

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.

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

10 Defendants.

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13 Deposition of ARCHBISHOP JOHN  
14 NIENSTEDT, taken pursuant to Notice of Taking  
15 Deposition, and taken before Gary W. Hermes, a  
16 Notary Public in and for the County of Ramsey,  
17 State of Minnesota, on the 2nd day of April,  
18 2014, at 30 East 7th Street, St. Paul,  
19 Minnesota, commencing at approximately 9:05  
20 o'clock a.m.

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1           APPEARANCES:

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

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

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

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

19                          JOSEPH F. KUEPPERS, ESQ., Chancellor  
20          for Civil Affairs, 101 East 5th Street, Suite  
21          800, St. Paul, Minnesota 55101, appeared for  
22          Archdiocese of St. Paul and Minneapolis.

23           ALSO PRESENT:

24          Dean Hibben, 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

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3 MR. ANDERSON: Okay. Let's start  
4 the record for purposes of the deposition, and  
5 before we begin the actual deposition of the  
6 archbishop, there are a few matters that we  
7 need to put on the record.

8 The first pertains to the disclosure  
9 or, more accurately, the lack of disclosure as  
10 we interpret the order of the court. It was  
11 our understanding and belief that Judge Van de  
12 North ordered the archdiocese to produce the  
13 documents and the files that we requested, at  
14 least for purposes of Archbishop Nienstedt's  
15 deposition, and we did not receive anything  
16 until 5:45 p.m. on Monday. When we did, it  
17 was formatted, I think, in disk and --

18 MR. FINNEGAN: USB drive.

19 MR. ANDERSON: -- or a zip drive,  
20 and contained in that were some materials, but  
21 far from what had been requested, far from  
22 what had been required, in our view. It was  
23 not only thus incomplete, there were  
24 redactions and deletions and omissions that we  
25 believe are not in compliance with the order

1 of the court as we read it and understood it  
2 to be. We, then, hustled to try to review  
3 what was turned over in preparation for this,  
4 and realizing that we had less than what was  
5 expected.

6           Yesterday at five p.m., we received  
7 a second disclosure with a letter and in it  
8 there was a disk in this case with some  
9 additional disclosures pertaining to some  
10 additional files. We have not had time, nor  
11 will we use or attempt to use any of the  
12 materials provided at five o'clock last night.  
13 There's no way that is feasible or realistic.  
14 On quick review of that, however, it may  
15 appear that that disclosure continues to be  
16 less than complete and not in compliance with  
17 the court order, so it is our position just  
18 for this record that the archdiocese is in  
19 noncompliance with the orders of the court as  
20 it pertains to the disclosures required to be  
21 made for purposes of this deposition. And I  
22 think that's all I have to say about that for  
23 the moment.

24           MR. HAWS: Well, just to respond,  
25 first, we produced all the priest files that

1           existed and we put the redactions in in  
2           accordance with what we had stated we would  
3           when we were in front of the court the week  
4           before, or last week, whenever that was.

5                       We also advised you that this  
6           process of producing these files was extremely  
7           cumbersome and time-consuming and that in our  
8           letters we provided additional dates for  
9           depositions of the archbishop if you felt you  
10          needed it, and no one contacted us to make any  
11          such requests. So we believe that we have  
12          complied as best as we possibly can. We've  
13          explained the difficulties in getting all of  
14          this information to you in the time frame that  
15          you had requested, and so we're proceeding by  
16          providing you with what we could as best we  
17          could and in compliance with the court order.  
18          We don't agree with your rendition and,  
19          obviously, we'll supplement the record and  
20          identify for the court whatever we need to  
21          should we get to that point.

22                      MR. ANDERSON: I don't expect you to  
23          agree with our view today. I do believe,  
24          however, that you made those same arguments to  
25          the court, I think they were rejected as to

1 deletions and non-productions and I think the  
2 order is clear, but it will speak for itself  
3 and we'll take it up another day.

4 Just for purposes of mechanics of  
5 today, the court has ordered a deposition to  
6 be taken for four hours of the archbishop. I  
7 will expect there not to be speaking  
8 objections. If you have legal objections, I'm  
9 sure you'll state them. If there are speaking  
10 objections, I will count that time as not  
11 against the four hours. So I will have  
12 somebody calculating the time for speaking  
13 objections. If you choose to make speaking  
14 objections, I just want to alert you to that.

15 If it at any time you choose to take  
16 a break, Archbishop, that's fine.

17 THE WITNESS: Okay. Thank you.

18 MR. ANDERSON: Anything else by way  
19 of housekeeping before we proceed?

20 MR. HAWS: (Shakes head).

21 MR. ANDERSON: Okay. Let's begin  
22 the deposition.

23 MR. HIBBEN: We are on the record.  
24 This is the videotape deposition of Archbishop  
25 John Nienstedt taken on April 2nd, 2014. The

1 time now is approximately 9:05 a.m.

2 The deposition is being taken in the  
3 matter of Doe 1 versus the Archdiocese of  
4 Minneapolis and St. Paul, et al., in the state  
5 of Minnesota, District Court, County of  
6 Ramsey, Second Judicial District. This is  
7 case number 62-CV-13-4075. The deposition is  
8 taking place in St. Paul, Minnesota.

9 My name is Dean Hibben. I'm the  
10 videographer representing Affiliated Video.

11 Will counsel please identify  
12 themselves for the record?

13 MR. ANDERSON: For the plaintiff,  
14 Jeff Anderson.

15 MR. FINNEGAN: For the plaintiff,  
16 Mike Finnegan.

17 MS. ODEGAARD: For the plaintiff,  
18 Sarah Odegaard.

19 MS. LINDSTROM: For the plaintiff,  
20 Elin Lindstrom.

21 MR. HAWS: Dan Haws for the  
22 Archdiocese of St. Paul and Minneapolis.

23 MR. WIESER: Tom Wieser for the  
24 Archdiocese of St. Paul and Minneapolis.

25 MR. BRAUN: Thomas Braun on behalf

1 of the Diocese of Winona.

2 MR. KUEPPERS: Joseph Kueppers on  
3 behalf of the Archdiocese of St. Paul and  
4 Minneapolis.

5 MR. HIBBEN: And would the court  
6 reporter please swear in the witness?

7 ARCHBISHOP JOHN NIENSTEDT,  
8 called as a witness, being first duly sworn,  
9 was examined and testified as follows:

10 EXAMINATION

11 BY MR. ANDERSON:

12 Q. Archbishop, would you please state your full  
13 name for the record and spell your last?

14 A. John Clayton Nienstedt, Jr.,  
15 N-i-e-n-s-t-e-d-t.

16 Q. You've given depositions before, so you  
17 understand the protocol here today, do you  
18 not?

19 A. I -- I think so.

20 Q. Okay. And it's correct to state that you were  
21 appointed and eventually installed as a  
22 coadjutor in the Archdiocese of St. Paul and  
23 Minneapolis in the year 2006?

24 A. 2007.

25 Q. 2007. What would have been the date of the

1 installation?

2 A. It would have been June 29th, 2007. It wasn't  
3 an installation per se. It's just when you  
4 become a coadjutor, you're just received.

5 Q. And then you were appointed to be the  
6 archbishop as of what date?

7 A. May 2nd, 2008.

8 Q. During your tenure as archbishop, it is  
9 correct to state that you have made a number  
10 of public statements concerning the fact that  
11 -- the representation that there are no  
12 offending priests in ministry, have you not?

13 A. I have done that, yes.

14 Q. When did you first begin doing that as  
15 archbishop?

16 A. I don't recall.

17 Q. How many times would you estimate you had  
18 represented to the public and to the people  
19 that there are no offending priests in  
20 ministry here in the Archdiocese of St. Paul  
21 and Minneapolis?

22 A. I can't recall exactly, but I don't think that  
23 they have been many.

24 Q. You have made such representations to the  
25 media, have you not?

1 A. I don't believe so.

2 Q. You've made representations to the  
3 parishioners, have you not, through bulletins  
4 and otherwise?

5 A. Yes, I have.

6 Q. You have included such representations in  
7 materials demonstrated -- or prepared by the  
8 archdiocese and distributed to parishioners  
9 and the public concerning priests in  
10 ministries who are safe?

11 A. The -- the priests are safe --

12 Q. Yeah.

13 A. -- or the environments are safe?

14 Q. The environments are safe.

15 A. Yeah.

16 Q. Do you continue to claim that the environment  
17 of the Archdiocese of St. Paul and Minneapolis  
18 is safe for the children?

19 A. I do. I do.

20 Q. I'm going to show you what we've marked --

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

23 BY MR. ANDERSON:

24 Q. At any time since your installation, have you  
25 received any information from any source that

1 causes you to want to change any of the  
2 statements you have made about the safety of  
3 children in this archdiocese?

4 A. Just in the last month, I did discover that  
5 there was a priest who had offended who  
6 retired, but continued periodically to  
7 celebrate mass on weekends, and I was not  
8 aware of his presence and I was not aware that  
9 he was publicly in ministry. And as soon as I  
10 realized it, I had his faculties removed.

11 Q. And who is that?

12 A. I believe it's Father LaVan.

13 Q. And any other time, other than in the last  
14 month, that causes you to believe that the  
15 statements that you had made earlier about the  
16 safety of the children and the absence of  
17 offenders in the archdiocese ministry to be  
18 corrected?

19 A. Could you restate the question, please?

20 Q. Have you received any other information that  
21 tells you that the statements you made about  
22 the safety of the children in the archdiocese  
23 were not true?

24 A. No.

25 Q. That's it, LaVan?

- 1 A. LaVan, yes.
- 2 Q. And that was last month. How did you get that  
3 information?
- 4 A. It was in the process of doing our file  
5 review.
- 6 Q. Okay. Who was doing that review?
- 7 A. Kinsale.
- 8 Q. Spell that.
- 9 A. K-i-n-s-a-l-e.
- 10 Q. And once you received the information from  
11 Kinsale or Kinsale concerning LaVan, what  
12 correction, if any, did you make about the  
13 statements you had made to the public and the  
14 community of faith?
- 15 A. I don't believe that I did.
- 16 Q. Do you think one is needed?
- 17 A. He's out of ministry now, so I don't see the  
18 -- the point of -- of making that  
19 announcement, no.
- 20 Q. It had been known by the archdiocese that  
21 LaVan had been accused credibly of abusing at  
22 least two girls and that was reflected in the  
23 files back over a decade ago, correct?
- 24 A. I don't know that for -- for a -- for a fact,  
25 no.

1 Q. When you came on as archbishop, did you ever  
2 make any effort, from the time of your  
3 installation and to the discovery of the LaVan  
4 material by Kinsale, to see actually that the  
5 statements you were making to the public about  
6 the safety of the children were true?

7 A. I met with my staff and they affirmed for me  
8 the fact that there was no one in ministry who  
9 had credibly abused any children.

10 Q. When did you first meet with your staff to  
11 make such a determination that the environment  
12 was safe?

13 A. Shortly after my reception into the  
14 archdiocese as coadjutor.

15 Q. What staff did you meet with to determine the  
16 safety of the environment and whether or not  
17 there were priests in ministry who had  
18 offended?

19 A. I met with my delegate for safe environments  
20 and I met with my civil and canonical  
21 chancellors.

22 Q. And so the delegate for safe environments was,  
23 then, Kevin McDonough?

24 A. He was.

25 Q. Appointed by you to be just that title, right?

1 A. I did, yes. He had been previously appointed  
2 by Archbishop Flynn.

3 Q. And was it his job, at least as you understood  
4 it, his appointment to be -- to make sure that  
5 the environment was safe and he was the point  
6 guy for handling that?

7 A. That's correct.

8 Q. And that first meeting, then, was with  
9 McDonough and with the chancellors, both  
10 Jennifer Haselberber -- no. She wasn't there  
11 then?

12 A. She wasn't there at that time.

13 Q. Who were the chancellors?

14 A. Sister Dominica, I can't think of her last  
15 name, but Sister Dominica and Mr. Andy  
16 Eisenzimmer.

17 Q. And how long was that meeting, sir?

18 A. I -- to the best of my recollection, it was  
19 approximately two hours, I believe. It was a  
20 long meeting.

21 Q. And was that at the Chancery in your office?

22 A. It was at the Chancery in one of our meeting  
23 rooms, yes, sir.

24 Q. And in preparation for that meeting, did you  
25 order or request that they review any or all

1 materials held by the archdiocese concerning  
2 priests who may have been accused, credibly or  
3 otherwise?

4 A. I asked -- at the time of the meeting, I asked  
5 them to give me all that they knew concerning  
6 the safe environments of the archdiocese.

7 Q. And did anybody put or record by memo or  
8 recording the contents of that meeting?

9 A. I don't believe so.

10 Q. So it was all verbal?

11 A. It was verbal, yes.

12 Q. And at that meeting, were you presented with  
13 any written materials?

14 A. I was not, no.

15 Q. Did you know -- you knew there had been a list  
16 compiled, under the Charter for the Protection  
17 of Children, a list of credibly accused  
18 offenders, correct?

19 A. I was aware of that. I'm not sure I was aware  
20 of that at that time, but I was aware shortly  
21 after my arrival.

22 Q. Well, you were bishop of New Ulm when the  
23 Charter for Protection of Children was  
24 established in 2002?

25 A. Correct.

1 Q. And you attended those meetings where promises  
2 were made to the public --

3 A. Correct.

4 Q. -- across this nation that we're going to have  
5 a zero tolerance policy, correct?

6 A. Correct.

7 Q. And you were a part of -- one of the bishops  
8 that made such a representation to the people  
9 in the U.S. about zero tolerance, correct?

10 A. Correct.

11 Q. So you knew at that time the bishops then  
12 commissioned John Jay to do a study to  
13 determine, based on information given them,  
14 various lists of credibly accused offenders?

15 A. I don't recall exactly when that list was  
16 asked for. My recollection was it was in  
17 2004, but I'm not -- I'm not sure about that.

18 Q. That sounds correct?

19 A. (Nods head).

20 Q. In any case, you knew in 2004 or thereabouts  
21 that the bishops had compiled lists of  
22 offenders, credibly accused?

23 A. I did, yes.

24 Q. Did you ask that such a list for the  
25 Archdiocese of St. Paul and Minneapolis be

1 presented to you at this first meeting  
2 concerning safe environment in this  
3 archdiocese?

4 A. I did not.

5 Q. Why not?

6 A. It didn't occur to me.

7 Q. So, tell me, then, who conducted the meeting?

8 A. Father McDonough conducted the meeting.

9 Q. And tell us what Father McDonough told you,  
10 Archbishop, responsive to your request about  
11 the safe or lack of safe environment in the  
12 Archdiocese of St. Paul and Minneapolis and  
13 what priests had been accused and what priests  
14 were or were not in ministry.

15 A. Well, he described for me the POMS program  
16 that we have, which is our monitoring system  
17 for priests who have abused, and explained to  
18 me how that worked and explained the situation  
19 of what those priests -- that those priests  
20 were not engaged in ministry and --

21 Q. Okay. I'm going to stop you there. I'm sorry  
22 to interrupt you, but you said the POMS  
23 program?

24 A. Yes, POMS is --

25 Q. Spell that for us.

1 A. P-O-M-E-S, I believe.

2 Q. Okay.

3 A. P-O-M-S, I believe, yeah, P-O-M-S.

4 Q. And you said that was a monitoring program,  
5 correct?

6 A. Correct.

7 Q. And did you ask him the names of the priests  
8 that were being monitored under the POMS  
9 program as McDonough recited this to you?

10 A. I -- I had asked for the meeting and he was  
11 chairing the meeting and he began to tell me  
12 the people -- the -- the individuals who were  
13 under the -- the POMS program.

14 Q. Who were those individuals?

15 A. I can't recall all the names right now.

16 Q. Why didn't you write it down?

17 A. It didn't occur to me at the time to do so.

18 Q. At the time, didn't it seem like one of the  
19 most important things you needed to do as  
20 archbishop, knowing the crisis in America of  
21 Catholic clergy abusing kids, to know who in  
22 this archdiocese had been accused and who are  
23 currently being monitored?

24 A. Well, I had asked for the meeting precisely so  
25 that I would know what the situation was and

1           that I could assure myself and assure my  
2           publics (sic) that the environments were safe.

3   Q.    But, Archbishop, you can't remember who that  
4           was that you were told today?

5   A.    There were several names that were given to me  
6           and I was assured that their situations were  
7           being monitored and that they were not likely  
8           to re-offend and that was the primary purpose  
9           of the meeting.

10   Q.   And you say "several names." How many?

11   A.    I don't recall exactly. There were -- there  
12           were several.

13   Q.    Well, what does "several" mean? Is that more  
14           than ten or less than ten?

15                   MR. HAWS: Well, objection. You  
16           don't have to guess, Archbishop. If you know,  
17           you can answer it, if you don't --

18   A.    I -- I -- I really don't know.

19                   BY MR. ANDERSON:

20   Q.    How many -- how were you told these priests  
21           were being monitored?

22   A.    I don't understand the question.

23   Q.    What were you told about how these priests who  
24           had been accused were actually being monitored  
25           so that they would not offend or re-offend?

