because of the determination by
9 Archbishop Flynn that he was disabled.

10 Q. And the disability is pedophilia?

11 A. I -- archbishop has the discretion to decide
12 if a priest is disabled. I don't know what
13 thought process he went through to make that
14 determination, but he decided Gil Gustafson
15 was disabled under the pension plan.

16 Q. And the disability diagnosis was pedophilia,
17 was it not?

18 A. No. I don't know that. I -- I don't know.
19 Again, the sole discretion to make that
20 decision rested with Archbishop Flynn and he
21 made that decision. On what basis he made it
22 is up -- you'll have to ask him.

23 Q. What role did you have in the quinquennial
24 report?

25 A. None.

1 Q. What --

2 A. And I might add, thank God.

3 Q. Who is responsible for the compilation of that
4 data and the reporting as particularly
5 relating to sexual abuse?

6 A. The only person I know that had overall
7 responsibility for that report was Jennifer
8 Haselberger.

9 Q. And there's quinquennial reports required
10 before Haselberger's tenure as chancellor of
11 canon affairs. Who would have been
12 responsible prior to that?

13 A. I don't know. I wasn't there long enough to
14 have been there for the previous one. There
15 was a delay there, too, because of change in
16 the -- because they changed popes, they went
17 from John Paul II to Benedict. I think that
18 the time period got extended beyond the normal
19 five years, so there was only one report
20 prepared all the time I was chancellor, and
21 Jennifer Haselberger had the overall
22 responsibility for compiling that.

23 Q. In 2001, the Vatican required under the SST a
24 reporting being made directly to them,
25 correct?

1 A. I believe that's correct.

2 Q. What role did you have in that at all?

3 A. None.

4 Q. And what knowledge do you have of what priests
5 were reported, then, to the Vatican as having
6 abused minors?

7 A. I think there was some communication involving
8 Freddy Montero and -- but I wouldn't have done
9 that, Jennifer Haselberger did that. During
10 her tenure, she would have done any of those.
11 And I think that eventually there was
12 something done with Father Wehmeyer. Yes, I
13 believe there was something communicated to
14 the CDF involving Wehmeyer after he pled
15 guilty.

16 Q. When you talk about Freddy Montero, that's
17 Francisco Montero that came here from Ecuador
18 as an extern priest, correct?

19 A. Correct.

20 Q. And he lived with McDonough, correct?

21 A. I'm told that. I didn't know that of my own
22 knowledge.

23 Q. Do you know what check was done on him before
24 he was allowed to work as a priest in this
25 archdiocese?

1 A. I don't. He was there when I came as
2 chancellor, I believe. And if he came there
3 after I came as chancellor, I -- that wasn't
4 my responsibility or function. That was
5 normally the chancellor for canonical affairs
6 that would do those kind of things on extern
7 or religious priests.

8 Q. You were aware that Montero was arrested,
9 correct?

10 A. Well, I know he was taken into custody.
11 Whether he was actually arrested, I'm not
12 sure.

13 Q. Well, I think custody and arrest -- let's use
14 them synonymously.

15 A. Yeah, okay. Yes, I became aware of that.

16 Q. Did you discuss that fact with Montero before
17 he was taken into custody or arrested?

18 A. No. I never talked to him before then.

19 Q. You met with him after that, did you not?

20 A. We met with him and his attorney at some point
21 in time.

22 Q. Yes. Did you ask him if he had committed
23 sexual abuse against that child or any others?

24 A. We were -- the purpose of that meeting was not
25 to interrogate him or ask questions or

1 investigate. It was simply to get us all
2 understanding what was happening with him
3 and --

4 Q. Are you aware that he --

5 A. And I might also add, most of that meeting was
6 conducted in Spanish, which I don't
7 understand.

8 (Discussion out of the hearing of
9 the court reporter)

10 BY MR. ANDERSON:

11 Q. Who paid for Montero's lawyer?

12 A. I don't know.

13 Q. Doesn't the archdiocese have a practice of
14 making arrangements to pay Paul Engh or
15 whoever was representing the accused
16 offender --

17 A. There have been times where --

18 Q. -- and then paybacks?

19 A. There have been times where we have, in
20 essence, lent priests money so they would have
21 legal counsel, yeah. I don't know if that was
22 done with Montero or not.

23 Q. Those debts traditionally get forgiven after
24 the case is over, don't they?

25 A. Not that I'm aware of.

1 Q. Are you aware of any that have paid them back?

2 A. I know that there are a number of them still
3 paying it back.

4 Q. Can you give names?

5 A. I'd prefer not to.

6 Q. Well, we're not here if anybody -- nobody
7 prefers to be here today.

8 A. Yeah. I'd have to even think about it. I'm
9 trying to remember who Paul Engh's represented
10 over the year. Yeah, as I sit here, I'm not
11 recalling any of the names, but --

12 Q. Bishop Pates was in on that meeting with Paul
13 Engh and yourself. Why was Bishop Pates there
14 and then what was the purpose of that meeting?

15 A. I don't recall Bishop Pates being at that
16 meeting. I don't think he was.

17 Q. In a memorandum concerning Montero there is an
18 expression that the police stated they
19 appreciated the archdiocese didn't contact
20 Montero before the police could.

21 A. Hum.

22 Q. Do you remember that exchange between the
23 police and Kevin McDonough?

24 A. I don't.

25 Q. Were you aware generally the police do not

1 want to have accused offenders contacted by
2 their employers before the police can
3 investigate -- can interview them?

4 A. Sure. And that's why we normally try to
5 coordinate whatever we're doing. In fact, I
6 think our policies reflect that same
7 consideration, our written policies.

8 Q. Well, that was adhered to in the case of
9 Montero. Why wasn't it adhered to in the case
10 of Wehmeyer?

11 A. I think it was. I think we -- as I've
12 testified here repeatedly today, Deacon
13 Vomastek communicated with the police, telling
14 them exactly what we were doing to give them
15 the opportunity to say, "Don't do that," if
16 that was their desire.

17 Q. You make that assertion, but you weren't in
18 that meeting?

19 A. Right. I'm only relying on what Deacon
20 Vomastek told me, so if you want to review it
21 with him, I -- I would welcome you to do that
22 because that's -- that's what he told me.

23 Q. So that's the totality of your knowledge and
24 the beliefs and opinions you just expressed
25 are based on what Deacon Vomastek told you?

1 A. Right, plus the e-mail that I've referred to
2 earlier that he -- there's a copy of an e-mail
3 he sent to Commander Axel reporting things and
4 part of that e-mail says, "We're gonna be
5 removing him tomorrow."

6 Q. Gil Gustafson abused a number of children and
7 was convicted, at least as it pertained to
8 one. You're aware of that, correct?

9 A. I know that he was convicted. I know that
10 there's been allegations of abuse of others.
11 I -- to the best of my knowledge, Gil
12 Gustafson has denied some of those, so I don't
13 know which ones he's admitted to and which
14 ones he's not to.

15 Q. Well, you were aware he was working at the
16 Chancery after having been accused and
17 convicted?

18 A. I'm not aware of that. I never saw him
19 working up there. Certainly not during the
20 period of time I worked there.

21 Q. You've made reference to the testimony of
22 Archbishop Nienstedt and that of McDonough, so
23 evidently you reviewed their depositions?

24 A. I read -- I read both of those, yes.

25 Q. What else did you review in preparation for

1 today?

2 A. I looked at the Minnesota statutes 626.556,
3 Minnesota statutes 595.02, I looked at the
4 e-mails that I mentioned from Deacon Vomastek
5 to the police officer, and I think that
6 included some e-mails back to Deacon Vomastek.
7 And there was a few other documents, I think,
8 on the Minnesota Public Radio website that I
9 looked at, but I can't recall what those were.

10 MR. ANDERSON: It's a little before
11 three. Why don't we take a short break?

12 THE WITNESS: Okay.

13 MR. KINSELLA: Off the video record.

14 (Recess taken)

15 MR. KINSELLA: Back on the video
16 record 3:01 p.m.

17 A. Mr. Anderson, before you ask your next
18 question, let me supplement my last answer. I
19 think your question was what did I review, I
20 mean, prior to this deposition or anticipation
21 of this deposition. I think there was two
22 other things that I now recalled reviewing.
23 One was simply a calendar of June 2012, and
24 not a calendar with calendar entries, just
25 simply a calendar with the dates and those

1 kind of things.