1 A. Well, I was told that we have a promoter of  
2 these safe environments who meets regularly  
3 with the individuals. I was told that they  
4 were undergoing regular therapy, that they  
5 were in spiritual direction and that they had  
6 to sign a contract to the effect of how they  
7 would be monitored.

8 Q. Who was the promoter of safe environment?

9 A. Right now it's John Selvig.

10 Q. Who was it then?

11 A. I can't recall the name.

12 MR. HAWS: When you say "then,"  
13 you're referring to the time of the meeting?

14 MR. ANDERSON: Yes.

15 A. I can't recall his name.

16 BY MR. ANDERSON:

17 Q. And when you say that they were to sign an  
18 agreement, would that be an agreement not to  
19 re-offend?

20 A. It was a -- it was a signed statement  
21 indicating what we expected of them. I don't  
22 believe that it said in those categories,  
23 although it was understood that they weren't  
24 to offend again.

25 Q. And did you have any personal knowledge or

1           experience with offenders, clergy or non-  
2           clergy, who are accused and who have offended,  
3           that there's a high recidivism rate and when  
4           they do re-offend, they often lie and deny  
5           about it so that you can't rely upon them?  
6           Were you aware of that?

7    A.    I believe I was, yes.

8    Q.    Well, then, what made you think, then, if you  
9           did, that simply monitoring them and asking if  
10          they're re-offending would work?

11   A.    I asked Father McDonough at that meeting to  
12          tell me what we were doing in terms of making  
13          sure that these men were being monitored and  
14          that they had a program that we were holding  
15          them to.

16   Q.    Did you, as a result of that meeting, disclose  
17          to anybody in the public or any of the  
18          parishioners any of the names that you were  
19          given by your team about those priests who  
20          were being monitored and who had offended?

21   A.    I did not personally, no.

22   Q.    Did anybody under your direction, working with  
23          and under or for you in the archdiocese?

24   A.    I believe I was told that Father McDonough  
25          carried out those disclosures.

1 Q. What disclosures did he make?

2 A. He -- he did not -- as I recall, he did not  
3 tell me exactly who he made the disclosures  
4 to, but, generally speaking, they were people  
5 in the parish that he served.

6 Q. Well, didn't you ask? Didn't you say, "Father  
7 McDonough, we have a number of priests who  
8 you" -- and that number you can't remember  
9 today, "who are are under monitoring, who we  
10 know have offended in the past," didn't you go  
11 back and say, "Tell me exactly what you're  
12 going to do and when you're going to do it to  
13 make the public know"?

14 A. I asked for that meeting so that I would  
15 understand more clearly how the environments  
16 that we have in our parishes and our schools  
17 would be safe for children and that's our  
18 primary objective.

19 Q. Archbishop, isn't it correct that you really  
20 didn't want the public and the people to know  
21 who was being monitored at that time?

22 MR. HAWS: Well, that's objection,  
23 that's argumentative, counsel.

24 BY MR. ANDERSON:

25 Q. You can answer the question.

1 A. I don't believe that's true, no.

2 Q. Well, then, can you tell me exactly what  
3 offenders that had been monitored or under  
4 monitoring were, then, actually disclosed to  
5 the public as a result of that meeting?

6 A. I can't answer that, no.

7 Q. Can you tell me when any of those offenders  
8 who were disclosed to you at that meeting were  
9 ever disclosed to the public?

10 A. I -- I know that they have been. I can't tell  
11 you the exact dates or the times that they  
12 have been disclosed, but they have been  
13 disclosed.

14 Q. Can you tell me the name of any offender or  
15 the time in which it was done when the  
16 archdiocese, under your direction, either  
17 Kevin McDonough or anybody else, made an  
18 actual disclosure and it wasn't made by  
19 somebody, some third party --

20 A. Well, yes.

21 Q. -- such as media or ourselves?

22 A. This past October, I believe, we made our  
23 first disclosures.

24 Q. So is it correct to say, then, that from your  
25 first meeting, staff meeting shortly after

1           your installation that you described, between  
2           that and October 13th of this last year --  
3           October of this last year, you can't identify  
4           today any disclosures made of any of these  
5           accused offenders who were being monitored to  
6           the public?

7    A.    Well, in that --

8                       MR. HAWS:  Objection, that misstates  
9           testimony.

10   A.    In that meeting that I had, Father McDonough  
11           told me how we approach the situation and what  
12           kind of disclosures he made.  He didn't tell  
13           me exactly which disclosures and what day the  
14           disclosures were made on a particular  
15           individual.

16                       BY MR. ANDERSON:

17   Q.    Well, I'm asking you what disclosures were  
18           made to the public.  I appreciate you have  
19           this information in your inner circle of the  
20           chancellors and the delegate, Father  
21           McDonough -- who I think was then vicar  
22           general, wasn't he also?

23   A.    Not -- at the time I was coadjutor, yes.

24   Q.    Yeah.  And, in any case, we'll call them your  
25           inner circle, but beyond your inner circle,

1 I'm asking you to tell me, if you can, if  
2 there were any disclosures made of any of  
3 these offenders identified to you who were  
4 under monitoring to the public until October  
5 of 2013?

6 A. Father McDonough informed me that as part of  
7 our procedures, we would disclose to certain  
8 people in parishes where -- where priests had  
9 served.

10 Q. And how was it determined who would be told in  
11 those parishes?

12 A. My recollection is, as I recollect now, it was  
13 the pastor and the trustees of the parish.

14 Q. What about the parishioners and the public,  
15 didn't they have a right to know who was being  
16 monitored and who had been accused?

17 A. I -- I find it difficult to answer that  
18 question.

19 Q. Don't you think they have a right to know who  
20 has abused children and who's being monitored  
21 in addition to the pastor and the trustees so  
22 they can protect their kids and know who might  
23 pose a risk of harm to their children?

24 MR. HAWS: Are you speaking of  
25 priests that are still in the ministry or

1 serving?

2 MR. ANDERSON: I'm speaking the  
3 priests that are being monitored.

4 A. Well --

5 MR. HAWS: Other than those who are  
6 serving?

7 MR. ANDERSON: The question stands.

8 BY MR. ANDERSON:

9 Q. You identified a number of priests who are  
10 being monitored, right?

11 A. Correct. Correct.

12 Q. They are all priests who are in ministry,  
13 correct?

14 A. No. They were out -- out of ministry.

15 Q. They're out of ministry, they're still  
16 priests?

17 A. Correct.

18 Q. They're still active as priests?

19 A. No. They wouldn't be if they were out of  
20 ministry, they wouldn't be active as priests.

21 Q. And so they were in various capacities in the  
22 community, right, but not in ministry, is that  
23 what you're saying?

24 A. I don't understand what you mean by  
25 "capacities."

1 Q. Well, they were --

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

4 BY MR. ANDERSON:

5 Q. Are you saying, then, Archbishop, that the  
6 monitoring program only covered priests that  
7 were not in parishes?

8 A. No. I'm not saying that.

9 Q. Okay. Let's break it down then. How many of  
10 those priests that you were told were under  
11 monitoring were actually in parishes then?

12 A. Well, you have to understand that the  
13 monitoring system, the POMS program, included  
14 priests who had abused children and -- and  
15 priests who had other behavioral difficulties.  
16 For example, if they had been arrested for a  
17 DW -- a drunk while -- driving while -- while  
18 drunk or other kinds of abnormal, I would say,  
19 behaviors, so that was all put together. It  
20 wasn't just those who had abused children.

21 Q. How many, then, that were accused of having  
22 abused children were disclosed to you that  
23 were under monitoring?

24 A. I don't recall that number.

25 Q. And how many of that number were still in

1 ministry?

2 A. My recollection is that only the one that I  
3 cited before was in ministry and he was  
4 retired. The others were out of ministry.

5 Q. And is that Ken LaVan?

6 A. Yes.

7 Q. And that was -- and when was the first public  
8 disclosure of Ken LaVan having been accused as  
9 an offender and that he had been under  
10 monitoring?

11 A. I don't recall that. Sorry.

12 Q. Isn't it reasonable, Archbishop, that if you  
13 as the archbishop and your team saw fit to put  
14 them under monitoring as you've described in  
15 this program, isn't it reasonable that the  
16 public and the parishioners in the community  
17 of faith be advised that there is a reason to  
18 put a priest under monitoring and that you  
19 have this program so that they can know there  
20 is an issue?

21 MR. HAWS: Objection, calls for a  
22 legal conclusion. Go ahead if you can answer.

23 A. Could you rephrase the question for me,  
24 please?

25 BY MR. ANDERSON:

1 Q. Why didn't you tell the people that you had a  
2 number of priests under monitoring?

3 A. I believe that we felt that we could monitor  
4 the situation without making a total  
5 disclosure to the people.

6 Q. You still feel that way?

7 A. No. I do not.

8 Q. What made you realize that that was a bad  
9 decision?

10 MR. HAWS: Well, objection, that's  
11 argumentative.

12 BY MR. ANDERSON:

13 Q. What made you realize it was a bad choice?

14 MR. HAWS: Same objection,  
15 argumentative.

16 A. I think over my tenure as being archbishop, I  
17 have had new insights into how we should  
18 proceed with these -- these situations.

19 BY MR. ANDERSON:

20 Q. And so when did you realize that?

21 A. I don't -- I can't give you an exact date, but  
22 it's been probably over the last two years  
23 I've come to appreciate that.

24 Q. So in the last two years, once having realized  
25 it, what did you do about it to correct it --

1 A. Well, we --

2 Q. -- in terms of public disclosure?

3 A. We made sure that if there was an incident  
4 that happened, that the trustees of the parish  
5 would be -- be informed of that. And then, of  
6 course, last October we made a full  
7 disclosure.

8 Q. Are you sure it wasn't December that you made  
9 that disclosure?

10 A. I don't recall an exact date.

11 Q. When you say "a full disclosure," what do you  
12 mean by that then?

13 A. Of the 43 persons that we put on our website.

14 Q. Archbishop, you have resisted very vigorously  
15 through your counsel and publicly the  
16 dissemination of the list of accused offenders  
17 and credibly accused offenders, have you not?

18 MR. HAWS: Objection, it's again a  
19 legal conclusion. You can answer to the  
20 extent you know, Archbishop.

21 BY MR. ANDERSON:

22 Q. That is, to the public.

23 A. Could you repeat the question? I'm sorry.

24 Q. You have continuously, until ordered by the  
25 court, resisted making a public disclosure of

1 the names of the credibly accused offenders on  
2 the list compiled by the archdiocese, have you  
3 not?

4 MR. HAWS: Objection, that misstates  
5 the facts and the evidence.

6 A. My understanding is that we voluntarily  
7 disclosed those names, the first names on the  
8 John Jay list, we voluntarily went to the  
9 court, asking them to unseal those names  
10 because there had been such a notoriety, I  
11 would say, about that list of John Jay, and as  
12 we discovered and as we've met -- made public  
13 since then, that there were names on that John  
14 Jay list that should not have been there, who  
15 had not abused children.

16 BY MR. ANDERSON:

17 Q. Archbishop, you're aware that it was our  
18 office that has persisted in trying to get  
19 those lists disclosed by you and your office  
20 for years, including the John Doe 76C case,  
21 correct, you're aware of that?

22 A. I'm aware of that, yes.

23 Q. And you're also aware, are you not, that you  
24 released that list only after we brought  
25 another motion before Judge Van de North and

1           it was very evident and imminent that it was  
2           going to be required, correct?

3                       MR. HAWS:  Objection, misstates  
4           facts in evidence.  Go ahead.

5   A.    I don't -- I -- I don't recall that, no.

6           BY MR. ANDERSON:

7   Q.    So you're saying to us today under oath that  
8           you made the conscious choice to voluntarily  
9           release that list --

10  A.    We did, yes.

11  Q.    -- when you did?

12  A.    Yes.

13  Q.    And you made that choice for what reason?

14  A.    Well, in a -- in an attempt to be transparent  
15           with our publics, with the Catholics in the  
16           pew, because the media had made such a big  
17           deal out of the John Jay list.

18  Q.    It was public pressure, wasn't it?

19  A.    I -- I wouldn't say so.  I think it was  
20           conversion on my part to see that this was  
21           something we should do.

22  Q.    Was it legal pressure by us?

23  A.    No, sir.

24  Q.    No influence, huh?

25  A.    I wouldn't say that, no.

1 Q. Yeah.

2 A. There were multiple sources.

3 Q. Okay. If it wasn't us and it wasn't the media  
4 putting on pressure, you say you had  
5 conversion. What gave you this conversion,  
6 then, if it wasn't public pressure by us or  
7 the media?

8 A. Discussion with my team, who it would be my  
9 communications director, my chancellor for  
10 civil affairs, my chancellor for canonical  
11 affairs, my auxiliary bishops, my moderator of  
12 the curia.

13 Q. And who urged you to keep it quiet on that  
14 team up until that time?

15 MR. HAWS: Object to the form.

16 A. I can't recall anyone specifically doing that.

17 BY MR. ANDERSON:

18 Q. Before you actually had this conversion after  
19 meeting with the team that you described, had  
20 any urged you to make it public so that the  
21 public could know who's on it?

22 A. I don't recall.

23 Q. From 2008 until 2013, you made the choice to  
24 keep that list secret, did you not?

25 A. It already had been kept secret and I didn't

1 see any reason to disclose.

2 Q. After that first meeting you've described in  
3 which you were informed that priests were  
4 placed on monitoring and no memo was made of  
5 that or notes taken by you and/or recording  
6 made of that meeting, why not? Why not? Why  
7 not record that? Why not put it in a memo?  
8 Why not get that list at that time?

9 MR. HAWS: Objection. Can you break  
10 it down and ask a question instead of six?

11 BY MR. ANDERSON:

12 Q. Why not make a recording of the whole thing?  
13 Didn't it seem important enough to get down,  
14 to get recorded, to get done?

15 A. It was important to me. I asked for the  
16 meeting with Father McDonough so that I could  
17 have an idea of where we were in terms of our  
18 safe environments.

19 Q. Were you concerned, Archbishop, that we  
20 shouldn't make some recording of this meeting  
21 about these decisions to keep this secret or  
22 not because, if you did, it might be subject  
23 to some discovery by us or others who were in  
24 litigation with you and the archdiocese?

25 A. No. That didn't occur to me at the time.

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

3                   BY MR. ANDERSON:

4           Q.     Did it ever occur to you at any time or were  
5                   you told that some of these things,  
6                   conversations shouldn't be put in writing  
7                   because they could be discovered by us in  
8                   litigation and known to the public?

9           A.     I believe that Father McDonough once said that  
10                  to me, but it was outside of that context, I  
11                  can't recall exactly the date.

12          Q.     How long ago?

13          A.     I can't -- I can't -- I don't have any  
14                  recollection of that.

15          Q.     What were you discussing?

16          A.     I don't recall.

17          Q.     Who were you discussing?

18          A.     That I don't recall, either.

19          Q.     Anybody else give you that guidance?

20          A.     No, sir.

21          Q.     Anybody else present at the McDonough meeting  
22                  when he said that to you?

23          A.     It wasn't at that meeting. I did not want to  
24                  imply that. I don't recall the circumstances  
25                  in which he had said that.

1 Q. Yeah. I'm just talking about when McDonough  
2 told you that, was anybody else present?

3 A. I don't believe so, no.

4 Q. Okay. You must have been discussing something  
5 very sensitive at that time, but you just  
6 don't recall today what it was and who may  
7 have been involved?

8 A. I don't, sir, I'm sorry.

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

11 BY MR. ANDERSON:

12 Q. You followed his advice, didn't you?

13 A. In terms of?

14 Q. Not putting certain things into writing.

15 A. Yes.

16 Q. How many different times do you think you  
17 chose not to put certain things into writing  
18 concerning scandalous material such as sexual  
19 abuse by (sic) minors?

20 A. It wouldn't have been very many.

21 Q. Well, "very many." Does that mean more than a  
22 dozen or less?

23 A. My understanding today is that would -- would  
24 have been less.

25 Q. Okay. Tell me the times that you remember

1           having conversations where you made the  
2           conscious choice not to put it into writing  
3           because you were concerned, as McDonough had  
4           advised you, that it may be subject to  
5           discovery in litigation and you didn't want it  
6           to be recorded.

7    A.    I can't recall the number of times, I'm sorry.

8    Q.    Tell me the contents of any of those  
9           conversations and with whom they were had.

10   A.    Again, I -- I would just be guessing, I would  
11          be speculating.

12   Q.    And because it was not recorded on any  
13          journal, any diary or the contents of any of  
14          those discussions, there would be no way to  
15          test or determine today how many times you  
16          actually did have such a conversation,  
17          correct?

18   A.    That is -- that is correct.

19   Q.    Do you keep a journal?

20   A.    I do not.

21   Q.    Do you have any memory today of having any of  
22          those meetings or the contents of any of those  
23          meetings where you made the conscious choice  
24          not to record it because it could be  
25          discovered or discoverable in litigation and

1           it pertained to sexual abuse of minors by  
2           priests?

3    A.    I do not.

4    Q.    Do you have the names of any of the priests in  
5           mind that you're thinking today, I do remember  
6           discussing X priest and making the conscious  
7           decision that we can't put that in writing  
8           because if we do, Anderson and his team will  
9           discover it, it could be public?

10                   MR. HAWS:  Well, first, that assumes  
11           facts not in evidence.  I don't think he's  
12           ever testified to that.  Archbishop, don't  
13           guess or don't just assume that that's what  
14           happened just because the question is asked  
15           that way.

16   A.    I would be guessing.

17                   BY MR. ANDERSON:

18   Q.    Okay.  So my question to you is, do you have  
19           any memory of the contents of any conversation  
20           concerning any offender today that falls into  
21           that category of no notes or records made?

22   A.    I do not, no.

23   Q.    Okay.  Did you instruct anyone else to not  
24           document conversations such as that --

25   A.    I don't --

1 Q. -- for the same reasons at any time?

2 A. I don't believe I did, no.

3 Q. Okay. So that would be just you and McDonough  
4 that that particular practice would apply to,  
5 correct?

6 MR. HAWS: Objection, that's not  
7 what he stated that it was a practice, as  
8 you've implied, counsel. Don't misstate the  
9 record.

10 MR. ANDERSON: Give me a legal  
11 objection, not a speaking --

12 MR. HAWS: The objection is don't  
13 put facts into the record that are not  
14 accurate. You are doing that.

15 MR. ANDERSON: Take it off the time.  
16 Give me a legal objection. What's the legal  
17 objection?

18 MR. HAWS: You're misstating facts  
19 and absolutely trying to change and taint your  
20 record for your media and that's not what is  
21 appropriate, counsel, and you know it.

22 MR. ANDERSON: That is not a legal  
23 objection.

24 BY MR. ANDERSON:

25 Q. Archbishop, the question is, anybody else

1           besides yourself and Father McDonough made a  
2           party to such a practice of not recording  
3           sensitive meetings such as that?

4    A.    Not to my knowledge.

5                           MR. HAWS:   Same objections.

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

8           BY MR. ANDERSON:

9    Q.    Archbishop, did you review any materials in  
10           preparation for your deposition today?

11   A.    I did.

12   Q.    What?

13   A.    I reviewed the Charter for the Protection of  
14           Children and Young People.  I reviewed a  
15           summary of the Adamson case.  And I reviewed  
16           the case of Father Montero.

17   Q.    Anything else?

18   A.    No, sir.

19   Q.    Okay.  When you're saying you reviewed a  
20           summary of the Adamson case, what was that  
21           that you looked at?

22   A.    It -- it was a summary of his particular file  
23           that we had.

24   Q.    Prepared by whom?

25   A.    By Mr. Kueppers.

1 Q. And when was it prepared and was it for your  
2 review in this deposition?

3 A. I beg your pardon?

4 Q. When was it prepared?

5 A. I believe it was in the last two to three  
6 weeks.

7 Q. And for this deposition to help you?

8 A. Yes.

9 Q. And was the same kind of thing prepared for  
10 Montero, that you reviewed?

11 A. No. It wasn't as extensive.

12 Q. But was that also prepared by Mr. Kueppers for  
13 you in preparation for this deposition?

14 A. Correct.

15 Q. Anything else that you reviewed?

16 A. No, sir. I did review the names of the 43  
17 priests that are on our website.

18 Q. That's it in terms of review?

19 A. Correct.

20 Q. Did you learn anything in your review of the  
21 Montero summary prepared for you in this  
22 deposition -- in preparation for this  
23 deposition that you had not known before about  
24 Montero and his history?

25 A. I did. I learned that the charges against him

1 had been dropped before he left the country.

2 Q. Did you not know that until you reviewed the  
3 summary?

4 A. That -- that happened before I became  
5 archbishop.

6 Q. Had Montero ever been on your radar as a  
7 priest who had been accused of offending and  
8 had left the country and the archdiocese?

9 A. Yes, I was aware of that.

10 Q. How did you become aware of that?

11 A. I believe at the time that -- at the time that  
12 he had left and a letter was sent from Bishop  
13 Pates to the bishop in Mexico, explaining to  
14 him the situation that we had experienced  
15 here.

16 Q. Did you, yourself, ever request or demand that  
17 any of your subordinates and those in the  
18 inner circle, the chancellors or the vicar  
19 generals or auxiliary bishops, ever retrieve  
20 any files of those who had been accused so  
21 that you could make an independent decision to  
22 review those files yourself?

23 A. Could you repeat the question?

24 Q. Had you ever reviewed any of the files, except  
25 for what you just described involving Adamson

1 and Montero prepared for you, have you,  
2 yourself, ever reviewed any of the priest  
3 files personally so that you could be  
4 satisfied that you were making the right  
5 decisions concerning that priest?

6 A. Well --

7 MR. HAWS: Object to the form, it's  
8 compound and --

9 A. We've had in -- since December a complete  
10 review of the files by an outside company  
11 called Kinsale.

12 BY MR. ANDERSON:

13 Q. Okay. That's something you delegated, though,  
14 isn't it, to somebody else?

15 A. Something that we hired a group, outside  
16 company for, yes.

17 Q. Now, I'm asking you personally. Have you ever  
18 said, "I want to review the file of Father X,"  
19 and have that file produced to you in its  
20 entirety so you could make a fully informed  
21 decision about what to do or not to do? Have  
22 you personally ever done that?

23 A. I don't recall that I have.

24 Q. And until recently, you had delegated that  
25 responsibility, then, to whom?

- 1 A. To the delegate for safe environments.
- 2 Q. And that would have been McDonough?
- 3 A. It was Father McDonough until about a year ago
- 4 when Father Dan Griffith, another priest of
- 5 the archdiocese, took that position over.
- 6 Q. And did you make the decision to remove
- 7 McDonough because of disclosures about how he
- 8 had handled this publicly and there was both
- 9 criticism and scrutiny of that?
- 10 A. No. I realized that he had multiple
- 11 responsibilities, he'd been in the job for 17
- 12 years and I felt it was time that we needed a
- 13 change. Excuse me.
- 14 Q. Have you at any time warned, penalized or
- 15 reprimanded McDonough for the way he handled
- 16 his job as the delegate for safe environment
- 17 under your charge?
- 18 A. I don't believe so, sir.
- 19 Q. Do you fault him for any of the decisions he
- 20 made or recommendations to you now?
- 21 A. I've always believed that Father McDonough had
- 22 the -- the best intentions. He certainly
- 23 shared with me the priority we had of
- 24 maintaining safe environments in our parishes,
- 25 our schools and our other programs.

1 Q. My question goes to actions, not intentions.  
2 Have you ever reprimanded or criticized or  
3 faulted him for any of his actions taken  
4 concerning any of these priests who have  
5 offended and have been accused of offending?

6 A. I don't recall having done so.

7 Q. As you reflect today and look back at the  
8 history now before you, do you fault him for  
9 any of the decisions that he made as your  
10 delegate and/or as vicar general in this  
11 archdiocese concerning the safety of children?

12 A. The only thing that comes to my mind is the  
13 fact that I learned subsequent to --  
14 subsequent to the -- the fact that when Father  
15 Wehmeyer was arrested for drunk driving, that  
16 that was not shared with the trustees and I --  
17 there was some reason that he had for not  
18 doing that. I disagreed with him in that  
19 decision. That's the only one I can think of.

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

22 BY MR. ANDERSON:

23 Q. Any other decisions concerning sexual abuse of  
24 minors and Father McDonough's actions  
25 pertaining to that that you either fault or

1           now look back upon as deficient in the  
2           protection of children?

3                         MR. HAWS: Object to the form.

4     A.     Could you rephrase that question, please?

5                         BY MR. ANDERSON:

6     Q.     Any other actions taken by Kevin McDonough as  
7           your delegate for safe environment or as vicar  
8           general that you look back on now and say, "He  
9           blew it when it comes to protection of the  
10          children and the recommendation he made to  
11          me"?

12                        MR. HAWS: Object to the form, it's  
13           argumentative. Go ahead.

14    A.     I don't believe so, no.

15                        BY MR. ANDERSON:

16    Q.     So you think he did a good job about that,  
17           huh?

18    A.     I believe he did.

19    Q.     Do you think you're doing a good job?

20    A.     I believe I am, yes.

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

23                        BY MR. ANDERSON:

24    Q.     Have you, yourself, when you reflect on what  
25           has happened to date and all that has been

1 revealed to you to this date and time, have  
2 you, yourself, made any mistakes in failing to  
3 protect children and provide the safe  
4 environment to this community that you  
5 promised when you took the job?

6 A. The only mistakes that I know for sure I made  
7 was not removing the faculties from Father  
8 Lavan, but I didn't know that that was  
9 happening at the time. Once I learned it, I  
10 -- I acted.

11 Q. Any others? Is that it?

12 A. That's it.

13 Q. Let's talk about Father Lavan, then, for a  
14 moment. You continued to maintain publicly  
15 and as a part of the Charter for the  
16 Protection of Children adopted in 2002 to  
17 believe that this archdiocese has a zero  
18 tolerance policy when it comes to sexual  
19 abuse, is that correct?

20 A. We have tried to maintain that as our  
21 standard, yes.

22 Q. And you say you have tried to maintain that as  
23 your standard. Have you maintained that as  
24 your standard?

25 A. I believe we have. I think the record shows

1           that in the last 20 years, we have had two  
2           incidents; now, those are two too many, but  
3           two incidents in which a child had been abused  
4           by priests who were in ministry at the time.

5   Q.   And what two priests are you referring to,  
6        Archbishop?

7   A.   Father Francis Montero and Father Wehmeyer.

8   Q.   And how was, then, the zero tolerance policy  
9        as represented to the people violated as it  
10       pertains to Father Freddy Montero?

11                   MR. HAWS:  Well, objection, that  
12        misstates facts.  He didn't say that it was.

13        BY MR. ANDERSON:

14   Q.   Didn't you say that it was?

15   A.   Did I say what?

16   Q.   Didn't you say that the zero tolerance policy  
17        was not adhered to when it came to Montero?

18   A.   No.  I didn't say that.  We -- we immediately  
19        removed him from ministry and turned the case  
20        over to the police, so I believe that we  
21        maintained the zero policy that we had.

22   Q.   Did you ever review the Montero file itself?

23   A.   No.

24   Q.   Were you aware that Montero was living with  
25        Father Kevin McDonough?

1 A. I believe I did know that.

2 Q. Were you aware that Father McDonough had some  
3 responsibilities for supervision over him  
4 because Montero was an extern priest from  
5 Ecuador?

6 A. Well, my understanding was that he -- he lived  
7 in the rectory at St. Peter Claver.

8 Q. And that's where Father McDonough was assigned  
9 as pastor?

10 A. Correct.

11 Q. And he was assigned there so McDonough could  
12 keep an eye on him; were you aware of that?

13 A. I was not aware of that.

14 Q. Were you aware that Montero --

15 A. That was before my time.

16 Q. Were you aware that Montero was allowed to  
17 leave this archdiocese and return to Ecuador  
18 before the police could complete an adequate  
19 investigation?

20 MR. HAWS: Objection, it misstates  
21 the facts and the evidence.

22 A. My understanding of the facts is that he --  
23 the -- the -- the charges against him were  
24 dropped before he left the country.

25 BY MR. ANDERSON:

1 Q. Do you have any information that the police  
2 investigation had not been completed?

3 A. No, I don't.

4 Q. Are you aware that as soon as Montero was  
5 allowed to leave the archdiocese and return to  
6 his home diocese in Ecuador, he was placed in  
7 active ministry?

8 A. We removed his faculties when the accusation  
9 arose. We never gave him back faculties and  
10 he returned home to his own home diocese.

11 Q. And did you tell the bishop of his home  
12 diocese that his faculties had been removed  
13 because an accusation of child sexual abuse  
14 had been made against him?

15 A. Yes, I believe Bishop Pates was the one that  
16 wrote to the bishop about that.

17 Q. And what bishop did Bishop Pates write to?

18 A. To the bishop of the diocese, I can't recall  
19 the -- the exact diocese in Ecuador.

20 Q. And were you aware that Father Montero was  
21 immediately returned to active ministry in  
22 Ecuador?

23 A. I would only be speculating to say that I did.  
24 I -- I don't know for sure.

25 Q. I called Father Montero shortly after we

1 learned and brought suit concerning that case  
2 that he was in Ecuador and talked with him and  
3 he was, then, in active ministry; and did you  
4 know that we had a conversation with him?

5 A. I did not.

6 Q. Did you see anything in the Montero file that  
7 you reviewed that we had had such a  
8 conversation?

9 A. I did not specifically review the Montero  
10 file. I had a summary from my civil  
11 chancellor.

12 Q. Father Montero did not indicate that any  
13 restrictions on his faculties had been placed  
14 and he was in active ministry. Does that  
15 concern you that he's now in Ecuador in active  
16 ministry?

17 A. Well, I believe that's why Bishop Pates wrote  
18 the letter to the bishop, we were concerned  
19 about that.

20 Q. But I'm talking about today, about the kids in  
21 Ecuador. Having reviewed what Mr. Kueppers  
22 gave you in preparation for this deposition  
23 and having reviewed that, are you now  
24 concerned that maybe something more should be  
25 done about Montero being in Ecuador, given the

1 benefit of what you now know that you didn't  
2 before?

3 MR. HAWS: Objection, it's  
4 argumentative. Go ahead.

5 A. I would agree to that, yes.

6 BY MR. ANDERSON:

7 Q. Maybe we should do something about that. I  
8 was able to call him and talk to him. Maybe  
9 this would be a great opportunity for you to  
10 directly contact the bishop of Ecuador and  
11 say, "Bishop, we do have concerns based on  
12 what Mr. Kueppers has told me and the  
13 information we have about the safety of the  
14 children in Ecuador, about Freddie Montero."  
15 Maybe you should give him a full disclosure of  
16 what you know here and about what happened.  
17 Do you think that's a good idea?

18 MR. HAWS: Objection, that has  
19 nothing to do with this case, counsel. It's  
20 argumentative, it's a speech, it's compound,  
21 asks dozens of questions within it, it assumes  
22 facts not in evidence, it's your facts. Ask a  
23 question and he can answer.

24 MR. ANDERSON: Speaking objections.

25 MR. HAWS: Ask a good --

1 BY MR. ANDERSON:

2 Q. Are you willing --

3 MR. HAWS: -- question that's one  
4 question.

5 BY MR. ANDERSON:

6 Q. Are you willing to do that, Archbishop?

7 MR. HAWS: Willing to do what?

8 BY MR. ANDERSON:

9 Q. Contact the bishop in Ecuador --

10 A. As I indicated --

11 Q. -- about Freddie Montero.

12 A. As I indicated before, he's already been  
13 contacted, yes. That happened before I became  
14 archbishop. I would be willing to contact him  
15 again and to share my concerns with him, yes.

16 Q. I would appreciate that. I think it's very  
17 important that you do that. Thank you.

18 A. You're welcome.

19 Q. Have you at any time reprimanded, punished,  
20 demoted or taken any action against any priest  
21 for -- or official for their mishandling of  
22 childhood sexual abuse while archbishop?

23 A. Could you repeat the question again? You had  
24 several verbs there.

25 Q. Have you at any time reprimanded, punished,

1 demoted or taken any disciplinary action  
2 against any priest or official of the  
3 archdiocese for their mishandling of child  
4 sexual abuse allegations?

5 A. I don't believe so, no.

6 Q. Do you believe you should have?

7 A. No.

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

10 BY MR. ANDERSON:

11 Q. Do you believe there are any priests in the  
12 archdiocese or officials in the archdiocese  
13 that have mishandled childhood sexual abuse?

14 MR. HAWS: At what point in time?

15 BY MR. ANDERSON:

16 Q. Allegations since your installation.

17 A. No. I don't believe so.

18 Q. Father Michael Stevens, what do you know about  
19 him?

20 A. I don't.

21 Q. Are you aware that in mid-1980s, he pled  
22 guilty to criminal sexual conduct with a  
23 minor?

24 A. I'm not, no.

25 Q. Are you aware that in 2002, he was publicly --

1           excuse me, he was removed from ministry?

2    A.    I'm not aware of that.

3    Q.    At any time, are you aware that the  
4           parishioners or the public were ever informed  
5           that Father Michael Stevens posed a risk of  
6           harm to the children in the archdiocese?