2 The other thing I reviewed was, I
3 think in about 2010, the Vatican or the Holy
4 Father issued a -- what they call a motu
5 proprio regarding SST, and so I think I took a
6 class in that at some point in time. As I sit
7 here I can't even remember why I looked at
8 that, quite frankly.

9 BY MR. ANDERSON:

10 Q. That was my question: Why did you look at
11 that?

12 A. Yeah, I don't know. And I'm glad you said SST
13 earlier because I don't -- I can't speak the
14 Latin in words, sacramentois (ph) or
15 something.

16 Q. Well, don't bother.

17 Okay. You're aware that in 2010,
18 the archdiocese, after prevailing on the
19 statute of limitations in the Supreme Court on
20 John Doe 76C or the case of Jim Keenan versus
21 the archdiocese and Diocese of Winona, that
22 the archdiocese taxed costs against him, I
23 think in the amount of \$64,000. Did you
24 advise the archbishop to do that?

25 A. Yes.

1 Q. Why?

2 A. Well, we -- well, again, I think the tax --
3 the costs were taxed prior to the Supreme
4 Court decision, I believe.

5 Q. No. It was after.

6 MR. FINNEGAN: It was before.

7 Q. Okay. It was before.

8 A. And, obviously, it was a -- it was a
9 litigation strategy. I mean, if he has the
10 risks of paying us \$64,000 in costs, maybe
11 he'll decide he doesn't want to appeal the
12 case, so it was purely litigation strategy.

13 Q. Do you think also think it sends a pretty
14 powerful message to the victims out there how
15 this archdiocese is going to want to treat
16 them if they have the courage to stand up
17 against them, doesn't it?

18 A. Well, I don't know. That wasn't my
19 consideration.

20 Q. In any case, it was the archbishop's decision
21 to make, even though you may have advised
22 it --

23 A. I don't know --

24 Q. -- it was his decision?

25 A. I don't know that he decided. I believe I

1 probably would have communicated with the then
2 vicar general, whoever that was. I don't know
3 that I -- I never -- I don't think I talked to
4 the archbishop directly about the question.

5 Q. So who, then, is responsible for having made
6 that decision to tax that young man for having
7 stood up against the archdiocese and then lost
8 on the statute of limitations?

9 A. I think I'll fully accept responsibility for
10 that because it was my recommendation.

11 (Discussion out of the hearing of
12 the court reporter)

13 BY MR. ANDERSON:

14 Q. You did discuss that with the archbishop, I
15 trust?

16 A. No. I don't believe I did. I don't recall
17 that I did.

18 Q. After that was done and made public, did the
19 archbishop ever express disapproval of that
20 decision or make any effort to ameliorate the
21 harm done by it?

22 A. Well, no one had required Mr. Keenan to pay
23 any money, so certainly from a financial side,
24 purely financial side, there was no harm done.

25 Q. They were going to, though?

1 A. No. I don't think that's true.

2 Q. Well, okay. But my question is --

3 A. I mean, ultimately, we did not tax costs and
4 probably could have, I think.

5 Q. Costs were taxed, but then for other legal
6 reasons, it became non-feasible because he was
7 filing a bankruptcy.

8 A. Well, whatever.

9 Q. My question to you, though, is, did the
10 archbishop ever express anything to you about
11 the fact that, "Well, this isn't the right
12 thing. This is wrong to win a case on the
13 statute of limitations and then go after the
14 victim the way the archdiocese did"?

15 A. The archbishop never expressed anything one
16 way or the other to me about that.

17 Q. Do you think it is wrong?

18 A. No.

19 Q. There's been a lot of public discourse by the
20 archdiocese for years about zero tolerance and
21 caring for the wellness and the safety of the
22 survivors. Do you think that that taxation of
23 that survivor in that instance sends a message
24 that the archdiocese really cares about the
25 survivor and for their wellness?

1 A. Well, I certainly think that some people can
2 get confused about it and some people have
3 chose to mischaracterize the nature of that.
4 But your client had ample opportunity to
5 resolve that case in a fashion that could have
6 settled it and avoided that and he chose not
7 to take advantage of that, as you know.

8 Q. His only requirement for settlement of that
9 case was releasing the list, that was his
10 first requirement and there was no economic
11 requirement in front of that release of that
12 list. And he said to this archdiocese and
13 every representative at every point in that
14 case, "You release the list and I'll talk
15 settlement." And the archdiocese and the
16 archbishop refused to release that list,
17 correct?

18 A. Well, I think, unfortunately, we're getting
19 into some testimony about settlement
20 discussions.

21 Q. You started it. Go ahead.

22 A. Yeah, well --

23 Q. That's correct, isn't it?

24 A. It was clear that that was his first item of
25 demand was the list.

1 Q. Yes.

2 A. Yeah.

3 Q. And any other discussion, it was
4 preconditioned on release of the list and the
5 names, correct?

6 A. Well, he certainly wouldn't discuss any other
7 issues without the list.

8 Q. Okay. Is there a written document retention
9 policy in the archdiocese?

10 A. Like file retention?

11 Q. Yeah, file retention.

12 A. I believe that the archivist or record keeper
13 in the office has a rc -- record retention
14 policy.

15 Q. And what is it? I mean, when it comes to,
16 let's say, a priest who might have offended in
17 the files, what would --

18 A. Those files are never destroyed, never
19 disposed of in any way, shape or form.
20 They're kept forever, everything in the
21 priest's file.

22 Q. Even if they were found to have not actually
23 offended and were exonerated internally?

24 A. Yes, everything is kept in the file, nothing's
25 thrown away. Even a greeting card that the

1 priest might send to the archbishop could find
2 its way in that file forever.

3 Q. When did Jon Shelley first come on to your
4 radar?

5 A. Well, I had known Father Shelley for years
6 back when I was in my old law firm.

7 Q. In 2004, when Joe Ternus, T-e-r-n-u-s, turned
8 the computer over to Father McDonough, what,
9 if any, was your involvement at that stage?

10 A. None.

11 Q. And at that time Richard Setter was hired by
12 the archdiocese. Did you have any involvement
13 in that decision?

14 A. I did not.

15 Q. And Setter retained a forensic assessor to do
16 a forensic computer assessment of the images,
17 which were thought to have been potentially
18 child pornography. Did you see that report
19 prepared by both Setter and Johnson?

20 A. I -- at some point I saw parts of Setter's
21 report and parts -- and maybe all of Johnson's
22 report.

23 Q. In the Johnson report and in part reflected by
24 the Setter report, it described that the
25 images on that computer were potentially child

1 pornography, were they not?

2 A. I think it used the term "borderline."

3 Q. Okay. And when did you first see that report?

4 A. Sometime in 2012.

5 Q. In 2004, you became aware that that computer
6 had been turned over to the archdiocese and
7 the consultants hired and investigation done,
8 correct?

9 A. I didn't learn that in 2004.

10 Q. You learned that when?

11 A. Probably 2012.

12 Q. Okay. Did you ever see those images?

13 A. No.

14 Q. Shelley was sent to St. Luke's and Kevin
15 McDonough was involved in that decision on
16 behalf of the archdiocese. Did you become
17 aware of that?

18 A. At some point in time I became aware that he
19 had been sent to St. Luke, but that was not
20 until like 2012 as well.

21 Q. In the documents and both in the deposition of
22 Kevin McDonough, he specifically asked St.
23 Luke's some very limited questions and he
24 specifically restricts his questions to them,
25 instead of giving a broad overview of any

1 dangers or any other sexual history, he
2 specifically asks them to limit their inquiry
3 to two specific questions. In your
4 experience, has that been a common practice,
5 known to you, other than as reflected in the
6 Shelley matter, if it is so reflected?

7 MR. HAWS: Object to the form and
8 misstatement of Father McDonough's testimony.

9 A. Yeah, I don't know what's reflected in
10 anything relating to St. Luke's and Father
11 Shelley and normally what Father McDonough
12 would communicate to St. Luke or another
13 treatment facility was his determination of
14 what he wanted them to reflect on.