7    A.    That was all before my time.

8    Q.    Are you aware that Father Michael Stevens is  
9           in monitoring?

10   A.    Excuse me?

11   Q.    Are you aware that Father Michael Stevens is  
12          on monitoring now?

13   A.    In the POMS program, yes.

14   Q.    And the only ones that know that are now us  
15          and those in your inner circle, correct?

16                   MR. HAWS:  Object to the form.  I  
17           don't know if "inner circle" --

18           BY MR. ANDERSON:

19   Q.    Well, the inner circle would be the  
20          chancellors, the auxiliary bishops and vicar  
21          generals and your officials and the monitors.

22   A.    I don't know that for -- as fact.

23   Q.    Are you aware that Father Michael Stevens,  
24          while on monitoring, still performs IT work  
25          for the archdiocese and for various parishes?

1 A. My understanding is that he had in the past,  
2 but no longer does perform that service.

3 Q. And he is still a priest, correct?

4 A. I believe that's correct.

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

7 BY MR. ANDERSON:

8 Q. And when, then, did he stop doing the IT work  
9 in parishes and for the archdiocese while a  
10 priest?

11 A. It was some time ago, but I can't tell you the  
12 exact date.

13 Q. What prompted the revocation or termination of  
14 his IT work?

15 A. I don't have that answer.

16 Q. Who does?

17 A. I would presume Father McDonough would know.  
18 I think that that happened under his watch.

19 Q. His watch as promoter, but your watch as  
20 archbishop, correct?

21 A. I don't have those dates.

22 Q. Does it concern you to hear and learn that you  
23 had and have a priest by the name of Michael  
24 Stevens who was on the monitoring plan -- and  
25 by the way, that monitoring plan, did you

1           inherit that from your predecessor or did you  
2           start that?

3    A.    I inherited it from my predecessor.

4    Q.    Does it concern you that you have Michael  
5           Stevens on such a monitoring plan and that he  
6           is still a priest and allowed to go into  
7           parishes and do IT work, knowing that he had  
8           been accused and not under monitoring?

9    A.    It would be a cause for concern.

10   Q.    Isn't it a conscious choice being made by  
11          Father McDonough to take the risk to let that  
12          guy out there as a priest even work in the  
13          parishes?

14                           MR. HAWS:  Objection, that's  
15                           argumentative and misstates facts and  
16                           evidence.

17   A.    I would have to talk to Father McDonough about  
18          that.

19                           BY MR. ANDERSON:

20   Q.    Do you think it deserves some attention?

21   A.    I -- I would be willing to talk to Father  
22          McDonough about that.

23   Q.    Thank you.  Now, there is some indication that  
24          Deacon Rourke is the monitor of Stevens.  Are  
25          you aware of that?

1 A. Deacon O'Rourke was the POMS person, that's  
2 the name I couldn't remember before, but Mr.  
3 John Selvig is now the monitor.

4 Q. Is it O'Rourke or Rourke? I've seen it both  
5 ways.

6 A. Yeah, I can't tell you.

7 Q. Okay. I've got it as Rourke.

8 MR. KUEPPERS: That's correct.

9 MR. ANDERSON: Okay. Thank you.

10 BY MR. ANDERSON:

11 Q. Are you aware, Archbishop, that Father  
12 McDonough communicated to the monitor, Rourke,  
13 concerning Stevens that Stevens was in four to  
14 five parishes and the pastors in those --  
15 doing IT work and a priest, the pastors had  
16 not been informed of the fact that Stevens had  
17 been accused of sexual molestation?

18 MR. HAWS: On what date are you  
19 referring to?

20 BY MR. ANDERSON:

21 Q. I'm just asking if you're aware of that.

22 A. I was not aware of that.

23 Q. Are you aware that Jennifer Haselberger, your  
24 former chancellor for canonical affairs,  
25 raised concerns with Father Laird in 2011

1           about Stevens' status as a priest in the  
2           parishes doing this IT work and that he had  
3           had a criminal conviction?

4   A.    I was not aware of that.

5   Q.    Is it your testimony that Father Laird never  
6           discussed that topic with you?

7   A.    To the best of my recollection, he did not.

8   Q.    Is it your testimony that Jennifer Haselberger  
9           never brought to your attention concerns that  
10          Stevens would not be working in the parishes,  
11          being able to do IT work if he had been a  
12          layperson because he wouldn't have gotten by a  
13          record check?

14  A.    I am not aware that Jennifer ever brought that  
15          to my attention.

16  Q.    Did you remove Father Laird as vicar general?

17  A.    I did not.

18  Q.    Did he resign?

19  A.    He did.

20  Q.    Why?

21  A.    To the best of my recollection, he had  
22          disagreed with me at the time that I had made  
23          Father Wehmeyer pastor of Blessed Sacrament  
24          and St. Thomas the Apostle parishes and he  
25          felt that when the MPR story came out on the

1           28th of September, that that reflected poorly  
2           on himself and he felt that he had to resign  
3           because of it.

4    Q.    Did you ask him to resign?

5    A.    I did not.

6    Q.    Do you hold him responsible for the failures  
7           that led to his resignation or do you hold  
8           yourself?

9    A.    I don't know what --

10                   MR. HAWS:  Objection, it assumes  
11           facts not in evidence.  What failures?  No  
12           one's discussed failures.

13   A.    I don't know what failures you'd be talking  
14           about.

15                   BY MR. ANDERSON:

16   Q.    Well, you referred to the MPR story.  What was  
17           the MPR story that caused the ultimate  
18           resignation?

19                   MR. HAWS:  Well, objection.  That's  
20           not what he stated, either, counsel.  Try to  
21           ask questions that are questions --

22                   MR. ANDERSON:  Just a minute.  Don't  
23           instruct me.

24                   MR. HAWS:  -- and not put -- I'm  
25           instructing you, counsel, because you continue

1 to misstate evidence and try to create your  
2 own evidence by putting facts into a question  
3 that don't exist. That's an inaccurate  
4 statement.

5 MR. ANDERSON: Just stop. I'll  
6 rephrase.

7 BY MR. ANDERSON:

8 Q. Did the MPR story trigger Laird's resignation?

9 A. I believe it did.

10 Q. Okay. What was it that caused -- in the MPR  
11 story that triggered it?

12 A. Well, I -- we didn't talk about that  
13 specifically, so you'd have to talk to him  
14 about that. But my recollection is that he  
15 said -- he used the expression, "I'm being  
16 painted with the same brush you are." And he  
17 said, "I need to resign to maintain my  
18 integrity."

19 Q. I'm sorry, I wasn't able -- there was  
20 pounding, I didn't hear what you said he said.  
21 Could you repeat that?

22 A. He used the expression -- he said, "The media  
23 is painting us with the same brush, and for my  
24 own integrity, I need to resign." I believe  
25 that's what he said.

1 Q. Did you feel bad for Laird and consider him to  
2 have been a victim?

3 A. I don't know that I considered him a victim,  
4 but I felt badly that he felt he had to  
5 resign, yes.

6 Q. There was an audio recording made of a meeting  
7 you had with priests and reported by MPR where  
8 I think, to paraphrase, you described Father  
9 Laird as having been a victim in this whole  
10 thing. Did you use those terms to your fellow  
11 priests in the meeting?

12 A. I don't recall. I remember the event and I --  
13 I spoke positively about Father Laird and the  
14 contributions he had made to the archdiocese.  
15 I don't remember the exact words I used.

16 Q. Did you listen to the MPR recording of your  
17 own words about Father Laird?

18 A. I did not.

19 Q. Did you hear about that?

20 A. I heard that they -- I heard that that was --  
21 surreptitiously and secretly that that  
22 recording was made, but I didn't listen to it.

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

25 BY MR. ANDERSON:

1 Q. Did you discipline anybody or investigate  
2 anybody for having made such a recording?

3 A. I did not.

4 Q. Do you know who did?

5 A. No, I don't.

6 MR. HAWS: Who did what? Who did  
7 the --

8 BY MR. ANDERSON:

9 Q. The recording.

10 A. There were only probably nine people, ten  
11 people in the room, but if I were to guess, it  
12 would just be a guess as to who it was.

13 Q. Okay. Don't need you to guess.

14 Archbishop, I'd like to ask you  
15 about Father Gilbert Gustafson. His current  
16 status in the archdiocese is what?

17 A. I believe that he is retired. He -- he's in  
18 our monitoring program and he's living on his  
19 own.

20 Q. You're aware that he had been convicted of  
21 criminal sexual conduct?

22 A. I was, yes.

23 Q. When did you first become aware of that?

24 A. I think during the -- the last six months.

25 Q. Were you aware that he had been at some point

1 in time, either prior to or after your  
2 installation, working at the archdiocese  
3 offices in the tribunal?

4 A. I was not aware of that, no.

5 Q. Were you aware that a protest had been done,  
6 prior to your installation, at the Chancery  
7 about Gustafson's presence as a priest at the  
8 archdiocese?

9 A. I was not aware of that.

10 Q. Are you aware that Father Gustafson has worked  
11 as a consultant at Cristo Rey Jesuit High  
12 School?

13 A. I learned about that just recently. I wasn't  
14 aware of it at the time.

15 Q. And when did you learn that?

16 A. I believe -- I believe I -- I learned that in  
17 the -- as a result of the Kinsale file review.

18 Q. Were you aware that Father Gustafson, after  
19 some -- after a lawsuit was brought against  
20 him by Anne Bonse, who became quite public  
21 about it, was placed on disability and is now  
22 receiving disability payments?

23 A. I'm not aware of that.

24 Q. Are you aware that there is an insurance  
25 company in the archdiocese that insures the

1 archdiocese and priests in it --

2 A. Yes, I am.

3 Q. -- that qualifies somebody such as Gil  
4 Gustafson for disability?

5 A. I'm aware that there is a -- such a program.

6 Q. What's the name of that company?

7 A. I -- I can't recall right at the -- at the  
8 moment.

9 Q. Is that administered effectively by your  
10 office --

11 A. It would be --

12 Q. -- at least under the control of?

13 A. It would be done through our finance office.

14 Q. And are you aware that Gil Gustafson, as we  
15 speak here today, is receiving disability  
16 payments every month for the diagnosis of  
17 pedophilia?

18 A. I was not aware of that, no.

19 Q. Do you know what pedophilia is?

20 A. I do.

21 Q. Do you think that's appropriate, Archbishop,  
22 for him to be getting disability payments for  
23 having the diagnosis and having been  
24 established as being a compulsive sexual  
25 offender that qualifies him for that

1 diagnosis?

2 A. I'm not aware of those facts.

3 MR. HAWS: Objection, that's a legal  
4 conclusion. There's no foundation here, but  
5 also a legal conclusion. And I don't think  
6 that the Archbishop is qualified to evaluate  
7 who it qualifies under its insurance policies  
8 for disability, counsel.

9 A. I'm not aware of those facts.

10 BY MR. ANDERSON:

11 Q. Okay. When you say you know what pedophilia  
12 is, let's make sure we're talking about the  
13 same thing.

14 A. Okay.

15 Q. Under the Diagnostic and Statistical Manual  
16 used by mental health practitioners and for  
17 purposes of establishing disability and the  
18 like and other reasons, pedophilia is defined  
19 as a compulsive sexual interest in  
20 prepubescent adolescents. Now, keeping that  
21 diagnosis in mind and now being informed that  
22 he is getting, through this program,  
23 disability payments for that diagnosis, does  
24 that concern you?

25 MR. HAWS: Same objections and,

1           Archbishop, I don't know if you -- if you know  
2           how to answer how he qualifies under an  
3           insurance policy contract, you can answer.  If  
4           you don't, you can advise that you don't  
5           understand or know.

6    A.    I don't understand and I -- I -- I have not  
7           had those facts.  I'd have to look into the  
8           facts to see where the truth lies.

9           BY MR. ANDERSON:

10   Q.    Well, does it concern you, having heard what  
11           you just did, that he was working at Cristo  
12           Rey and allowed to?

13   A.    That would -- would have been a concern, yes.

14   Q.    Why haven't you gone back to the files  
15           pertaining to Gil Gustafson and others like  
16           him, Stevens and LaVan and those that we've  
17           discussed at least so far, and made sure that  
18           you're abiding by the promise of zero  
19           tolerance and the safety of the children in  
20           this archdiocese?

21                   MR. HAWS:  There's no evidence,  
22           counsel.  You've implied that that hasn't --  
23           that there's been some violation of zero  
24           tolerance and there's no evidence of that, so  
25           your statements again, if they're --

1                   MR. ANDERSON:  If you have an  
2                   objection, state a legal objection.

3                   MR. HAWS:  I do, counsel.  My  
4                   concern --

5                   MR. ANDERSON:  Don't give me a  
6                   speech.

7                   MR. HAWS:  No.  Here's my concern,  
8                   counsel.  You are trying to make sound bites  
9                   for yourself and for media by inserting facts  
10                  that do not exist.  And so when you say that  
11                  and imply that there's some violation when  
12                  there is not, that is unfair and it's  
13                  inappropriate.  So if you want to ask the  
14                  archbishop questions about which he knows and  
15                  can answer, he'll do his best.  But don't  
16                  imply and don't create your facts for a media  
17                  sound bite.

18                  (Discussion out of the hearing of  
19                  the court reporter)

20                  BY MR. ANDERSON:

21        Q.        Why do you think you don't know that one of  
22                  your priests, Gil Gustafson, is getting  
23                  payments for a diagnosis of pedophilia while  
24                  he works at Cristo Rey?

25        A.        Well, I would have to look into the facts.

1           You're -- you're telling me facts that may or  
2           may not be true and I would have to look into  
3           that. We just had this Kinsale group, as I  
4           mentioned, go through 800 files and they're  
5           still in the process of doing that. I suspect  
6           that their findings are going to be  
7           enlightening for us and we will follow up on  
8           whatever they -- they have come up with.

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

11           BY MR. ANDERSON:

12    Q.    Do you consider it a violation of the promises  
13           you made to the people and the zero tolerance  
14           policy to have allowed LaVan to have worked in  
15           a parish?

16    A.    I didn't know he was working in parishes. He  
17           was retired, and so he shouldn't have been  
18           working in the parish.

19    Q.    You learned he was, though, didn't you?

20    A.    Just recently I've learned.

21    Q.    So it was a violation, wasn't it?

22    A.    Well, we took him out of ministry as soon as  
23           we learned.

24    Q.    You say "we learned."

25    A.    I learned. I learned. I'm sorry.

1 Q. That means other people learning. He couldn't  
2 have been in there without other people having  
3 known, right, other people under your control?

4 A. I don't know that as a fact.

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

7 MR. FINNEGAN: You want to take a  
8 break?

9 THE WITNESS: We can take a break.

10 MR. HAWS: Is it a good time to take  
11 a break?

12 MR. ANDERSON: Sure, if you like.

13 MR. HAWS: Okay.

14 MR. ANDERSON: Thanks.

15 MR. HIBBEN: We're going off the  
16 record at 10:31 a.m.

17 (Recess taken)

18 MR. HIBBEN: This is video number 2  
19 in the deposition of Archbishop John  
20 Nienstedt, taken on April 2nd, 2014. Time now  
21 is 10:47 a.m.

22 BY MR. ANDERSON:

23 Q. Archbishop, going back to the monitoring  
24 program for a moment, today, are there  
25 currently any priests on the monitoring

1 program pertaining to accusations of sexual  
2 abuse of minors?

3 A. Are there -- those on the -- on the POMS  
4 program?

5 Q. Yes.

6 A. Yes, there would be.

7 Q. How many?

8 A. Well, living members who are on our website.

9 Q. You're talking about the 36 that are living --

10 A. The --

11 Q. -- that are still priests?

12 A. Thirty-six, that would be -- yes.

13 Q. Did you say six or 36?

14 A. Thirty-six, I think. That's my recollection,  
15 anyhow.

16 Q. So is it your testimony that if they're still  
17 a priest and still alive, but on the list of  
18 credibly accused as reported on the website,  
19 which is 36 in number, they are on the POMS  
20 monitoring program?

21 A. My understanding is yes, although they have  
22 been taken out of ministry and they've had  
23 their faculties removed, so they can't  
24 function as priests any longer.

25 Q. Are there any that are on monitoring that are

1 not on that list currently?

2 A. Yes, there would be because the -- the  
3 monitoring program includes those who have  
4 abused children, but also includes others who  
5 have not abused children, but who have maybe  
6 had a drinking problem or a problem with a --  
7 an adult, some -- some form of bad behavior.

8 Q. Are there any that are on monitoring  
9 pertaining to sexual misconduct?

10 A. Yes, there would be.

11 Q. Has that been made public and known to any of  
12 the parishioners or the public?

13 A. If there's an accusation of sexual misconduct,  
14 we ask the individual priest to step aside  
15 from ministry and that becomes known to the --  
16 the public, yes.

17 Q. Is there an instance where you can point to  
18 where the priest has stepped aside, resigned  
19 from ministry and the reason for that has been  
20 disclosed as allegations of sexual misconduct?

21 A. You -- you lost me there for a minute. Could  
22 you repeat that?

23 Q. Have there been any instances that you've  
24 disclosed that the reason they're stepping  
25 aside or stepping down is because of

1           allegations of sexual misconduct?

2    A.    Yes, there are cases of that.

3    Q.    And what case?

4    A.    I'm thinking of Father Huberty.

5    Q.    Anybody else?

6    A.    No one comes to mind.  That's the case that  
7           comes to mind as the most recent.

8    Q.    Any cases that you know of where sexual  
9           misconduct was involved and it wasn't  
10          disclosed to the public and the parishioners  
11          as to why the priest was taking a leave or a  
12          sabbatical or resigning?

13   A.    To the best of my ability, I can't think of a  
14          case.

15   Q.    What about Shelley?

16   A.    Well --

17   Q.    I mean, the parishioners weren't told that he  
18          had been in possession of child pornography?

19   A.    That's -- that's true.

20   Q.    And they weren't told and the public was never  
21          even alerted until October of this last year  
22          when you made that public, were they?

23   A.    Well --

24                           MR. HAWS:  Well, counsel, again,  
25                           you've --

1 MR. ANDERSON: No.

2 MR. HAWS: You've made your record  
3 that's wrong and there's no evidence of child  
4 pornography, as you said. The claim has been  
5 pornography. And so let's be clear, when you  
6 try to assert your facts, they're different  
7 maybe than the real facts. Ask the proper  
8 questions.

9 A. I -- I was going to make that intervention and  
10 say that it was -- it was submitted to the St.  
11 Paul Police Department twice and twice they  
12 said they didn't find child pornography.

13 BY MR. ANDERSON:

14 Q. Was everything in possession of the  
15 archdiocese files turned over to the police  
16 for their investigation at the time they were  
17 doing that?

18 A. Yes. Yes, sir.

19 Q. Was the report done by Setter & Associates  
20 turned over to the police?

21 A. Yes, that was part of the file.

22 Q. Was the report done by Johnson, the forensic  
23 report?

24 A. I believe that was part of the file. We  
25 turned everything over in those three files,

1 everything that we had.

2 Q. Have you reviewed the Shelley file personally?

3 A. Personally, I -- I've -- I've read an awful  
4 lot about that. The files themselves I have  
5 not gone through.

6 Q. Okay. We'll go through that a little later.  
7 Have you told the parishioners and the public  
8 the names of all the priests in the POMS  
9 program?

10 A. Well, there would be, as you stated before,  
11 the -- the number that have been removed from  
12 ministry and that would be known to the  
13 public. I'm not sure that those -- and so my  
14 answer would be that everyone who has an  
15 allegation of child sexual abuse would be  
16 known to the public.

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

19 BY MR. ANDERSON:

20 Q. I'm asking broader than that. I'm talking  
21 about everybody in the program. Have the  
22 parishioners and the public been informed of  
23 all the priests who are in the POMS program  
24 for whatever reason?

25 A. I'm pretty sure they -- they -- they have

1           been, but I can't say for sure. My impression  
2           is that they have been made known, they have  
3           been disclosed.

4    Q.    I get the impression that a lot of the  
5           responsibility for the safety of the  
6           parishioners and the public is delegated by  
7           you to folks. Is that a fair characterization  
8           or not?

9    A.    Well, I'm -- I -- typically I'm a hands-on  
10          person and -- but I have to delegate  
11          responsibilities, yes.

12   Q.    You have been described by various people at  
13          various times, priests included, both in New  
14          Ulm and in the archdiocese, as a micro manager  
15          in terms of your management style. Would you  
16          say that's a fair characterization?

17   A.    No. I don't think so.

18   Q.    You would say a hands-on manager is a fair  
19          characterization because I think those were  
20          your words, right?

21   A.    Correct.

22   Q.    Do you feel you have taken a hands-on approach  
23          to sexual abuse of priests -- excuse me,  
24          sexual abuse of minors by priests in this  
25          archdiocese?

1 A. Yes, I believe so.

2 Q. What action, besides the POMS program that  
3 you've talked about, demonstrates your  
4 hands-on approach to sexual abuse by priests  
5 in this archdiocese?

6 A. Well, the whole VIRTUS program that we have  
7 that assures us that people are being -- that  
8 people are receiving background checks,  
9 they're given training in terms of what to  
10 look for, signs. We've had clergy study days  
11 in which we've discussed all these related  
12 issues.

13 Q. Anything else?

14 A. It doesn't come to mind.

15 Q. I'd like to ask you about Joseph Gallatin. Is  
16 he on any list?

17 A. He would be on the POMS program.

18 Q. And besides those -- and that would be for  
19 sexual misconduct pertaining to minors,  
20 correct?

21 A. It was an allegation. That allegation is  
22 being investigated now and so I can't say  
23 definitively that it was.

24 Q. When you say "being investigated," is that by  
25 the police?

1 A. Yes.

2 Q. Do you have a practice that if an allegation  
3 is being investigated by the police, that you  
4 do not take action as to that priest because  
5 you believe that to do so would suggest the  
6 priest's guilt?

7 A. No. That's not correct. We -- we --

8 Q. Just a moment.

9 A. Okay.

10 MR. HAWS: Well, let him -- he can  
11 answer his question.

12 MR. ANDERSON: He said that's not  
13 correct.

14 MR. HAWS: He can answer and tell  
15 you why. So you can finish, Archbishop.

16 MR. FINNEGAN: He can ask him why.

17 MR. HAWS: He can finish his  
18 question -- an answer to the question.

19 BY MR. ANDERSON:

20 Q. Is your answer no?

21 A. Could you repeat the question, please? I'm a  
22 little confused right now.

23 Q. Do you have a practice that if a priest is  
24 being investigated by the police for child  
25 sexual abuse, that you do not take any public

1           action as to that priest because you believe  
2           to do so would suggest the guilt of the  
3           priest?

4    A.    No, sir.

5    Q.    Have you ever expressed that view to any of  
6           those who occupy positions as officials in the  
7           archdiocese, such as your current chancellors  
8           or your former chancellors or your auxiliary  
9           bishops or vicar generals?

10   A.    No.  Because we let the police do their own  
11           work and then we would have our own  
12           investigation.  We have two boards set up, one  
13           that deals with precisely the charter issues,  
14           and then we have a ministerial standards board  
15           that we set up for everything else.  And those  
16           would be the areas that would ask for and do  
17           the investigation.

18   Q.    Did you ever express that view or practice or  
19           the desire to employ such a practice to  
20           Jennifer Haselberger?

21                   MR. HAWS:  I'm sorry, what view or  
22           practice?

23           BY MR. ANDERSON:

24   Q.    The view that you would take no action  
25           concerning a priest while there's a police

1 investigation.

2 A. Well, we do take the action of removing them  
3 from ministry.

4 Q. But do you say why?

5 A. It depends on the case.

6 Q. Okay. And do you also choose not to tell the  
7 people in the pews in the parishes and the  
8 public because you don't want the suggestion  
9 of guilt of the priest to have been made by  
10 that disclosure?

11 A. Well, by the very fact that the priest is  
12 removed from the public ministry is a signal  
13 to the people that something's wrong, but we  
14 don't -- we haven't done our investigation.

15 Q. Well, Father Jon Shelley went on sabbatical  
16 and he told everybody he went on sabbatical,  
17 right?

18 A. He did, I believe, yes.

19 Q. That was under your -- with your permission  
20 that he told everybody that, right?

21 A. That's true, he was on sabbatical.

22 Q. But the fact of the matter was that it had  
23 been discovered that he had been in possession  
24 of possible child pornography?

25 MR. HAWS: Well, objection. That

1 misstates the facts and evidence as well.

2 BY MR. ANDERSON:

3 Q. Is that correct?

4 A. No. It's not correct. The -- he was in  
5 possession of pornography, but he was never  
6 accused of a crime.

7 Q. Is it your belief that for him to be guilty of  
8 the crime of sexual abuse or possession of  
9 child pornography, he has to be charged with  
10 it by the law enforcement authorities?

11 A. Our standard practice is that when we receive  
12 an allegation or we have reason to believe  
13 that there has been a violation, we turn that  
14 matter over to the police immediately, which  
15 is what we did in his case.

16 Q. And then if the police do not charge, is it,  
17 then, your belief and practice that the priest  
18 is effectively exonerated?

19 A. We would do our own investigation after that.

20 Q. And --

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

23 BY MR. ANDERSON:

24 Q. You said that Shelley was turned over to the  
25 police. When was that?

1 A. When the incident -- prior to my time, so I  
2 can't give you a date, but it was on, my  
3 understanding, two -- two occasions that that  
4 was given -- the files were given to the  
5 police.

6 Q. In 2004, you're aware that your predecessor,  
7 Archbishop Flynn, and his subordinates became  
8 aware of his possession of materials that were  
9 borderline child pornography at least,  
10 correct?

11 MR. HAWS: Objection, you're again  
12 misstating facts.

13 A. I don't know when that happened. I don't have  
14 a recollection of that. I -- I do know that  
15 on two occasions, that computer was taken to  
16 the police, but on two occasions it was also  
17 said that it wasn't child pornography.

18 BY MR. ANDERSON:

19 Q. Did you ever, while the archbishop here, tell  
20 anyone to report Shelley to the police?

21 A. Did I? The incident happened prior to my  
22 being archbishop.

23 Q. I know. But he continued as a priest while  
24 you were archbishop.

25 A. That's true.

1 Q. And he continues as a priest to this day,  
2 although he is on sabbatical, correct?

3 A. He's on a leave of absence at this present  
4 moment.

5 Q. And when he took that leave, he told the  
6 people that he was going on sabbatical, did he  
7 not?

8 A. Yes, he did.

9 Q. And a party was held?

10 A. I don't know that.

11 Q. So my question to you is, did you personally  
12 order anyone in your charge to report Shelley  
13 to police?

14 A. I don't know that I did, no.

15 Q. You say you don't know that you did. What  
16 does that mean?

17 A. Well, I don't have the recollection of having  
18 done that.

19 Q. So you don't recall ever having told anybody  
20 or instructed anybody to report to the police  
21 or having done it yourself, correct?

22 A. My understanding is that there was a question  
23 on the part of my canonical chancellor as to  
24 the matter to the -- of the computer, and my  
25 moderator of curia, Father Laird at the time,

1 instructed her to take it to the police.

2 Q. Are you referring to Jennifer Haselberger?

3 A. I am.

4 Q. She was urging you to report to the police,  
5 wasn't she?

6 A. I thought she was working in our priests' work  
7 group and the topic came up and my  
8 understanding was that Father Laird had  
9 instructed her to take that to the police.

10 Q. Archbishop, you wrote a letter to the C.D.F.,  
11 the Congregation of the Doctrine of Faith and  
12 Cardinal Levada, specifically stating that  
13 your concern that your advisors had told you  
14 that you may be in violation of the law by  
15 reason of possible possession of child  
16 pornography previously possessed by Shelley,  
17 correct?

18 A. No.

19 Q. Never wrote such a letter?

20 A. No. The letter was drafted by Jennifer  
21 Haselberger, but when I read it, I did further  
22 investigation, realized that this was not  
23 correct and the letter was never sent.

24 Q. And did you look at the images?

25 A. I did, she showed me some images, yes.

- 1 Q. She claims that those images that she brought  
2 to you and showed to you were child  
3 pornography or borderline child pornography  
4 and should have been reported to the police,  
5 correct?
- 6 A. No. I looked at those images and I could not  
7 tell whether they were adolescents or older.
- 8 Q. It was a close call, wasn't it?
- 9 A. It was, yes.
- 10 Q. Yeah. And so she urged you to turn that over  
11 to the law enforcement for them to make that  
12 determination, didn't she?
- 13 A. She may have, but it had already been turned  
14 over to the police department and the verdict  
15 had come back that it wasn't child  
16 pornography.
- 17 Q. You're talking about in 2004?
- 18 A. Well, probably, yes.
- 19 Q. Well, what are you talking about? It had  
20 already been turned over?
- 21 A. It had been given to the St. Paul Police  
22 Department and the police department had said  
23 it wasn't child pornography.
- 24 Q. When Jennifer Haselberger placed the images  
25 before you and you looked at them, correct?

1 A. Correct.

2 Q. She urged you, because they were borderline  
3 and you couldn't make the determination and by  
4 looking at them you couldn't make the  
5 determination and didn't, that it should go to  
6 the police, correct?

7 A. She -- I don't recall her at the time saying  
8 that.

9 Q. What did she say?

10 A. I don't recall.

11 Q. When did you view those images, Archbishop?

12 A. I -- I don't recall the exact date. I -- I'm  
13 trying to think, but I -- I can't recall the  
14 exact time.

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

17 BY MR. ANDERSON:

18 Q. When you made the determination that you,  
19 yourself couldn't tell on viewing those images  
20 whether it was adolescents or adults, did you  
21 report that to the police?

22 A. I did not.

23 Q. You're a mandatory reporter, aren't you?

24 A. I am.

25 Q. And you're aware as a mandatory reporter that

1           you are required to report immediately any  
2           suspicions of child abuse, correct?

3    A.    Correct.

4    Q.    And you're also aware that pornographic images  
5           of children is child abuse?

6    A.    Correct.  I was not able to determine that  
7           that was child pornography.

8    Q.    Why do you think we have reporting statutes?  
9           It's for the police and professionals to make  
10          that determination?

11   A.    Correct, and they already had.

12   Q.    When did you learn they had already determined  
13          that these images were not illegal?

14   A.    Prior to the time of her showing them to me.

15   Q.    Who told you the police had made that  
16          determination?

17   A.    I believe it was Father McDonough.

18   Q.    When did he tell you that?  How soon before  
19          you viewed those images?

20   A.    I don't recall.  It was sometime before, I  
21          believe.

22   Q.    What does "sometime" mean, a month, a week a  
23          day?

24   A.    I'm trying to recollect and I don't -- I don't  
25          have that answer.

1 Q. Jennifer Haselberger was telling you that she  
2 believed them to have been child abuse and, in  
3 fact, pornographic images of children,  
4 correct?

5 A. I believe that she -- she believed that to be  
6 true.

7 Q. Yes. And Kevin McDonough also had viewed  
8 those images, correct?

9 A. To the best of my recollection, I think he  
10 had.

11 Q. And he took a different view, didn't he?

12 A. He did.

13 Q. And what was his view expressed to you?

14 A. Well, I can't say for sure that he expressed  
15 this to me, but I know that from others that  
16 he believed that they were not child  
17 pornography.

18 Q. Did McDonough tell you he had reported it to  
19 the police?

20 A. He told me that the -- that in 2004 that the  
21 computer and everything on it and the -- the  
22 disks had been reported to the police, yes.

23 Q. So you were relying on McDonough's  
24 representation to you in 2000 -- I think it's  
25 '12, that it had been reported back to the

1 police in 2004, is that what you're telling us  
2 today?

3 A. Yes.

4 Q. Did you ever learn if it actually had been  
5 reported to the police in 2004?

6 A. Well, yes.

7 Q. What informs you that in fact the police had  
8 received a report concerning these images in  
9 2004?

10 A. See, there was a record.

11 Q. A record in the file?

12 A. Yes.

13 Q. Prepared by whom?

14 A. I can't tell -- answer that.

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

17 BY MR. ANDERSON:

18 Q. When did you see that record that you're  
19 relying upon for that assertion?

20 A. When the whole matter was brought up about  
21 whether or not the whole file had been turned  
22 over, there was some discrepancy there,  
23 Jennifer believed that the whole file hadn't  
24 been turned over. Subsequently when we did an  
25 investigation with the -- the person who

1 worked on the computer, and he indicated that  
2 everything had been encrypted into those  
3 files.

4 Q. What person are you referring to?

5 A. I think it was the -- whoever worked for the  
6 Setter Corporation.

7 Q. There is a record that that person's report  
8 and the forensic report done by them has been  
9 withheld by your lawyer Tom Wieser from the  
10 police.

11 A. That's not true.

12 Q. When was it turned over, then, by the  
13 archdiocese?

14 A. Subsequent to that -- to -- to my seeing the  
15 images, Jennifer took that to the St. Paul  
16 Police Department and they had -- they were  
17 given all the materials over again.

18 Q. You did not instruct Jennifer to make that  
19 report, did you?

20 A. No. Father Laird did.

21 Q. Did Father Laird tell you that he had told her  
22 to report?

23 A. Yes.

24 Q. When was that that Laird told you that he had  
25 instructed her to make such a report?

1 A. I think it was in two -- 2012. I can't -- I  
2 can't give you an exact date.

3 Q. Did Father Laird view the images?

4 A. I don't -- I can't say for sure.

5 Q. Then why was Laird involved in this  
6 conversation about whether it should be  
7 reported and how is it you now claim that it  
8 was Laird that told Haselberger to make the  
9 report?