15 BY MR. ANDERSON:

16 Q. Well, let me put it this way. The questions
17 he asked of St. Luke's were, one, whether
18 Shelley had a problem with compulsive interest
19 in pornography use; and two, whether he was
20 being honest and he only wanted answers to
21 those questions in the referral. My question
22 to you is, are you aware of limiting the
23 inquiry of St. Luke's, who were doing
24 assessments of possible offenders such as
25 Shelley?

1 MR. HAWS: Same objection, it's a --
2 A. Yeah, and I can't --

3 MR. HAWS: -- mischaracterization of
4 the testimony.

5 A. I'm sorry. I -- I can't say that I knew that
6 it had been done before or hadn't been done
7 before, I don't know. I --

8 BY MR. ANDERSON:

9 Q. As it pertains to conversations between
10 yourself and the archbishop pertaining to
11 childhood sexual abuse and priests possibly
12 offending and the like, during your tenure as
13 chancellor, do you make any claim that those
14 conversations or any of them are privileged?

15 A. Well, certainly if he was seeking legal advice
16 as to those matters or if they were matters in
17 litigation where we were discussing legal
18 matters relative to litigation they might be
19 privileged, but normally, if he was just
20 seeking information or asking questions about,
21 you know, the background of a particular
22 matter, those I wouldn't characterize
23 necessarily as privileged unless it was a
24 predicate for asking my legal advice.

25 Q. Well, the decision to report, is that seeking

1 legal advice? "Is this a reportable offense?"

2 A. Well, it certainly can be, sure.

3 Q. Would that be privileged?

4 A. It can be.

5 Q. Did you ever -- did he ever seek your advice
6 on whether an offense should be reported?

7 A. No.

8 Q. Did you become aware in the Shelley matter
9 that after he was sent back -- sent to St.
10 Luke's and they answered the questions that
11 were asked, it was after that that the Setter
12 report and findings came back?

13 A. Again, that all happened before I became --
14 into the chancellor's office, so I don't know
15 anything about that.

16 Q. And I think that was shortly before you came
17 into the chancellor's office, so when --

18 A. Well, again, you -- you probably --

19 Q. -- you came in 2005 --

20 A. Late 2005, November 7th, 2005.

21 Q. So when you came in, none of that became known
22 to you immediately --

23 A. Correct.

24 Q. -- that Shelley had been on the radar, that
25 there had been this problem and he was still

1 in ministry?

2 A. Correct. At some point in time I learned
3 there was some issue, but initially that was
4 very, very limited in terms of what I learned.

5 Q. What did you learn at what point in time?

6 A. I'm not sure what point in time it was, but I
7 -- a call had come in and been directed to me
8 and there was a woman, and I recall her saying
9 something about that she was aware that Father
10 Shelley had been somehow involved with
11 sexually explicit materials or something along
12 those lines. I didn't know anything about it,
13 so, then, I communicated to Father McDonough
14 in some fashion and said, "I don't know
15 anything about this. This is what this woman
16 is saying. What do you want to do?" And I
17 don't remember what we did after that.

18 Q. Did you make a memorandum of that call?

19 A. I likely did. Either a memorandum -- either a
20 written memorandum or an e-mail if Father
21 McDonough was doing e-mail at the time.

22 Q. What year would that have been?

23 A. Well, it would have been somewhere between the
24 time I started and 2012. I can't pin it town.

25 Q. McDonough said he wasn't really using e-mail,

1 I think, until later --

2 A. And, again, I don't know if I would have done
3 it by e-mail. I could have done it by memo,
4 and if so, I'm guessing there should be a copy
5 in Father Shelley's file.

6 Q. The woman or the caller said that he was
7 involved in sexually explicit material. Was
8 it child pornography?

9 A. I don't remember how she characterized it.

10 Q. Did it alarm you enough to go back to
11 Shelley's file and say, "We better go back and
12 look into this and what's the history on this
13 guy?"

14 A. No. Because Father McDonough would have known
15 that, so that's why I referred the call to
16 him.

17 Q. And what was McDonough's response to you when
18 you referred the call to him?

19 A. As I said -- I didn't refer the call to him.
20 I referred the information I had gotten from
21 this woman to him. I don't recall what his
22 response was. And I may not have even gotten
23 a response from him, I don't know that.

24 Q. In any case, Shelley continued as he had,
25 which means he was active in ministry,

1 correct?

2 A. I think Father Shelley was in a parish at the
3 time this call came in, yeah.

4 Q. And that call did not trigger, to your
5 knowledge, McDonough to have done anything
6 different as a result of that than had been
7 done before, which means keeping --

8 A. Right. I mean, what I related to Father
9 McDonough was that this woman didn't have any
10 information of her own knowledge. She was
11 repeating some rumor or something she had
12 heard in the community. She had no direct
13 firsthand knowledge or anything that was --
14 would be helpful. She was just repeating
15 something in the community.

16 Q. But you now know that in this -- included in
17 the Shelley file was the whole St. Luke's
18 report, the seizing of the -- or the taking of
19 the possession of the computers, the
20 destruction of the computers, and also that
21 the analysis done showed he'd been in
22 possession of borderline child pornography,
23 you knew all those things?

24 A. No. I would not agree with that
25 characterization. First of all, I -- I --

1 I've never heard anybody suggesting that a
2 computer was destroyed. And, I mean, the
3 report speaks for itself, I guess. It uses
4 the term borderline, from what I can recall,
5 but I would not have looked at or seen the --
6 the St. Luke material or anything. The only
7 thing I was ever aware of in the St. Luke
8 material, I think at some point in time in
9 early 2012, Jennifer Haselberger wrote a
10 memorandum and I think I've seen that referred
11 to the St. Luke report, that's what I
12 remember.

13 Q. Okay. We'll get to that. In 2008 there's
14 indication that Shelley is reported to have
15 been allowed to have or was living with an
16 18-year-old parishioner. Did that come to
17 your attention?

18 A. No.

19 Q. Does that alarm you that he had, given the
20 history you now know?

21 A. Well, I -- at some point in time we -- we even
22 had discussions about the rules around
23 rectories and whether priests should have
24 anybody living in the rectories, even family
25 members, so anytime -- excuse me -- anytime

1 there was questions that came up about
2 somebody living in a rectory, for example, you
3 know, there was -- would be follow-up
4 questions about that. And, eventually, I
5 think we actually drafted a policy around that
6 to -- to make sure that people were doing what
7 they were supposed to be doing regarding those
8 things.

9 Q. And to your knowledge, in 2008 or at anytime,
10 was any disciplinary action or investigation
11 conducted concerning Shelley responsive to the
12 report you got or the knowledge in the file
13 that he was living with an 18-year-old?

14 A. I wouldn't describe what I got as a report.

15 Q. Okay. Well, whatever --

16 A. I think I've already answered that question.
17 And regarding him living with an 18-year-old,
18 I don't know anything about that.

19 Q. In 2012, February, Haselberger found 48
20 restricted files archived in the archdiocese
21 that she says were moved to the basement
22 without reference to being in the personnel
23 file. What do you know about that?

24 A. Nothing. I mean, I've heard that comment
25 somewhere, I'm not sure where I've heard that

1 comment.

2 Q. Did you read that memo?

3 A. I don't recall that. I mean, I know Jennifer
4 raised a question about some files that were
5 in the basement and the chancellor's office is
6 responsible for the files, so Jennifer was
7 questioning, you know, where these things were
8 or where they should be kept, et cetera, et
9 cetera.

10 Q. So it says 48 restricted files. What are
11 those files?

12 A. I don't have a clue what she's talking about.
13 I never understood what she was referring to.
14 As far as I know, we had all the restricted
15 files.

16 Q. She also found a banker's box of three-ring
17 binders, including the Setter report and the
18 findings that were made in 2004. Were you
19 aware that there was a three-ring binder in
20 there, in the Shelley file, including the
21 Setter report?

22 A. Well, I ultimately saw parts of the Setter
23 report. Any time Setter did an investigation,
24 he prepared a three-ring binder, so for any
25 investigation that was undertaken by Richard

1 Setter, there should be a three-ring binder
2 somewhere in the Chancery, with the priest's
3 file or referenced in some fashion that the
4 archives and records people can retrieve it.
5 How they set up those files, they decide that,
6 that's why we have an archives -- or had a --
7 have an archives and records department.