10 A. Well, because we had a -- what we called a  
11 priest working group that Father Laird started  
12 when he came on board as the moderator of the  
13 curia, they would meet twice a month and they  
14 would review any misbehavior on the part of  
15 any of the priests or deacons and they would  
16 discuss this among themselves. There would be  
17 the canonical chancellor there, the civil  
18 chancellor, the moderator and the delegate for  
19 safe environments, so that everyone had a  
20 complete picture of what was going on. And it  
21 was at one of those meetings that this  
22 question of the Shelley files came up, and  
23 it's my understanding that Father Laird  
24 indicated to Jennifer that she should take  
25 that to the police.

1 Q. Did you disagree with Laird?

2 A. No.

3 Q. Did you disagree with Jennifer Haselberger on  
4 whether this should be reported to law  
5 enforcement?

6 A. No. Not at the time, no.

7 Q. Did you express disagreement to her at any  
8 time that she should not report this because  
9 it was not a violation of the law or for some  
10 other reason?

11 A. I suspect, thinking back on it, that I told  
12 her that it had already been submitted to the  
13 police and that, having received an answer  
14 from them on their opinion of what was on the  
15 -- on the file, that it was not necessary to  
16 take it to the police a second time.

17 Q. And when you told her that, she told you in  
18 fact the file does not reflect that it had  
19 been reported to the police earlier, correct?

20 A. I don't believe so.

21 Q. Do you recall her becoming quite animated and  
22 adamant about that?

23 A. I don't recall that, no.

24 Q. Did you instruct her to leave it alone?

25 A. She asked my opinion. I told her, "I cannot

1           make a judgment here. This has already been  
2           looked at by the police. It doesn't seem to  
3           be reasonable that we would take it back to  
4           the police a second time."

5    Q.    And you have no recollection of having been  
6           told by her that, in fact, the police had not  
7           examined this earlier, only internal  
8           archdiocese officials and their consultant had  
9           reviewed it?

10   A.    It was not my understanding. My understanding  
11           was it had been turned over to the police in  
12           2004.

13   Q.    At that time when there was this differing  
14           view, did you make an effort to actually  
15           discern, by review of the file itself, whether  
16           or not such a report had ever been actually  
17           made to the police concerning Shelley?

18   A.    If you're asking me if I reviewed the file  
19           with that purpose in mind, no. I did not.

20   Q.    What law enforcement agency do you believe it  
21           was reported to?

22   A.    St. Paul Police Department.

23   Q.    And what date do you believe that was made?

24   A.    I think you indicated in 2004.

25   Q.    Who at the archdiocese made such a report, in

1 your belief, in 2004?

2 A. It would have been either Mr. Eisenzimmer or  
3 Father McDonough.

4 Q. Are you speculating or do you have some reason  
5 to believe they actually did?

6 A. Well, they were the ones that had the  
7 responsibility, so I -- I guess I am  
8 speculating.

9 Q. So you're assuming that, aren't you?

10 A. I think with reasonable certitude.

11 Q. And you base that reasonable certitude on  
12 what?

13 A. On the trust I have in the people who were  
14 telling me that they had already done it.

15 Q. So because you trust them and because you know  
16 that this information was possessed in 2004,  
17 you're assuming they made a report as required  
18 by the law in 2004, is that correct?

19 MR. HAWS: Well, again, counsel  
20 you're misstating the record.

21 MR. ANDERSON: Well, I'm asking if  
22 that's correct. If it's wrong, he can say so.

23 MR. HAWS: No.

24 BY MR. ANDERSON:

25 Q. Is that correct, Archbishop?

1 MR. HAWS: No. Wait, Archbishop.

2 MR. ANDERSON: If you have an  
3 objection, make it.

4 MR. HAWS: I am making it, and, no.  
5 Don't. Wait, Archbishop. Counsel, again,  
6 your facts are not the record. You can't  
7 create facts, okay? You can't misstate --

8 MR. ANDERSON: Don't give me a  
9 lecture.

10 MR. HAWS: I am giving you a lecture  
11 because you continue to do it and it's  
12 improper. That's not what the law allows.  
13 Now, he's already told you that someone told  
14 him that and you've asked him five times at  
15 least the same question. So if you want to  
16 ask another question in a proper way that has  
17 information in it that asks him what the facts  
18 are as opposed to your facts, that's fine.

19 BY MR. ANDERSON:

20 Q. Today you can't tell me who made the report,  
21 can you?

22 A. I can tell you with reasonable certitude, but  
23 I cannot tell you for sure.

24 Q. Okay. So who made the report with reasonable  
25 certitude?

1 A. I would suspect it would have been Father  
2 McDonough.

3 Q. When did that person make that report with  
4 reasonable certitude?

5 A. When the matter was brought up in --  
6 apparently in 2004.

7 Q. The question is when do you know with  
8 reasonable certitude the report was made.

9 A. No.

10 Q. With reasonable certitude, to whom was that  
11 made?

12 A. To the -- I don't understand the question. To  
13 the St. Paul Police Department you mean?

14 Q. Who at the St. Paul Police Department?

15 A. I have no idea. That was before my time.

16 Q. And on what do you base your answers using the  
17 term "reasonable certitude" that the report  
18 was made? On what do you base that?

19 A. On the trust and confidence that I have in the  
20 people who were working for me.

21 Q. Have you ever seen a record that demonstrates  
22 in the file that such a report was made?

23 A. I did not see a receipt, no. I was told that  
24 there was one and I had no reason not to  
25 believe it.

1 Q. And, again, who told you that?

2 A. I believe that would have been Mr.

3 Eisenzimmer.

4 Q. And when did he tell you that?

5 A. When the whole matter came up again in 2012.

6 Q. And have you reviewed anything since then that

7 demonstrates that not to have been the case?

8 A. No. I have not.

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

11 BY MR. ANDERSON:

12 Q. Is it fair to say, then, that there was a  
13 question -- or let me put it this way. Was  
14 there a question in 2002 on whether a report  
15 had been made -- excuse me. Was there a  
16 question in 2012, as Shelley was being  
17 discussed, whether Shelley had been reported  
18 in 2004?

19 A. There was not a question. It was taken as a  
20 fact that that had already been turned over to  
21 the police and the police had made a decision  
22 on it.

23 Q. And the only fact that was taken from was what  
24 Andy Eisenzimmer told you?

25 A. I believe that's correct.

1 Q. And what did he say to you?

2 A. He explained that the three files -- I believe  
3 there were three files -- that had been done  
4 by the forensic persons had been taken to the  
5 St. Paul Police Department.

6 Q. Anything else?

7 A. No.

8 Q. Did you inquire further?

9 A. I don't believe I did, but I -- I don't have a  
10 recollection of having asked that.

11 Q. When you, yourself, reviewed those images and  
12 had the concerns as you've expressed it,  
13 Shelley was still in ministry, wasn't he?

14 A. Not at the time that I saw those images, no.  
15 He had been taken out of ministry.

16 Q. What date had he been taken out of ministry?

17 A. I can't recall that.

18 Q. How long after, then, according to your  
19 belief, was it -- well, what was the time  
20 differential between his resignation or  
21 sabbatical in ministry and you having viewed  
22 those images?

23 A. I think he was on sabbatical for six months  
24 and then he was put on a leave of absence, and  
25 so it probably would have been about eight

1 months, I think. That's my best guess.

2 Q. Okay. I want to go for a moment to --

3 (Discussion off the record)

4 BY MR. ANDERSON:

5 Q. -- Jeff Gallatin. I had begun to ask you --

6 MR. HAWS: I'm sorry, let me just  
7 interrupt real quickly. Anything with respect  
8 to Shelley, starting with the Shelley  
9 questioning till now when you switched gears  
10 is to be put under seal and noted as under  
11 seal pursuant to --

12 MR. ANDERSON: No, it's not.  
13 Shelley's been a public matter. I've not used  
14 anything that has been turned over here.  
15 Shelley came up in the first hearing in  
16 October of this last year concerning this very  
17 matter. It's a very public matter. There's  
18 nothing that was made by way of my questions  
19 that we consider under seal. If you want to  
20 take that position, your position is noted.  
21 We're not going to discuss it further.

22 MR. HAWS: It is noted. And  
23 anything that involves Gallatin is the same,  
24 but we'll -- that is for the record and we'll  
25 have to address that with the court. And I

1 raise these issues that we would make that  
2 objection and note that to be addressed later.  
3 I'm just telling you, counsel, that it  
4 shouldn't be disclosed by you until it's  
5 resolved.

6 MR. ANDERSON: So far any question  
7 that I've asked, counsel, has not been in  
8 reliance upon any information other than what  
9 has already been made public and both known to  
10 you and the public and reported. So there's  
11 nothing that has been produced in this case  
12 that has been relied upon in the questions  
13 that I've asked. Later on, we'll get to that  
14 discussion. And I'm now going to Joseph  
15 Gallatin.

16 BY MR. ANDERSON:

17 Q. Isn't it correct that there was a public  
18 disclosure made by the archdiocese on December  
19 29th, 2013, concerning Joseph Gallatin?

20 A. I believe that's true.

21 Q. So let's talk about that.

22 MR. ANDERSON: And that's not under  
23 seal, right, counsel? Right?

24 MR. HAWS: Gallatin?

25 MR. ANDERSON: Yeah.

1                   MR. HAWS: No. I think it is, isn't  
2                   it?

3                   MR. ANDERSON: They're the ones that  
4                   made the public disclosure that Gallatin -- on  
5                   December 29th, 2013. That's not under seal.

6                   MR. HAWS: Well, counsel, we have  
7                   the ones that are under seal, you're aware  
8                   which is under seal. I'm not going to fight  
9                   with you here. It's under seal. And if you  
10                  violate the court order, you take your risk.  
11                  But we have said that the ones that are under  
12                  seal are not to be disclosed publicly until we  
13                  resolve that with the court. You have to  
14                  bring your motion for good cause.

15                  BY MR. ANDERSON:

16                  Q. Let's talk, Archbishop, about the public  
17                  disclosures and representations made to the  
18                  people about Gallatin on December 29th, 2013.  
19                  It's correct that the archdiocese admitted  
20                  that he'd been engaged in inappropriate  
21                  boundary violations with minors, is that  
22                  correct?

23                  A. I believe so.

24                  Q. Who made the determination that that was not  
25                  criminal sexual conduct?

1 A. I -- I can't say.

2 Q. If you can't say, why did you allow it to be  
3 described as inappropriate boundary violations  
4 when it could have been criminal sexual  
5 conduct and described as such?

6 A. There had been -- there had been an  
7 investigation into this and there had been a  
8 determination made that it was inappropriate  
9 boundary violations, that it was not criminal  
10 intent.

11 Q. An investigation by whom?

12 A. I'm trying to recall and I just can't recall  
13 right at the moment.

14 Q. It was an internal investigation done by  
15 somebody in the archdiocese, is that what  
16 you're saying?

17 A. I can't recall in this particular instance  
18 whether that was turned over to the police or  
19 not.

20 Q. Has the Gallatin file, to your knowledge, ever  
21 been turned over to the police in its  
22 entirety?

23 A. I can't say for sure.

24 Q. To your knowledge, has any file of any priest  
25 accused of sexual misconduct ever been turned

1 over to the police in its entirety maintained  
2 by the archdiocese?

3 A. Again, I don't believe so, but I can't say for  
4 sure.

5 Q. And why do you guys withhold information from  
6 police?

7 MR. HAWS: Well, again, counsel  
8 you've misstated --

9 MR. ANDERSON: Just a moment.

10 MR. HAWS: No. Can you quit trying  
11 to put words in for your sound bites? That is  
12 inappropriate, counsel.

13 MR. ANDERSON: Give me an  
14 appropriate legal objection to it.

15 MR. HAWS: What facts do you have to  
16 state that they withheld a request that they  
17 provide -- that the archdiocese provide a file  
18 to the police?

19 BY MR. ANDERSON:

20 Q. Have you ever provided a file to the police?

21 MR. HAWS: Have they requested a  
22 file? Counsel, your misstatements are  
23 inappropriate and you know it.

24 BY MR. ANDERSON:

25 Q. Have you ever provided a file to the police?

1 A. We have provided to the police anything  
2 they've ever asked for.

3 Q. No. Tell me this. First answer this yes or  
4 no. Has the archdiocese ever turned over any  
5 file to law enforcement concerning sexual  
6 allegations and a priest?

7 MR. HAWS: And, Archbishop, your  
8 last answer to his question, which was the  
9 same one, was just fine.

10 MR. ANDERSON: Don't instruct the  
11 witness how to answer.

12 BY MR. ANDERSON:

13 Q. Did you hear the question?

14 A. If you could repeat it again, please.

15 Q. Has the archdiocese ever turned over any file  
16 to law enforcement?

17 A. I don't know.

18 (Discussion out of the hearing of  
19 the court reporter)

20 BY MR. ANDERSON:

21 Q. Have you ever told any of your subordinates or  
22 officials to turn over the files in the  
23 possession of the archdiocese to law  
24 enforcement to assist them in their  
25 investigation?

1 A. I have always made -- maintained that -- that  
2 whatever the police ask for, we are  
3 cooperative and we give them.

4 Q. So is it your position and practice that you  
5 don't turn it over unless they ask?

6 A. That is correct.

7 Q. What if you get a report from somebody other  
8 than the police that a priest has abused?

9 A. We turn that over to the police.

10 Q. Yeah, but if the police don't ask, you don't  
11 turn it over, right?

12 A. No. If we get -- if we had an allegation that  
13 was credible, we would turn it over to the  
14 police.

15 Q. Have you ever told the police that you keep  
16 files on each of the priests, both in separate  
17 locations, some secret locations, some not so  
18 secret?

19 MR. HAWS: Objection, that misstates  
20 evidence. Again, your games, counsel. Ask a  
21 proper question and then he can answer your  
22 questions.

23 A. There are no secret archives. The files are  
24 kept in a -- in a room. We had invited the  
25 St. Paul Police Department to come in and view

1           that room just a few weeks ago.  There's no --  
2           no intent whatsoever to withhold information  
3           from the police.

4           BY MR. ANDERSON:

5    Q.    Before a few weeks ago, had you ever told law  
6           enforcement about the archival file room where  
7           Jennifer Haselberger retrieved the Shelley  
8           materials and the Wehmeyer materials and  
9           brought them to you?

10   A.    And -- and your question is --

11                       MR. HAWS:  Whether the Archbishop's  
12           done that?

13                       MR. ANDERSON:  Yes.

14           BY MR. ANDERSON:

15   Q.    Have you ever told police about that archival  
16           file before a few weeks ago?

17   A.    I think they had been informed before that.

18   Q.    By whom?

19   A.    My understanding in terms of the Shelley case,  
20           it was -- would have been Mr. Eisenzimmer.  He  
21           was the one that worked closely with the  
22           police.

23   Q.    In connection with Mark Wehmann,  
24           W-e-h-m-a-n-n, there are some public  
25           statements made by the archdiocese and I quote

1 in a release done by the archdiocese, "There  
2 were several incidents of inappropriate  
3 conduct with minors involving boundary  
4 violations." Who made the determination to  
5 use a descriptor "boundary violations" and  
6 that it was not criminal sexual conduct?

7 A. I believe that would have been an internal  
8 decision that had been made on that.

9 Q. Who made that?

10 A. It would have been Father Dan Griffith, who is  
11 our new delegate for safe -- safe  
12 environments.

13 Q. And do you know what he based that on or if he  
14 interviewed or on what he based such a  
15 determination?

16 A. Well, I think it -- he -- he knew that it  
17 wasn't a question of sexual abuse and it was  
18 inappropriate behavior.

19 Q. Was that reported to law enforcement?

20 A. I don't believe it was, no.

21 Q. Was Gallatin ever reported to law enforcement?

22 A. I have no recollection of that.

23 Q. So what qualifications does Dan Griffith have  
24 to determine what's a crime and what's not a  
25 crime? He's a priest, right?

1 A. He's a priest, yes. Yes. Has a law degree.

2 Q. I mean, a civil law degree, right?

3 A. Civil law, yes.

4 Q. So what qualifications does he have in child  
5 detection and the criminal investigation of  
6 what constitutes a crime involving children  
7 and what doesn't?

8 A. I don't know that I can answer that.

9 Q. There have been some public disclosures  
10 concerning Father Keating and he was either  
11 removed from ministry or resigned his position  
12 on or about the same day that he was sued. Is  
13 that your understanding, Archbishop?

14 A. That is my understanding.

15 MR. HAWS: Before you get into  
16 another one, counsel, I'm sorry, just Wehmann  
17 is under seal as is Keating, if you get into  
18 that.

19 MR. ANDERSON: This is public and it  
20 -- it's already out there, counsel. He's been  
21 sued.

22 MR. HAWS: It's our request it's  
23 under seal and we'll take it up later.

24 BY MR. ANDERSON:

25 Q. What did you know about Keating and what he

1 had been accused of and how it had been  
2 handled before Keating got sued and that suit  
3 made public?

4 A. The situation surrounding Father Keating  
5 happened before my time as archbishop. I was  
6 aware that something was going on when I  
7 became coadjutor because I knew a relative of  
8 the person who was involved in the case, but I  
9 didn't know -- I didn't -- wasn't privy to --  
10 to the case itself, to all the details of the  
11 case.

12 Q. Can you think of any priests that have neither  
13 been discussed or identified that have --  
14 well, let me put it this way. Can you name  
15 for me the priests that actually have been  
16 reported by the archdiocese, either you or  
17 somebody at your direction, to law enforcement  
18 for suspicions of sexual abuse under the  
19 mandatory reporting act?

20 MR. HAWS: You're talking about  
21 since he became archbishop?

22 MR. ANDERSON: Yes.

23 A. The case of -- the one case under my tenure  
24 was the case of -- of Curtis Wehmeyer and we  
25 reported that immediately.

1 BY MR. ANDERSON:

2 Q. You say "we." Who is "we"?

3 A. Well, it would have -- the information came in  
4 to the civil chancellor and the civil  
5 chancellor notified another person on our  
6 staff, Father McDonough, who was at the time  
7 the delegate for safe environment. And he  
8 also informed me that Father McDonough and  
9 this Deacon Vomastek were being sent over to  
10 tell Father -- Father Wehmeyer at the time to  
11 leave the premises and to take a leave of  
12 absence.

13 Q. When did Jennifer Haselberger first bring to  
14 your attention that she believed that Wehmeyer  
15 posed a risk of harm to the children in the  
16 archdiocese if he was allowed to continue in  
17 ministry?

18 MR. HAWS: Well, again, you're  
19 assuming facts not in evidence. If that's a  
20 statement, I don't know. If the archbishop  
21 can answer whether that came to his attention,  
22 listening to what he asked you, that's fine.

23 A. Jennifer prepared a memo for me prior to the  
24 time that I had made him pastor of Blessed  
25 Sacrament of St. Thomas the Apostle, pointing

1 out that five years previously he had --

2 BY MR. ANDERSON:

3 Q. The question was when now. When did she bring  
4 this risk to your attention?

5 MR. HAWS: You're answering and  
6 that's fine, Archbishop. Counsel, he can  
7 answer your question.

8 MR. ANDERSON: Yeah, I asked a  
9 question of when now. I'm just trying to get  
10 the anchor for the date here.

11 MR. HAWS: And he's providing that.

12 A. I can't tell you the -- the month or the date,  
13 but I -- I think it was in 2008 prior to my  
14 making him pastor. He was already parochial  
15 administrator of Blessed Sacrament and we  
16 were talking --

17 BY MR. ANDERSON:

18 Q. So let's just get the when so we're talking  
19 about the right time frame here. You're  
20 talking about sometime in 2008, right?

21 A. Right.

22 Q. And you're saying that it was when Wehmeyer  
23 was at what parish?

24 A. He was parochial administrator of Blessed  
25 Sacrament in St. Paul.

1 Q. And are you able to identify the month in  
2 2008?

3 A. It was shortly after I had become archbishop,  
4 I became archbishop on the 2nd of May, so I  
5 believe it would have been in the month of  
6 June.

7 Q. And at that time, what did you learn about  
8 Wehmeyer's fitness as a priest to continue in  
9 ministry and the risk that may be posed by it?

10 A. The information that Jennifer brought to my  
11 attention was that Father Wehmeyer had a same-  
12 sex attraction, that he had approached two  
13 young men in their mid-20s at a book store of  
14 some sort and made an advance on them. That  
15 was reported to the -- I think that was five  
16 years previously, that was reported to the  
17 Chancery and Father Wehmeyer was sent off to a  
18 rehabilitation program, a clinic, and came  
19 back and had a -- I mean, it confirmed the  
20 fact that he was same-sex attracted and he was  
21 put on the monitoring program. He was to do  
22 therapy once a month and spiritual direction  
23 once a month. And I obviously didn't see him  
24 being same-sex attracted as an indication that  
25 he had any interest sexually in young children

1 and that he was a pedophile. I had no reason  
2 to believe that he was. And I believe that he  
3 was fit at that time to take on these two  
4 parishes.

5 Q. There's some indication that in February of  
6 2009, Rourke was his monitor. Do you have a  
7 recollection of that?

8 A. I think that would be true.

9 Q. And that you signed on to a monitoring plan at  
10 that time. Do you recall that?

11 A. That I signed on? Could you explain that?

12 Q. Did you sign on to monitoring plans?

13 A. For whom, please?

14 Q. Each of the priests that were being monitored  
15 for sexual abuse.

16 A. That program was already in place when I  
17 became archbishop.

18 Q. But in 2009, in order for somebody to go on  
19 monitoring, didn't it require you or, as a  
20 matter of practice and protocol, to approve  
21 that?

22 A. Yes, that would have -- that would be true.

23 Q. And when did you place, then, Wehmeyer on the  
24 monitoring program?

25 A. I believe, and I could be wrong on this, I

1 believe that he was on the monitoring program  
2 based on that previous incident.

3 Q. Yeah. I'm looking at some records and I think  
4 that's correct. It looks like he had been on  
5 monitoring for four years as of 2009. Does  
6 that sound right?

7 A. That sounds right.

8 Q. Okay. Did you become aware, at least in 2009,  
9 then, that he'd been in monitoring for  
10 misconduct in 2004 and in 2006 for seeking out  
11 sexual encounters with 18-, 19-year-olds?

12 A. I didn't know about that second incident. I  
13 did know about the first incident, which  
14 happened, I think, in 2004 in a book store  
15 somewhere.

16 MR. HAWS: And I don't think,  
17 counsel, your words of 18, 19, I don't know  
18 that that's what the Archbishop testified to.  
19 You can ask him that. Again, you've inserted  
20 your own facts --

21 MR. ANDERSON: I'm asking him if  
22 knew.

23 MR. HAWS: Well, how is he -- he's  
24 answered he knew, but you have your little  
25 sound bite. It's completely inappropriate yet

1           again that you insert your facts or what you  
2           want to be the facts for whatever reasons.  
3           Let's get to what the truth is and ask the  
4           questions that the Archbishop can provide you.  
5           Try to get to the truth and not made-up facts.

6                         MR. ANDERSON:   That little speech  
7           doesn't count on our time.   And look at the  
8           documents.

9                         MR. HAWS:    You ask him and then he  
10          can answer.   He can answer.   If that's what it  
11          is, then, fine, but don't just say things.  
12          Ask him to answer those.

13          BY MR. ANDERSON:

14    Q.    In April of 2009, I think you just said that  
15          -- well, let me put it this way.   In 2009, did  
16          you believe that Wehmeyer was fit to continue  
17          in ministry without informing any of the  
18          parishioners and the public that he was on the  
19          monitoring program?

20    A.    At that time we didn't -- I -- I don't believe  
21          that we had informed the trustees that he was  
22          on the monitoring program.

23    Q.    And you didn't inform anybody other than those  
24          in the official position of the archdiocese,  
25          so that would be your chancellors, the vicar

1           general, yourself and the monitors, correct?

2    A.    At the time I don't believe so.  If that were  
3           to happen today, we would disclose to the  
4           trustees.

5    Q.    We're talking about in 2009 now, okay?

6    A.    Uh huh.

7    Q.    Is that correct?

8    A.    Correct.

9    Q.    In April of 2009, do you recall receiving  
10           information from Haselberger about concerns  
11           about a change in Wehmeyer's status from being  
12           the business administrator to being the  
13           pastor?

14   A.    Well, that would -- would have happened, I  
15           think, in 2008, if I'm not mistaken.

16   Q.    Yeah, but she raised concern in 2009 to you is  
17           my question.  Do you remember, you know, you  
18           made that decision in 2008?

19   A.    I thought I had.  Could have been 2009.

20   Q.    Okay.  Let's assume, then, that you made the  
21           decision in 2008, do you recall Haselberger  
22           bringing the concern to you about why that was  
23           done?

24   A.    She brought the concern to me that he -- about  
25           the incident that I told you about in the book

1 store and that he was same-sex attracted.

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

4 BY MR. ANDERSON:

5 Q. And she also raised with you the concerns  
6 about the St. Luke's findings that had been  
7 made and in the file, correct?

8 A. She may have. I don't recall that.

9 Q. You recall that he had been diagnosed with  
10 having sexual compulsion or sexual addiction  
11 and unable to control his sexuality?

12 A. No. I don't remember that at all.

13 Q. Did you read the St. Luke's report?

14 A. I believe I did, yes.

15 Q. When?

16 A. At that time before I made him pastor.

17 Q. When you made him pastor and changed his  
18 status from business administrator to pastor,  
19 did you know that he was a risk of harm?

20 A. I did not know. I would have not have made  
21 him pastor if I'd known.

22 Q. He proved to be, didn't he?

23 A. Unfortunately (Nods head).

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

1 BY MR. ANDERSON:

2 Q. Did Father Laird warn you against making him  
3 pastor?

4 A. He did.

5 Q. And he told you that there were questions  
6 about his fitness to be in ministry, much less  
7 to be a pastor, didn't he?

8 A. He thought he was somewhat unstable.

9 Q. And in -- was that a yes?

10 A. That's what he told me. I -- he said he had  
11 an unstable personality, but Father Laird  
12 clearly didn't like Father Wehmeyer and there  
13 was a -- I think a bias there.

14 Q. So you thought it was a personality conflict  
15 between Laird and Wehmeyer?

16 A. I thought to a certain extent, yes.

17 Q. And so you didn't think about the fact that  
18 Laird was speaking for the safety of the  
19 potential children where he was serving as  
20 pastor?

21 A. Well, there was no indication that he had  
22 interest in -- in sexually abusing children,  
23 there was no indication at all.

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

1 BY MR. ANDERSON:

2 Q. When you read the St. Luke's report and  
3 received the other information you've  
4 described at the time you made him pastor and  
5 continued him in ministry, did you tell  
6 anybody at the parish what you knew about his  
7 history as reported in St. Luke's, as raised  
8 by Father Laird or as raised by Jennifer  
9 Haselberger?

10 A. At the time I believed that that was the  
11 responsibility of Father McDonough. I found  
12 out subsequently that he did not inform the  
13 trustees, but normally in those situations at  
14 that time we would have informed the trustees  
15 of the parish.

16 Q. So when did you learn that McDonough had not  
17 done what --

18 A. I think it was in the last week of September.

19 Q. Of what year?

20 A. Of 2013.

21 Q. Did anyone ever tell you or did you ever learn  
22 from review of the file that Curtis Wehmeyer  
23 had been restricted from working with youth in  
24 2004?

25 A. No.

1 Q. Had you ever heard that before I made that  
2 assertion today?

3 A. I had not.

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

6 BY MR. ANDERSON:

7 Q. Did you learn that Curtis Wehmeyer had gotten  
8 a DUI in 2009?

9 A. I did.

10 Q. How?

11 A. It was reported to us. It was after I had  
12 made him pastor and it was reported to us, I  
13 think, through Father McDonough.

14 Q. And did you also learn that as a part of that  
15 arrest relating to the DUI, he had been trying  
16 to solicit some young people to a party with  
17 him?

18 A. I don't recall that as part of the DUI.

19 Q. What do you recall as a part of the DUI,  
20 either what you were told or learned?

21 A. I learned that he was on a camping trip and  
22 that he went into kind of a 7-11-type place  
23 and they noticed that he was unstable in his  
24 walk and someone called the police and they  
25 came and -- and stopped him from driving and

1 gave him the citation.

2 Q. Were you aware that when he was arrested for  
3 the DUI, that he called Joe Kueppers as his  
4 criminal lawyer?

5 A. I was not aware of that. I knew that he was  
6 friendly with the Kueppers, so it doesn't  
7 surprise me.

8 Q. Were you aware that at the time of that he was  
9 still on monitoring?

10 A. I was aware of that, yes.

11 Q. Did you ever see the report or get informed by  
12 any of your -- any of your officials that the  
13 report says that he was trying to pick up  
14 teenagers to go back to the campground to  
15 party?

16 A. No, sir.

17 Q. Having heard that, is that the first time  
18 you've heard that?

19 A. I believe so, yes. I didn't know that.

20 Q. Does that alarm you?

21 A. It does.

22 Q. And would it have alarmed you if you had been  
23 told that back then?

24 A. Certainly would have, yes.

25 Q. You didn't know he was on monitoring, you

1 didn't know --

2 A. No. I didn't know he was on monitoring.

3 Q. I said you didn't know that, you didn't know  
4 about the other things. At that time after  
5 the DWI, did you call Curtis Wehmeyer and say,  
6 "I need to get to the bottom of this," and ask  
7 him if he had been engaging in inappropriate  
8 sexual contact of any kind with anybody?

9 A. During that time period, I called him in four  
10 times from reports that I had gotten in the  
11 parish about his anger management or  
12 mismanagement, I would say, but I didn't have  
13 the knowledge at that time to question him on  
14 his -- on any sexual activity.

15 Q. Well, you knew about the St. Luke's report, he  
16 was a sexual addict, you knew that?

17 A. But that -- I hadn't had any -- but that had  
18 been five years before and he had been in  
19 therapy and he had been in spiritual direction  
20 and St. Luke's report indicated that he was  
21 fit to go back into ministry.

22 Q. Well, if you had reason to call him in on four  
23 different times and ask him about certain  
24 things not pertaining to his sexuality, why  
25 didn't you ask him about his sexual conduct or

1 possible misconduct? Didn't you want to know?

2 A. Well, those were not things that had been  
3 reported to me. There's nothing of a sexual  
4 nature that had been reported to me except the  
5 St. Luke's remarks and the report of the 2004  
6 incident.

7 Q. But sometimes the way you get information,  
8 Archbishop, is to ask; and why didn't you ask  
9 him?

10 A. Because there was no reason to.

11 Q. The St. Luke's report gave you reason, didn't  
12 it?

13 A. It did, but that had already been a matter of  
14 at least a year and -- that I had received  
15 that report -- no. That would -- that would  
16 have been in 2004. I'm getting confused here.  
17 And I had to deal with the situation of what  
18 was current in his administration and that  
19 happened to be the question of his getting  
20 along with staff, his anger mismanagement,  
21 those were the -- the topics that were on the  
22 table.

23 Q. Scerbo was urging you to not continue him in  
24 ministry because of his sexual issues, wasn't  
25 he?

- 1 A. I don't believe that.
- 2 Q. Well, then, what was Scerbo concerned about as  
3 expressed to you? It was sexual issues,  
4 wasn't it?
- 5 A. No. Scerbo never expressed any sexual  
6 concerns to me.
- 7 Q. What was the basis for him being concerned  
8 about his unfitness to be and continue in  
9 ministry, if not sexual?
- 10 A. Are you talking about Scerbo --
- 11 Q. Laird, I mean, excuse me.
- 12 A. Okay. He never mentioned anything to me about  
13 his whole sexual nature. His concern  
14 primarily, as I recall it, was that he said he  
15 didn't think he had a stable personality.
- 16 Q. Did you ever tell anybody to get the 2009  
17 police report that reflects what I just told  
18 you about him and the teenagers?
- 19 A. I did not -- I -- I wasn't -- I was aware of  
20 the -- the arrest, but I wasn't aware -- aware  
21 of the other incident that you just alluded  
22 to.
- 23 Q. Did you tell anyone to get the 2009 report?
- 24 A. No. I don't believe so.
- 25 Q. You knew there was a police report?

1 A. Sure, I would have known there was a police  
2 report.

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

5 BY MR. ANDERSON:

6 Q. When is the first time you asked that a list  
7 of abusers be compiled, both accused or  
8 credibly accused?

9 A. When was the first time I asked that that -- I  
10 believe it would have been in October when we  
11 were making our plans to do disclosure.

12 Q. You're talking about October of --

13 A. 2013.

14 Q. And who did you ask to do that?

15 A. It would have been the members of the staff,  
16 the canonical chancellor, the civil chancellor  
17 and the delegate for safe environment.

18 Q. And, specifically, who are you talking about  
19 here?

20 A. I'm talking about Father Dan Griffith, talking  
21 about Joe Kueppers, I'm talking about Susan  
22 Wilhern.

23 Q. Susan who?

24 A. Wilhern.

25 Q. She's a secretary to the vicar general?

1 A. No.

2 Q. What is she?

3 A. She is the -- she's the chancellor for  
4 canonical affairs.

5 Q. Okay. And when was such a list first compiled  
6 for your eyes?

7 A. In October of 2013.

8 Q. And how many priests or deacons were on it?

9 A. My recollection is that there were 36 on the  
10 original list.

11 Q. And then how many -- that was the original  
12 list of the credibly accused as has been  
13 described you're talking about?