8 Q. There's also DVDs. Do you know anything about
9 those that she references?

10 A. Well, Mr. Ternus, is my understanding, had
11 copied material from the computer hard drive
12 of the computer that he said was Father
13 Shelley's on a DVD, or somebody had, I don't
14 know who.

15 Q. No. These are the ones found by Jennifer
16 Haselberger before Ternus went back.

17 A. Yeah, Ternus was the guy who gave the stuff to
18 the arch -- archdiocese to begin with.

19 Q. Okay. Excuse me, go ahead.

20 A. So some -- so either Mr. Ternus or somebody
21 else had copied the material on the hard drive
22 onto some DVDs. I've never seen them. I
23 never saw them. But what I've heard described
24 is those DVDs were in the file.

25 Q. And do you know what happened to the computer

1 or the hard drives?

2 A. Other -- other than what I've heard Father
3 testify -- Father McDonough testify that he
4 doesn't, I think, know what happened to the
5 hard drive.

6 MR. KINSELLA: Off the video record
7 to change media.

8 (Recess taken)

9 MR. KINSELLA: Back on the video
10 record, time is 3:24 p.m.

11 BY MR. ANDERSON:

12 Q. In 2012, did Jennifer Haselberger urge you to
13 come down to the file storage, wherever they
14 were, and look at those Shelley files to
15 demonstrate to you that this was illegal child
16 pornography?

17 A. Well, the way you framed your question, I'd
18 have to answer no. She did --

19 Q. Well, did she --

20 A. She did ask me to look at the -- some of the
21 images that were on something, I don't know
22 what they were on.

23 Q. And she was concerned that they were illegal
24 images, child pornography, correct?

25 A. Yes.

1 Q. What was your response to her?

2 A. I told her I was not gonna look at those
3 images.

4 Q. What did you tell her to do?

5 A. I told her if she thought they were illegal,
6 she should report it to the police.

7 Q. And was there any discussion with anybody else
8 about her exhortation to you and your
9 response?

10 A. I reported it to Father Laird and I -- as far
11 as I know, he -- he had the same response for
12 her when she reported it to him.

13 Q. Did you report it to Laird immediately?

14 A. Well, I -- I don't know what you mean by
15 "immediately," but it would have been within a
16 day or two of her having -- and -- and it was
17 more than one occasion that she said to me
18 that she thought this stuff was illegal.

19 Q. How many times did she tell you that she
20 thought it was illegal?

21 A. Well, at least twice. I don't know if it was
22 more than twice.

23 Q. And she based it on her viewing of the images?

24 A. Correct. As far as I know. I didn't know
25 that she did anything else. She hadn't

1 consulted with anyone else.

2 Q. Did she tell you that she had presented it to
3 the archbishop or intended to?

4 A. No. I never learned that till much later.

5 Q. How did you learn that she had?

6 A. I think in the news reports, as far as I know.
7 I don't remember that I heard about it before
8 the news reports.

9 Q. And her attention was drawn to this because
10 they were looking at Shelley for another
11 assignment?

12 A. Correct.

13 Q. And even after she had urged you to look at
14 this and expressed these concerns, are you
15 aware that Shelley was allowed to continue in
16 ministry and then report to the parish that he
17 was going onto sabbatical?

18 A. Well, I know that Father Shelley remained in
19 St. Hugo until the merger of St. Hugo with St.
20 Genevieve. I'm not certain I know when that
21 was, and especially am not certain when that
22 was in relation to whenever Jennifer was
23 raising these issues about the material.

24 Q. Well, he reported to the parish that he had
25 requested a sabbatical and it had been granted

1 by the archbishop --

2 A. I know nothing --

3 Q. -- do you dispute that?

4 A. I don't know anything about that.

5 Q. If that was the case, that would be kind of a
6 -- do you think that was a misrepresentation
7 to the parishioners about his reason for his
8 departure?

9 A. Well, I think they were putting him on a
10 sabbatical till they decided what assignment
11 they were gonna give him, if they were gonna
12 give him an assignment.

13 Q. Don't you think that the parishioners were
14 entitled to know that Shelley had a history
15 that went back to 2004 that could pose a risk
16 of harm or danger to the youth?

17 A. I think you're mistaken there, that -- that
18 the conclusion that was drawn from the review
19 of that material was that it was not child
20 pornography, it was not illegal. So your
21 question presumes that he had engaged in some
22 kind of illegal conduct and he hadn't,
23 apparently, according to the investigation
24 that was done at that time, which has since
25 been confirmed by police and prosecution

1 authorities.

2 Q. That was in an internal investigation done by
3 the archbishop investigators, correct, and the
4 archdiocese officials that made the
5 determination?

6 A. Well, they hired --

7 Q. -- not external or law enforcement in 2004,
8 correct?

9 A. Well, to the best of my knowledge from what I
10 learned, largely from Jennifer Haselberger,
11 what had been done was Richard Setter and this
12 Johnson guy, and Johnson was apparently an
13 expert in the area.

14 Q. And they're the ones that found it to be --
15 have been borderline?

16 A. Correct, which means it's not illegal.

17 Q. No. It means it's reportable.

18 A. Well, I think it's argumentative, counsel.
19 It's -- it was considered borderline, it's not
20 reportable for a variety of reasons, if you'd
21 bother to do the legal research.

22 Q. I have, and the statute says, "suspicions or
23 reason to believe," and if it's borderline --

24 A. I think you better --

25 Q. -- it's suspicion or reason to believe?

1 A. -- read the statute, counsel. Would you like
2 to take a break and read the statute and go
3 see if it has the word "suspicions" in it?

4 Q. Well --

5 A. It says, "know or has reason to believe."

6 Q. It's been interpreted to mean "suspicions" and
7 the statute says --

8 A. Again, I'm not gonna -- I'm not gonna argue
9 with you about it. You know what? I wasn't
10 there in 2004, so I wasn't involved in the
11 decision to report it. All I know is that
12 when I learned about it in about 2012, the
13 matter was obviously eight years later.

14 Q. In any case, were you aware that the parish --
15 the parishioners threw him a big party?

16 A. I'm not aware of that -- well, I shouldn't say
17 it. I've since read you or somebody
18 characterizing that in the media, but that's
19 the only source of that information.

20 Q. Doesn't this thing alarm you, this Shelley
21 thing?

22 A. No.

23 Q. Were you aware that a letter was drafted to
24 the CDF on Cardinal, then prefect Levada,
25 concerning the archbishop's concerns that his

1 advisors are telling him that he may be in
2 violation of law by reason of possession of
3 child pornography?

4 A. Again, counsel, you're mischaracterizing the
5 letter. The letter was drafted by Jennifer
6 Haselberger expressing what she perceived to
7 be her view of the matter. It was not
8 reflective of the archbishop's view, which was
9 just the opposite on that.

10 Q. There are notations -- it's on the
11 archbishop's signature, isn't it?

12 A. I don't think he ever signed the letter. I
13 know it got sent.

14 Q. But it was prepared for the archbishop?

15 A. Well, sure, that was a common practice that
16 Jennifer would be the one that would prepare a
17 letter if it went to Cardinal Levada.

18 Q. And there's handwritten notes on it by the
19 archbishop, aren't there?

20 A. I don't know. I've never seen the handwritten
21 notes by the archbishop.

22 Q. Then why are you telling me what that letter
23 is about when you say you haven't seen it?

24 A. Because I've heard him comment about it.

25 Q. So you're making your assertions under oath

1 about what the archbishop's letter said
2 without having read it, is that what you're
3 saying?

4 A. Right, because she's saying that it -- he even
5 said that it mischaracterized his view.

6 Q. We got it.

7 A. Okay.

8 Q. You haven't read the letter, right?

9 A. No. I have read the letter, but I didn't read
10 his handwritten notations.

11 Q. So you don't know what he wrote on it?

12 A. I don't. And I'd be happy to review those if
13 you want to share it with me.

14 Q. Those notes speak for themselves.

15 A. Okay.

16 Q. I don't need you to speak for him --

17 A. Okay.

18 Q. -- on that.

19 A. And to use Mr. Finnegan's words, I don't
20 necessarily want to be contentious, but I
21 think it's important that we get to the truth
22 about the question.

23 Q. Well, I think it's also important that you
24 talk about what you know about it. If you
25 don't know about the notes in the letter,

1 don't tell me what they say.

2 A. I didn't.

3 MR. HAWS: Counsel --

4 A. I didn't.

5 MR. HAWS: -- you've been arguing
6 with the witness the entire day and testifying
7 yourself, which is not necessarily truth, it's
8 what you say exists, so let's just get to you
9 questioning the witness.

10 BY MR. ANDERSON:

11 Q. Were you involved in the reporting or the
12 consideration of reporting to the CDF --

13 A. No.

14 Q. -- the Shelley matter?

15 A. The only thing I know is that Jennifer had
16 prepared that letter, she wanted the
17 archbishop to sign it and hand deliver it to
18 Cardinal Levada because he was going to Rome
19 and the archbishop refused to do that. I know
20 that because -- and I only knew that because
21 Jennifer told me.

22 Q. Did the archbishop say anything to you about
23 that?

24 A. No.

25 Q. And what did Jennifer say to you about what

1 the archbishop said to her?

2 A. Just that she was mad that he refused to hand
3 carry the letter to Rome. And, in fact,
4 Jennifer led me to believe that the letter had
5 been signed and mailed to Rome and apparently
6 that's incorrect, it was never signed and
7 mailed to Rome.

8 Q. He actually went to Rome shortly after the
9 preparation of that for the -- is it the
10 quinquennial visit?

11 MR. FINNEGAN: Ad limina.

12 BY MR. ANDERSON:

13 Q. -- ad limina visit?

14 A. Right.

15 Q. Yeah. And do you know anything about what was
16 discussed at the ad limina visit?

17 A. I do not.

18 Q. I may have asked you this, but at any time did
19 you review any of the images pertaining to
20 Shelley?

21 A. No. And you did ask me that before.

22 MR. HAWS: Several times.

23 BY MR. ANDERSON:

24 Q. And is that the one where Jennifer asked you
25 to and you said, "No. If you think they are,

1 report it"?

2 A. Correct.

3 Q. There was, in the records that we've reviewed,
4 it appears in 2013 some contention,
5 disagreement about whether or not Shelley --
6 maybe in 2012, too -- should be allowed in
7 ministry and Haselberger arguing against that.
8 Are you aware of that?

9 A. Yes, eventually she was against Shelley
10 remaining in ministry.

11 Q. Did you take a position?

12 A. No. And -- and it was an odd sequence of
13 events, which I can describe, but I didn't
14 take a position. I -- I actually became very
15 confused about what Ms. Haselberger was doing
16 relative to Jon Shelley.

17 Q. Who advocated for his continuation in ministry
18 to the archbishop?

19 A. Well, actually, Jennifer was part of the
20 advocacy, if you want to use that word,
21 although I think that's poor -- a poor word.
22 Sometime in 2012, Jennifer actually drafted a
23 memorandum setting forth what I would describe
24 perhaps as an outline of an action plan that
25 would allow Father Shelley to return to

1 ministry, and she had a number of elements in
2 that plan that would allow that if certain
3 things happened.

4 Q. Did Kevin McDonough share with you his
5 analysis that, and belief that, you know, a
6 large percentage of those viewing pornographic
7 images on the Internet are created and/or
8 monitored by law enforcement, and if he's not
9 caught having done it, he's not guilty of it
10 and, thus, should be continued in ministry?
11 Did you ever hear that position stated or made
12 by him?

13 A. Not by him or --

14 MR. HAWS: Objection, misstates
15 testimony.

16 A. Not by him or anybody.

17 BY MR. ANDERSON:

18 Q. I paraphrased it, but took it from the
19 documents.

20 A. Yeah, I've never heard it from -- that -- I've
21 never heard a statement like that from anyone.

22 Q. There's some discussion and dispute about
23 whether there was child pornography and Kevin
24 McDonough's assertion, according to the
25 documents, about whether they were pop-up ads

1 and Jennifer Haselberger took a different
2 view, stating that these are not pop-up ads
3 and it's not a -- that's not a feasible
4 position. Do you have any knowledge of that?

5 A. No. I --

6 MR. HAWS: Misstates the testimony
7 and the evidence, but go ahead.

8 A. Yeah, I -- there was never a discussion about
9 pop-up ads that I was aware of.

10 (Discussion out of the hearing of
11 the court reporter)

12 BY MR. ANDERSON:

13 Q. Did you ever have discussions with Archbishop
14 Nienstedt about whether Shelley should be
15 reported and it should be a matter for the law
16 enforcement to decide?

17 A. No.

18 Q. Why not? He's a mandatory reporter and you're
19 his advisor.

20 A. Well, I can probably best describe that -- my
21 response to that question as working from the
22 present back. Multiple St. Paul police
23 officers, the Ramsey County Attorney's office,
24 the Washington County Attorney's office, the
25 National Center for Missing and Exploited

1 Children and the justice department's task
2 force on Internet crimes against children have
3 all reviewed the material and all come to the
4 same conclusion, it's not illegal child
5 pornography. The only person that has ever
6 characterized that as illegal child
7 pornography is Jennifer Haselberger. While
8 she's not a mandated reporter, she was
9 repeatedly advised by me and Father Laird to
10 report it if she thought it was illegal. So
11 it's not illegal material, so it didn't need
12 to be reported and that's always been the
13 position of me and others within the
14 archdiocese.

15 Q. On March 5th, 2013, the police showed up at
16 the Chancery and they met with you and Joe
17 Kueppers and they asked about a priest and
18 possession of child pornography, correct?

19 A. Correct.

20 Q. And you didn't know what priest they were
21 talking about, right?

22 A. They didn't identify which priest they were
23 talking about and I asked them that, who are
24 they referring to.

25 Q. Yeah, and you said, "Well, I don't know,

1 there's" -- I mean, how many priests did you
2 know had been in possession of child
3 pornography --

4 A. None.

5 Q. -- or suspected of having been in possession
6 of child pornography in that time?

7 A. Well, certainly Jennifer had raised the
8 question about Father Shelley.

9 Q. So you knew Shelley had been?

10 A. Well, and I assumed that Jennifer had reported
11 this and that's why they were there.

12 Q. And then why did you deny that you knew that
13 it was Shelley they were investigating?

14 A. I didn't deny that. I said, "Who are you
15 talking about?" And they said they didn't
16 know, they couldn't identify the priest. And
17 I said, "Well, if you tell me who the priest
18 is, assuming it's who I think you're going to
19 be referring to, we'll get you the material."

20 Q. And why didn't you --

21 A. Which we did, I might add.

22 Q. Yeah; how many days later?

23 A. Within the next day or two.

24 Q. No. It wasn't.

25 A. It was. We got it to Tom Wieser and he got it

1 to the police as quickly as the police could
2 get over and pick it up.

3 Q. Why didn't you turn it over to them right then
4 and there when it was in the Chancery and say,
5 "Come on down" --

6 A. Because they didn't have the name of the
7 priest.

8 Q. You knew the name of the priest because you
9 knew --

10 A. I wasn't gonna speculate that that was the
11 same thing that Jennifer Haselberger had been
12 talking about.

13 Q. You were trying to protect the priest --

14 A. No. Not at all.

15 MR. HAWS: Objection, it's
16 argumentative.

17 BY MR. ANDERSON:

18 Q. If you knew that they were investigating --
19 you suspected that Haselberger had reported
20 Shelley and they're coming, looking for a
21 priest who was in possession of child
22 pornography, you knew in your mind who they
23 were looking at, you chose not to tell them
24 and you chose not to let them into the files,
25 correct?

1 A. What I told them is --

2 MR. HAWS: It's argumentative and
3 improper, counsel.

4 BY MR. ANDERSON:

5 Q. You can answer.

6 MR. HAWS: No. It's improper and
7 argumentative, and you know it. Ask a
8 question --

9 BY MR. ANDERSON:

10 Q. You can answer it. Go ahead.

11 MR. HAWS: And don't make threats
12 and accusations. It's completely
13 inappropriate and unprofessional, I might add.

14 BY MR. ANDERSON:

15 Q. You can go ahead.

16 A. I told them when they identified the priest,
17 we'd turn the material over.

18 Q. Okay.

19 A. Which we did.

20 Q. Why didn't you do it right that minute?

21 A. Because they didn't have the name of the
22 priest.

23 Q. You just told us you told them right away
24 you'd turn it over, right?

25 A. Right. As soon as they identified who was --

1 was the subject of their investigation, if it
2 was who I thought it might be, then I would
3 turn the material over.

4 Q. So you were being cagey?

5 A. No. I was not being cagey. I think they were
6 being sloppy.

7 Q. You didn't want to cooperate with them, did
8 you?

9 A. Well, counsel, they came in and they said, "We
10 want the file on the priest involving child
11 pornography." Our position was there wasn't a
12 child pornography because that had been the
13 conclusion of our investigation. And I told
14 them that. And I said, "Once you get me the
15 name of the priest, if it's who I think you're
16 talking about, we'll provide the material to
17 you," which they -- we did.

18 Q. Why did you have to go to Mr. Wieser first?
19 Why didn't you just do it?

20 A. Because we were gonna turn the material over
21 to him so as soon as they -- as soon as they
22 identified the priest, Mr. Wieser could turn
23 it over to them.

24 Q. What would have been the harm in simply
25 saying, "Look, I know that Shelley is the guy,

1 and come on down and look at this"? If you're
2 that confident that it wasn't child
3 pornography and you're that confident the
4 archbishop wasn't in possession of it and
5 you're that confident the archdiocese had been
6 in compliance with the law, why didn't you
7 just go down there and say, "Here it is. Take
8 a look for yourself"?

9 A. I didn't do that, counsel.

10 Q. Why didn't you?

11 MR. HAWS: Objection, it's
12 argumentative --

13 A. I didn't do it.

14 MR. HAWS: -- and it's been asked
15 multiple times.

16 BY MR. ANDERSON:

17 Q. I know, but why didn't you?

18 A. Because I didn't.

19 Q. Well, for every action there's a motivation;
20 what was your motivation?

21 A. There was -- there was no motivation. I had
22 no motivation whatsoever. I was prepared to
23 turn the material over if they identified
24 Father Shelley as the subject of their
25 inquiry.

1 Q. Well, you went, then, to Mr. Wieser with it,
2 right?

3 A. No. Mr. Kueppers arranged to get the material
4 to Mr. Wieser because I wasn't working in the
5 Chancery at that point in time.

6 Q. The archdiocese refused to turn over the
7 Setter report to law enforcement?

8 A. No. Actually -- actually, apparently we did
9 turn it over.

10 Q. Eventually.

11 A. No, no. Apparently, the material, the disks
12 we gave them had the Setter report, including
13 Johnson's report.

14 Q. There's some question about the disks that got
15 turned over and the disks that were in
16 possession of the archdiocese originally. Do
17 you know what disks were turned over to the
18 police?

19 A. I've never seen the disks.

20 Q. Okay.

21 A. And it's further my understanding that Mr.
22 Ternus kept copies of all the disks. He
23 subsequently has turned them over and
24 apparently they've confirmed that all the
25 material is the same material.

1 Q. How many disks were there?

2 A. I don't know. Three, I understand.

3 Q. From what do you understand that to be?

4 A. I -- Joe Kueppers or somebody told me there
5 were three disks or Tom told me that, one or
6 the other.

7 Q. It was two days later after the March 5th
8 visit by the police where they requested the
9 information and that three disks were turned
10 over.

11 A. Yeah, two days, okay.

12 Q. Two days.

13 A. After they'd been sitting in our files for
14 eight years, we took two days to get them to
15 them. But, yes, as soon as they identified
16 the -- the -- to Mr. Kueppers who the priest
17 was, Tom turned them -- Tom contacted Father
18 -- or Officer Gillette or whoever it was.

19 (Discussion out of the hearing of
20 the court reporter)

21 BY MR. ANDERSON:

22 Q. Are you aware of the search terms that were
23 found on the Setter report?

24 A. I think I heard Jennifer mention some search
25 terms. I only have a vague recollection of

1 that.

2 Q. If one of the search terms was -- let me see.
3 "Free naked boy pictures," would that concern
4 you that's an interest in minors?

5 A. I'm not gonna speculate. I -- I don't
6 remember what terms she shared with me.

7 Q. I'm referring to Exhibits 38 and 47 in terms
8 of search terms. It also lists the following
9 search term: "Hard core teen boys." Isn't
10 that suspicious of an interest in child
11 pornography?

12 A. I -- I'm not gonna characterize it one way or
13 the other. I don't -- I don't know anything
14 about those kinds of search terms.

15 Q. I'll quote another search term.

16 MR. HAWS: Is this a search term
17 that the experts are using?

18 MR. ANDERSON: The police report.

19 MR. HAWS: And that they didn't find
20 anything?

21 MR. ANDERSON: These are search
22 terms on the Shelley computer that were
23 identified.

24 A. Well, counsel, to help you, I don't remember
25 any of the search terms that Jennifer might

1 have shared with me, and it -- and it was like
2 one or two.

3 BY MR. ANDERSON:

4 Q. Well, you saw the Setter report. I'm asking
5 you --

6 A. No. I saw parts of Setter's report is what my
7 testimony was. I didn't see any search terms.
8 I don't recall any search terms.

9 Q. This comes from Setter report --

10 A. I don't --

11 Q. -- and the police investigation.

12 A. -- care where it comes from. I'm telling you
13 I don't recall any of those things and I -- I
14 -- and I'm not prepared to characterize what
15 that -- what that means.

16 Q. When I use the quote from the report that
17 shows the search term "European teen boys,"
18 does that cause concern that that might be a
19 reason to believe there's an interest in
20 minors or child porn?

21 A. I don't have any knowledge of what those
22 things mean.

23 Q. "Helpless teen boys." Is that suspicious or
24 reason to believe that he may be in possession
25 of child pornography?

1 A. Same --

2 MR. HAWS: So, counsel, is this for
3 you and your news media report after the
4 deposition? Because this witness has
5 testified he has no knowledge of any of this
6 and it's your gamesmanship --

7 MR. ANDERSON: This is a --

8 MR. HAWS: -- and it's
9 inappropriate.

10 MR. ANDERSON: This is a witness
11 that chose --

12 MR. HAWS: Counsel --

13 MR. ANDERSON: -- not to cooperate
14 with the police or even tell 'em --

15 MR. HAWS: This has nothing --

16 MR. ANDERSON: And is making a claim
17 -- and is making a claim --

18 MR. HAWS: -- to do with your case
19 and this deposition and I believe that the
20 judge would not be pleased to know this is
21 where we're going. This has gone so far
22 overboard and has nothing to do with the
23 deposition or the Doe 1 case under which we
24 sit today. This is almost embarrassing that
25 you're doing this. It's completely unfounded

1 and it's unprofessional to this witness and
2 it's only for your own purposes. I'd ask you
3 as an officer of the court to move on and ask
4 questions that this witness is here to answer
5 honestly and truthfully what he knows and not
6 just do your games.

7 MR. ANDERSON: This is a nuisance
8 and a negligence claim, this is a claim and
9 this is about the protection of these
10 children. This is very current and recent
11 events, counsel, and if you don't care about
12 these kids, I do and that's why we're here
13 today. So that's my speech to you --

14 MR. HAWS: You're the only who
15 cares, right, counsel? You're the only one
16 who cares about children, is that what you
17 say?

18 MR. ANDERSON: Well --

19 MR. HAWS: And you know that's not
20 accurate, either, do you? And is that again
21 just for your own benefit? That's, again, not
22 professional whatsoever.

23 MR. ANDERSON: It's responsive to
24 your dialogue.

25 MR. HAWS: No. It is not.

1 BY MR. ANDERSON:

2 Q. Are you aware that the police determined and
3 that Setter determined that Shelley was the
4 only one that had exclusive use of that
5 computer?

6 A. I'm not -- I am -- that's not true. I -- I
7 never heard the police say that and that
8 wasn't Setter's position, either.

9 Q. So that's news to you, if it's true?

10 A. Well, I think Mr. Johnson expressed a view
11 about that, I don't know that Mr. Setter did.

12 Q. What was Johnson's view?

13 A. In his opinion, that only Father Shelley had
14 access to some of those sites because he had a
15 password.

16 Q. Okay. I'm going to turn to Keating and we've
17 made some reference to that earlier.

18 (Discussion out of the hearing of
19 the court reporter)

20 BY MR. ANDERSON:

21 Q. Before I do, there's some reference somewhere
22 to the archbishop's council and that was not a
23 term that I had seen before. What was the
24 archbishop's council?

25 A. Well, it's the archbishop and some of his

1 advisors, the chancellors, the vicar general.
2 The council has also included at times the
3 regional vicars, the finance officer,
4 auxiliary bishops, I think that's it.

5 Q. Is that something that was constituted by
6 Archbishop Nienstedt under his --

7 A. There was also an archbishop's council under
8 Archbishop Flynn as well.

9 Q. I just haven't seen that term before. Do you
10 know what the council is used for? Are they
11 like consulters or any specific purpose, do
12 you know?

13 A. Well, we start out with a song and a prayer
14 and then the archbishop normally reports on
15 certain matters. And then anybody else, if
16 they've put something on an agenda, can raise
17 an issue that would be helpful for the council
18 to hear or know about or some of it's FYI
19 stuff.

20 Q. Is there anything in the archbishop's council
21 meetings that have been discussed by those in
22 attendance pertinent to the whole question of
23 sexual abuse of minors by the clerics in or
24 out of ministry and --

25 A. I don't think so. I don't recall a meeting

1 ever discussing that subject.

2 Q. Is that something that gets recorded by
3 minutes or notes or is it --

4 A. The council meeting?

5 Q. Yes.

6 A. There's -- at times there was an agenda that
7 if you wanted something to -- to be brought up
8 at council they wanted you to put it on an
9 agenda, but there's no minutes of the
10 meetings, as far as I know.

11 Q. Okay. I'm going to go to Keating, and we'll
12 talk about the girl, I refer to her as Doe 20.

13 A. Yeah.

14 Q. Do you know if anybody from the archdiocese
15 ever asked Father Keating his account of the
16 events pertaining to Doe 20 or any of the
17 other possible encounters?

18 A. The clergy review board did. I don't know
19 about anybody else.

20 Q. The clergy review board is constituted by the
21 archbishop to help make a determination --
22 help the archbishop make a determination about
23 whether Keating should be continued in
24 ministry, correct?

25 A. Well, the clergy review board exists for two

1 purposes, one is to help the archbishop
2 ascertain someone's fitness for ministry, but
3 they can also be utilized to help the
4 archbishop determine the credibility of
5 allegations. So I think when the matter was
6 turned over to the clergy review board
7 involving Father Keating, I think it was more
8 the latter than the former to help the --
9 Archbishop Flynn come to some conclusion about
10 the credibility of the allegations that Doe 20
11 was making.

12 Q. Would the clergy review board record the
13 testimony that was taken?

14 A. No.

15 Q. Beyond the findings that they made that
16 substantiated or not substantiated, is there
17 any record of their deliberations or their
18 findings beyond that?

19 A. The only record that I would be aware of is,
20 once they had discussed the matter, then it
21 was normally the chair would draft a proposed
22 recommendation and circulate it among them for
23 their comment and further refining of that
24 recommendation before it went to the
25 archbishop, once they all agreed with it or

1 the majority of them agreed with it. So if
2 the chair did that in that instance and saved
3 earlier drafts of that, they might exist. But
4 that's the only record that I'm aware of.

5 Q. Was the clergy review board divided in their
6 decision concerning Keating and the report
7 made by Doe 20?

8 A. I didn't -- I can't say that I was there for
9 all of their deliberations, but I don't -- I
10 didn't sense there was much division.

11 Q. Did you find it troubling in your own view
12 that they found that it was not a
13 substantiated claim, having seen the video and
14 having done some investigation?

15 A. Frankly, no.

16 Q. You didn't believe her?

17 A. No.

18 Q. Why?

19 A. I thought she was very mixed up and confused.
20 It's not a view I shared with the clergy
21 review board, but that was my own personal
22 feel of it.

23 Q. Did anybody in the clergy review board express
24 why they found the claims to have been not
25 substantiated and, thus, sending the message

1 that she wasn't believed?

2 A. I think the sense was -- first of all, I think
3 they were of the belief that she believed
4 something had happened, but I think the fact
5 that she hadn't characterized her relationship
6 with Keating as abusive until after she took a
7 coursework in college that somehow touched on
8 that topic that she began to re-evaluate her
9 relationship with Father Keating. The fact
10 that she seemed with each telling of her story
11 to have -- embellish is not a good word, but
12 that she had, you know, continued to increase
13 her description of the extent to which there
14 had been any kind of physical or sexual
15 contact, and the fact that she seemed to be,
16 again, very troubled and confused in some
17 fashion. And I think there was also the
18 question about the nature of the family
19 dynamics within that family.

20 Q. Well, what did that have to do with whether or
21 not Keating sexually abused her?

22 A. Well, I think that she was describing, for
23 example, Father Keating reading to all of the
24 kids with the mom being there and that as part
25 of that he'd be touching her, having her lie

1 on top of him, and there was a real question
2 about how that could have occurred in the
3 presence of all of these others. At some
4 point in time there was a photograph of her
5 lying with Father Keating and the question of,
6 you know, where -- who took this photograph
7 and where could this have -- you know, they --
8 they viewed that as really odd.

9 Q. Is that a word or a characterization that some
10 of them used or just your interpretation of
11 what they saw?

12 A. Well, I think they were troubled by what they
13 saw as the dynamic in that family, that -- and
14 -- but I think they were also troubled that
15 Father Keating was a bit clueless in
16 recognizing that as well.

17 Q. Now, Keating did get placed on some
18 restrictions. To your knowledge, were those
19 adhered to?

20 A. As far as I know. Although, I -- I seem to
21 recall at some time there was some question
22 about whether he was adhering to some
23 restrictions and there were some questions
24 that were raised, primarily by the archbishop.
25 And this -- now I'm talking about Archbishop

1 Nienstedt. The original recommendation was
2 made by the clergy review board to Archbishop
3 Flynn, I believe. And then when Archbishop
4 Nienstedt came on board, he actually became
5 friends with one of the -- Doe 20's brothers
6 and I think he began learning from the family
7 some of their concerns about what had -- what
8 had been done by the clergy review board and
9 what restrictions that had been imposed and
10 whether Father Keating was abiding by those
11 restrictions. So the archbishop would ask me
12 and I'd say, "Well, Father McDonough's the go-
13 to person with St. Thomas," which was later
14 where Father Keating was, "and so we'll have
15 to ask Father McDonough where they're at," and
16 all of that.

17 Q. At some point in time, I think the family was
18 led to believe that he was on some kind of
19 supervision or monitoring or restriction. Do
20 you know if they -- if he ever was on
21 monitoring?

22 A. I thought that the recommendations made by the
23 clergy review board, and I don't remember
24 those specifically and I haven't reviewed
25 those in years, but I thought they were being

1 followed and I thought a monitoring plan had
2 been set up. The only question I remember
3 being really raised, other than the ones I
4 just described, was at some point in time
5 Father Keating was to go to Rome and do some
6 teaching or something in Rome, and a question
7 arose about how he would be monitored in Rome.
8 And there was somebody that was identified
9 that would do that monitoring while he was in
10 Rome, so that, too, led me to believe that the
11 monitoring was being -- that was supposed to
12 take place was taking place.

13 Q. In May of 2010, Father Piche says that Keating
14 never went on monitoring. Do you have any
15 knowledge of --

16 A. Again, that would be inconsistent with what I
17 understood from Father McDonough. And I think
18 there was an e-mail exchanged at some point in
19 time with Don Briel around this question about
20 Keating being in Rome. Because I -- I think
21 it was in part the archbishop that raised that
22 question: "If he's going to Rome, how is he
23 going to be monitored when he's in Rome?" So
24 I in turn brought that question to Father
25 McDonough, who, then, conferred with Don Briel

1 and somehow they took that information back to
2 the archbishop.

3 Q. When was that?

4 A. I don't know. I couldn't pin it down. Again,
5 there should be -- well, I don't know that
6 there would have been a memorandum about that,
7 but I do recall an e-mail exchange that I was
8 copied on and Don Briel's name was on that,
9 because I would not have communicated directly
10 with Mr. Briel.

11 Q. Going back to priests who are accused as
12 offenders or credibly found to have been
13 offenders, receiving payments, are you aware
14 that Father Stevens had received payments
15 after having been -- I guess he was convicted
16 of child sexual abuse?

17 A. Well, I -- he was working as an IT guy in the
18 archdiocese, so I assumed he was getting
19 compensated somehow for that work. But how he
20 was being compensated I have no information.

21 Q. Do you have any knowledge of anybody, any
22 parishioners or the public ever having been
23 alerted to the fact that Stevens had a history
24 known to the archdiocese of having abused and
25 been convicted of child abuse?

1 A. Well, I mean, his conviction was a matter of
2 public record, and so I'm not sure what you're
3 asking.

4 Q. Well, public record doesn't necessarily mean
5 that people know.

6 A. Right.

7 Q. And the archdiocese knew. The question is,
8 did the archdiocese tell anybody, to your
9 knowledge?

10 A. Well, I -- I don't know.

11 Q. Father Kern has a record of receiving monthly
12 payments. What was your involvement with
13 Father Kern and did you know that he was
14 receiving such payments?

15 A. I do -- I didn't know that, no.

16 Q. Krautkremer, what do you know about him having
17 received payments from the archdiocese?

18 A. I think I learned at some point in time that
19 there had been a mortgage payment or something
20 that had been made -- or a lump sum paid on a
21 mortgage for him or something of that nature,
22 but that's all I know.

23 Q. And before MPR reported it, did you know that
24 Kapoun had been --

25 A. No.

1 Q. -- receiving such payments --

2 A. No.

3 Q. -- when you saw the MPR report? Did you see
4 the MPR report?

5 A. Well, I was a bit surprised by that and I -- I
6 know that some have raised the question about
7 whether he really got those payments or
8 whether Scott Domeier misdirected that money
9 because Father Kapoun should have been on
10 whatever pension he earned, so I don't know --
11 but I -- I don't know anything about those
12 payments other than what I saw in the news.

13 Q. I mean, you were involved in the Kapoun case,
14 so you know what his history was?

15 A. Yeah. I'll not forget the Kapoun case.

16 Q. Huh?

17 A. I won't forget the Kapoun case, nor will you
18 probably.

19 Q. You're right about that.

20 What about Thurner?

21 A. I know nothing of any payments to Thurner.

22 Q. Okay. And Brown, know anything about that?

23 A. I don't know anything about Brown.

24 Q. Okay.

25 (Discussion out of the hearing of

1 the court reporter)

2 BY MR. ANDERSON:

3 Q. The archdiocese reported that they recently
4 removed Father Gallatin from ministry for,
5 quote, I think it was boundary violations,
6 unquote. What do you know about what Gallatin
7 did or is accused to have done?

8 A. The only thing I ever learned about Father
9 Gallatin was that at some point in time, he
10 had placed his hand on like the stomach of
11 some youth at some kind of outing, that's all
12 I ever heard.

13 Q. And do you know what the source of that
14 information is that the archdiocese relied
15 upon in making those statements to the public
16 for his reasons for his removal?

17 A. Well, I don't know what statements the
18 archdiocese has made. And that's the only
19 information I've ever learned about Father
20 Gallatin.

21 Q. So where did you get that information?

22 A. Oh, I -- I couldn't even tell you where I
23 would have ever heard that from. Could have
24 been from Jennifer Haselberger, but I don't
25 know where else.

1 Q. Do you remember having discussions with
2 Haselberger about Gallatin?

3 A. I don't.

4 Q. Do you remember having disagreements or
5 discussions with Haselberger about certain
6 priests who should not be in ministry or that
7 she had more grave concerns about than perhaps
8 others?

9 A. Well, certainly Father Shelley was among those
10 that she didn't think should be in -- in
11 ministry. I'm not sure that I remember
12 anybody else. And I don't -- I -- I remember
13 her mentioning something about Gallatin, but I
14 don't remember in what context that was in.

15 Q. What about Wehmann, what do you know about the
16 reason given for his removal and/or the
17 history behind him?

18 A. That I -- the -- the only things -- I think I
19 learned that because it had been referred to
20 the clergy review board, if I recall
21 correctly. And there had been a report to the
22 police, maybe up in Coon Rapids or something,
23 and there was something else, but at this
24 point in time I don't remember what that was.

25 Q. How many child sexual abuse allegations --

1 when was it to go before the board, do you
2 remember?

3 A. I don't remember. It would have been within
4 the first few years, I think, that I was at
5 the archdiocese. And the things that had
6 brought him there hadn't occurred, I think,
7 while I was in the Chancery, so I wasn't there
8 to know, you know, the history kinda stuff.
9 But when -- I don't know what -- they were
10 doing something with him and they wanted it to
11 go to the clergy review board, if I recall
12 correctly, I'm pretty certain that he went to
13 the clergy review board.

14 (Discussion out of the hearing of
15 the court reporter)

16 BY MR. ANDERSON:

17 Q. What else, if anything, did you learn about
18 Wehmann?

19 A. I remember a description of something, he was
20 at somebody's house and there was a question
21 about a young girl and butterfly kisses, and
22 that's about all I remember. It was something
23 to do with butterfly kisses.

24 Q. How did that come to you?

25 A. I think from a review of his file in

1 connection with the referral to the clergy
2 review board.

3 Q. How many matters, to your knowledge, were
4 given to the clergy review board for their
5 consideration and recommendation that
6 pertained to accusations of childhood sexual
7 abuse?

8 A. Where they were asked to determine the
9 credibility of the allegations?

10 Q. Well, I think their -- I mean, isn't their
11 role basically to give advice to the
12 archbishop?

13 A. Relative to their view of the priest's fitness
14 for ministry, yes.

15 Q. So how many matters do you believe or were you
16 involved in where it was submitted to the
17 clergy review board?

18 A. Related to that question of fitness for
19 ministry?

20 Q. And safety pertaining to sexual abuse of
21 minors.

22 A. Well --

23 Q. I'm not talking about alcoholism or --

24 A. Yeah, yeah.

25 Q. -- other issues. I'm talking about abuse.

1 A. Okay. Let me see if I can characterize those.
2 In terms of the question of credibility of
3 allegations, the only one I'm aware of is
4 Keating.

5 Q. Okay.

6 A. All the rest of them, it was more related to
7 the question of fitness for ministry, but most
8 of those was where either there hadn't been
9 sexual contact or, if there had been sexual
10 contact, it was with an adult that may or may
11 not have involved some degree of pastoral
12 relationship.

13 Q. Were there any submitted to the review board
14 pertaining to minors, other than Keating on
15 the question of fitness?

16 A. Well, the -- Wehmann, in terms of the concerns
17 that were raised about Wehmann, even though
18 there was no allegation that he had sexual
19 contact with them, they -- that -- those
20 instances or examples did involve minors.

21 Q. And Wehmann was found to be fit for ministry
22 and continued in ministry?

23 A. They made a recommendation and I think he
24 continued in ministry. I don't remember what
25 that recommendation was.

1 Q. Did the Gallatin thing go before the review
2 board?

3 A. Not while I was there.

4 Q. Any other matters that you can recall that
5 went before the review board at any time
6 pertaining to sexual abuse of minors under
7 Flynn or Nienstedt?

8 A. I don't think so. Not that I'm recalling at
9 the moment. I think all the rest of 'em were
10 adult cases that --

11 Q. When you refer to Wehmann and the butterfly
12 kiss that you had some memory of, what did
13 that -- what was that and how did that -- what
14 did that -- what was a description of that?

15 A. I had -- if I recall correctly, he was like
16 the guest in the house of these parents and
17 there was some kids there, and there might
18 have been other people, adults, certainly the
19 parents were there as well. And that somehow
20 he was in a room with the kids and he had
21 asked a girl if she knew what a butterfly kiss
22 and she -- was and she said no, and that he
23 apparently had demonstrated a butterfly kiss,
24 which is where you flick your eyelash on
25 someone's cheek, I guess, is what I recall.

1 MR. ANDERSON: I'm getting pretty
2 close to done here, but let's take a break
3 right now, a short one, and then we'll finish
4 up.

5 THE WITNESS: Okay.

6 MR. KINSELLA: Off the video record.

7 MR. KINSELLA: Back on the video
8 record, 4:14 p.m.

9 BY MR. ANDERSON:

1 THE WITNESS: Thank you.

2 MR. HAWS: Gary, we'll read and

3 sign.

4 MR. KINSELLA: Off the video record.

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