14 A. Correct.

15 Q. And then were there any added to that?  
16 Because that list had been compiled originally  
17 in 2004. We're now in 2009. Any new names?

18 A. 2013.

19 Q. 2013.

20 A. There were subsequently another nine that were  
21 added to the list.

22 Q. Any of those now on the credibly accused  
23 publicly disclosed?

24 A. They're all publicly disclosed and they're all  
25 out of ministry.

1 Q. All nine?

2 A. Yes, out of ministry without faculties to  
3 function as a priest.

4 Q. Did you ever see any lists of priests accused  
5 of sexual abuse of minors before October of  
6 2013?

7 A. No.

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

10 BY MR. ANDERSON:

11 Q. Did you ever ask anybody to compile one or  
12 prepare one or give you one?

13 A. I did not.

14 Q. As the archbishop, isn't your first goal and  
15 primary to make sure first the children's  
16 souls are safe in the archdiocese?

17 A. Certainly is. It's my primary goal, to make  
18 sure that children are safe.

19 Q. Well, then, why wouldn't you make making sure  
20 you get all the information possible from all  
21 those under your charge about --

22 A. Well, I had --

23 Q. Just a minute. Let me finish -- who could  
24 pose a risk of harm to those children?

25 A. As I indicated before, I had that conversation

1 with Father McDonough and others when I first  
2 became coadjutor archbishop. I knew that they  
3 were under the monitoring system and I felt  
4 that they were not putting children at risk.

5 Q. But that was back in 2008. We're now in 2013.  
6 Why hadn't you done more before?

7 A. Well, I think we have done more. I mean,  
8 we've done the VIRTUS program, as I indicated,  
9 we've done background checks on everyone,  
10 we've had seminars and programs for our clergy  
11 and for our staff. So we -- it isn't -- isn't  
12 as if we weren't working on this. And, as  
13 I've said before, that our number one priority  
14 is to make sure the children are safe.

15 Q. When you got the compilation in 2013 in  
16 October, was that made publicly known?

17 A. Yes.

18 Q. To all the people?

19 A. That was publicly disclosed, yes.

20 Q. And did you turn any of the files pertaining  
21 to any of those and/or all of those accused  
22 offenders over to law enforcement agencies?

23 A. To my knowledge, we did not. They were all  
24 out of ministry.

25 Q. Yeah, but they may have been guilty of crimes,

1 right?

2 A. That could be. And so I believe some of them  
3 would have been -- already been turned over to  
4 the police.

5 Q. But you don't know which ones, do you?

6 A. I don't.

7 Q. Because you made a conscious choice to not  
8 turn them all over, correct?

9 MR. HAWS: Well, objection, counsel.  
10 Again, you've made a misstatement of facts for  
11 the purposes of your own needs here. If  
12 anyone has ever asked, you can ask did anyone  
13 ever ask you that you've not turned over a  
14 file, you can respond, Archbishop.

15 BY MR. ANDERSON:

16 Q. Archbishop, the question was, you made the  
17 conscious choice to not turn all the files  
18 over to law enforcement, correct?

19 A. I don't believe it was a conscious decision.  
20 I think we were trying to disclose to the  
21 public for the safety of children those who  
22 had abused.

23 Q. But there's a difference between identifying  
24 names and turning over files to law  
25 enforcement, correct?

1                   MR. HAWS: Well, objection, that  
2                   misstates evidence. I'm not sure that the  
3                   Archbishop has a --

4                   BY MR. ANDERSON:

5           Q.     You can answer the question. There's a  
6                   difference between disclosing names to the  
7                   public and turning over files concerning those  
8                   names to law enforcement, correct?

9           A.     There would be a difference, yes.

10          Q.     Okay. Let's talk about those two things.  
11                   You're saying you turned over the names to the  
12                   public, right?

13          A.     Yes.

14          Q.     Yes?

15          A.     Yes.

16          Q.     Okay. How many of those files of those names  
17                   of offenders that were made public were turned  
18                   over by the archdiocese to law enforcement?

19          A.     I can't answer that. I'm sorry.

20          Q.     Can you answer that any were?

21          A.     No.

22          Q.     Is it correct to say that no file had ever  
23                   been turned over after termination had been  
24                   made and a priest was credibly accused to law  
25                   enforcement until and unless law enforcement

1           asked?

2                           MR. HAWS:   Object to foundation.

3           Are you talking about while he's been the  
4           archbishop?

5                           MR. ANDERSON:   Yes.

6   A.    I don't recall.

7                           BY MR. ANDERSON:

8   Q.    So is it fair to say that your answer, then,  
9           you have no recollection of ever having  
10          voluntarily said, "Look it, we just looked at  
11          this file and made a determination internally  
12          that this is a credible allegation.  Let's  
13          just turn it over to law enforcement, whether  
14          it's Chisago County, Washington County, Ramsey  
15          County, Hennepin County, let's just do that  
16          voluntarily without a request"?  As far as you  
17          can tell or remember, you've never made that  
18          decision?

19   A.   No.  I think that there were cases that were  
20          turned over to the police in -- in December, I  
21          believe with Father Gallatin --

22   Q.    Okay.  Now we're talking about December of --

23   A.    2013.

24   Q.    -- 2013?  Okay.  Anybody else?

25   A.    There were three, but I can't think of the

1 other two.

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

4 BY MR. ANDERSON:

5 Q. Did you turn those files over to law  
6 enforcement, to the police?

7 A. I believe we did.

8 Q. To whom?

9 A. I think it was the St. Paul Police -- Police  
10 Department.

11 Q. Had they requested or did you do that on your  
12 own initiative?

13 A. I don't recall.

14 Q. So, do you recall ever on your own initiative  
15 ever ordering any files to be turned over  
16 without request by law enforcement?

17 A. I don't have that recollection. I'm sorry.

18 (Discussion out of the hearing of  
19 the court reporter)

20 BY MR. ANDERSON:

21 Q. Have you reported any of the offenders to the  
22 C.D.F.?

23 A. I -- I believe we have, yes.

24 Q. Who?

25 A. Wehmeyer, certainly. And I believe Montero.

1           And I believe there was another priest by the  
2           name of -- of Bussman, so there have been  
3           files turned over to the congregation.

4   Q.    Wehmeyer, Bussman and whom else?

5   A.    Montero, I think, although that may not be it  
6           because he wasn't our priest, so I -- I -- I'm  
7           not sure about that one.

8   Q.    When was Wehmeyer?

9   A.    Shortly after he was charged with the crime.

10  Q.    When was Bussman?

11  A.    Before I -- my arrival as archbishop.

12  Q.    And Montero you're not sure about --

13  A.    No.

14  Q.    -- it would not have been done by you?

15  A.    It probably wasn't because he wasn't our  
16           priest. He belonged to another diocese.

17  Q.    Under the SST issued in 2001, you're required  
18           to report to the C.D.F., are you not?

19  A.    Yes.

20  Q.    And required in your quinquennial report to  
21           also disclose any allegations of sexual abuse?

22  A.    Yes.

23  Q.    Have you done that in the quinquennial report?

24  A.    Yes.

25  Q.    And so who did you disclose in the

1           quinquennial report?

2       A.    I don't recall right off the top of my head.  
3            The quinquennial report would have been, I  
4            wanna say, 2010, but I'm not sure about that  
5            and so I just don't have that recollection  
6            right now.

7       Q.    Did you report Shelley to the C.D.F.?

8       A.    I don't recall.

9       Q.    Isn't that something you would recall if you  
10            had?

11      A.    It should be, I agree.  I would be  
12            speculating, though, to say that I did.

13      Q.    Do you have any recollection of any others  
14            having been reported by you or your offices to  
15            the C.D.F. under the SST requirement?

16      A.    All that we were required to would have been  
17            handled by the canonical chancellor.

18      Q.    And you're the reporter and the one that signs  
19            off on that report, however, are you not?

20      A.    I am.

21      Q.    Father Wajda, Joseph Wajde --

22                   MR. HAWS:  Counsel, isn't it a  
23            decent time for a break?

24                   MR. ANDERSON:  Sure.

25                   MR. HAWS:  I mean, if you want to

1 finish this, that's fine, but it's --

2 MR. ANDERSON: That's fine.

3 MR. HAWS: We've been going an  
4 hour-and-a-half.

5 MR. HIBBEN: We're going off the  
6 record at 12:15.

7 (Recess taken)

8 MR. HIBBEN: This is video number 3  
9 in the deposition of Archbishop John Nienstedt  
10 taken on April 2nd, 2014. Time now is 1:04  
11 p.m.

12 BY MR. ANDERSON:

13 Q. Archbishop, before the break I had begun to  
14 ask about Joseph Wajda, and did you become  
15 aware that Rome had conducted a canonical  
16 trial, a penal trial of him and findings had  
17 been made?

18 A. I -- I do recollect that, yes.

19 Q. Did you become aware that it was -- the  
20 instruction was to remove him from the  
21 clerical state?

22 A. I don't recall that particular part of it.

23 Q. Did you become aware that at some point in  
24 time, the instruction from Rome was re-  
25 investigated by your office or at your

1 instruction by Kevin McDonough? Did you ever  
2 instruct that to be done?

3 A. I did not.

4 Q. So that if it was done, it was your  
5 predecessor?

6 A. It must have been, yes.

7 Q. Are you aware that McDonough did re-  
8 investigate Wajda after the Rome instruction  
9 and made the recommendation that Wajda be  
10 suspended for ten years from ministry? Are  
11 you familiar with that?

12 A. I'm not familiar with that at all.

13 Q. At this point in time, what are your plans  
14 pertaining to Joseph Wajda? Is he going to be  
15 allowed to continue in ministry or is he going  
16 to be reinstated?

17 A. He's -- my understanding is he's not to be  
18 functioning in -- in ministry at all.

19 Q. Did you become aware that there was some  
20 controversy around McDonough's findings that  
21 contradicted those of Rome?

22 A. That must have been before my time.

23 Q. Okay.

24 A. Could -- could I make a correction? I was  
25 told by my counsel that I was confused about

1 the 2004 investigation of the Shelley  
2 computer. Apparently, we turned that over to  
3 this Mr. Setter, who was a retired police  
4 officer. That's why I thought he had been  
5 turned over to the police. And then that was  
6 turned over to the forensics, so I got that  
7 mixed up. I thought it went to forensic first  
8 and then to the police.

9 Q. Well, Setter, yeah, Setter, S-u-t-t-e-r (ph)  
10 -- S-e-t-t-e-r, is an investigator hired by  
11 the archdiocese. You're aware of that?

12 A. Yes.

13 Q. All right.

14 A. Apparently a retired officer, so I got that  
15 confused. I apologize for that.

16 Q. So as we speak, then, you have no information  
17 that any official law enforcement agency  
18 acting as a law enforcement agency ever  
19 received a report in 2004?

20 A. No.

21 Q. Is that correct?

22 A. That's correct.

23 Q. Okay.

24 A. I apologize for that.

25 Q. Were you relying on that same mistaken belief

1           when you were making decisions about Shelley  
2           in 2012 or was that just a correction for  
3           today?

4   A.    That's just a correction for today.

5   Q.    Okay. Thank you. Archbishop, you have made a  
6           number of statements to the public and the  
7           parishioners that the primary goal is to care  
8           for those abused by priests and made promises  
9           to the people that that is one of your goals,  
10          is it not?

11  A.    It -- it is, yes.

12  Q.    You did make the decision, did you not, to  
13          permit the taxation of costs against Jim  
14          Keenan, who had litigated against the  
15          archdiocese and have a judgment entered  
16          against him for \$64,000 for having brought  
17          that case. Do you consider that to be  
18          consistent with a promise to care for the  
19          victims?

20  A.    I'm not familiar with that case.

21  Q.    It is John Doe 76C and it was the one that  
22          went to the Supreme Court under your watch.

23  A.    And what -- what year was that?

24  Q.    2010, I think.

25  A.    I -- I -- it's not registering with me. I'm

1           sorry.

2       Q.    Are you aware that the statute of limitations  
3           had -- the Supreme Court had determined the  
4           statute of limitations had expired and,  
5           therefore, his claim and others like it could  
6           not be brought? Did you learn that at some  
7           point?

8       A.    No. I don't believe I did.

9       Q.    So you have no knowledge of the taxation of  
10          the costs against him?

11      A.    No.

12      Q.    Okay. Are you aware that in this -- in the  
13          case of John Doe 1, there has been an effort  
14          by your representatives to take the deposition  
15          of his 91-year-old mother and, thus, disclose  
16          to her, who she does not know that he was  
17          abused. Do you think that is consistent with  
18          your promise to care for the survivors?

19                   MR. HAWS: Well, objection, counsel,  
20          you're getting argumentative and litigation is  
21          taking place and the archbishop has -- that's  
22          an inappropriate question for you to get into.

23                   BY MR. ANDERSON:

24      Q.    You can answer it.

25      A.    It's the first I've heard of it, number one,

1           that the mother was 91 years old. I'd have to  
2           look at it, but it doesn't -- from what -- the  
3           way you have stated it here, it doesn't seem  
4           appropriate.

5    Q.    It wouldn't be right to really force the  
6           mother to have to know what she hasn't been  
7           told to this point in time, would it?

8    A.    I don't think so, no.

9    Q.    And other family members that don't know?

10   A.    I don't --

11                           MR. HAWS:  Same objections.  Go  
12           ahead.

13   A.    I don't know the case well enough to be able  
14           to comment on that.

15                           BY MR. ANDERSON:

16   Q.    Well, you can comment to your lawyers about  
17           that, can't you?

18   A.    I will.

19   Q.    Thank you.

20   A.    Uh huh.

21   Q.    In the case of Curtis Wehmeyer, when did you  
22           first learn definitively that he had been  
23           accused of or suspicions arose that minors  
24           were involved?

25   A.    The day that he was arrested.

1 Q. What day? Do you have that date?

2 MR. HAWS: If you don't remember,  
3 Archbishop, don't guess if you don't know.

4 A. I -- I don't remember.

5 BY MR. ANDERSON:

6 Q. Okay.

7 A. I believe it was a Friday, though, I do  
8 remember that.

9 Q. Some records show that his arrest was June  
10 22nd. Is it correct --

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

13 BY MR. ANDERSON:

14 Q. So what did you learn on that date and from  
15 whom?

16 A. I learned from, I believe it was Mr.  
17 Eisenzimmer, that Father McDonough had been  
18 informed of the allegation and that he and  
19 Deacon Vomastek were going over to Blessed  
20 Sacrament to tell Father Wehmeyer at the time  
21 that he was being removed from his assignment.

22 Q. And you had received no information before  
23 that time and that date that Wehmeyer had been  
24 suspected of involvement with minors?

25 A. No. I had not.

1 Q. Had you received information that Wehmeyer had  
2 been known to have been taking minors on  
3 camping trips?

4 A. No. I only became aware of that the first  
5 week in October of 2013.

6 Q. Did you ever -- did you become aware that one  
7 of the officials had called the mother of one  
8 of the children who had been taken on camping  
9 trips to discuss that relationship?

10 A. I learned about that in October of 2013.

11 Q. What did you learn about that? Who had made  
12 that call?

13 A. It was a Father -- at the time Father Scerbo,  
14 Father Paul Scerbo, who was at -- had just  
15 been pointed the vicar general and moderator  
16 of the Curia.

17 Q. So he was empowered to handle this on your  
18 behalf, correct?

19 A. He was.

20 Q. And so when you learned on October 13th, then,  
21 that minors were involved definitively,  
22 October 13th --

23 A. No. October 2013.

24 Q. Oh, excuse me. October of 2013. What did you  
25 do about that?

1 A. I don't understand the question.

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

4 BY MR. ANDERSON:

5 Q. Okay. So I want to get my dates correct. I  
6 think you had told me earlier that the date  
7 you first learned that minors were involved  
8 was the date that he was arrested and some  
9 records show that he was arrested on the 22nd.  
10 Does that sound right?

11 A. That's when I first learned about the  
12 allegation, yes.

13 Q. And what action, if any, did you take  
14 responsive to having learned that?

15 A. That day, I agreed with the decision, and when  
16 Mr. Eisenzimmer told me that they were --  
17 Father McDonough and Deacon Vomastek wanted to  
18 go over there, I said yes due to -- right  
19 away.

20 Q. And that was before it was reported to the  
21 police, though, wasn't it?

22 A. I think it was reported at the same time. I  
23 think they were simultaneous.

24 Q. Why would you want Father McDonough and Deacon  
25 Vomastek to go to Curtis Wehmeyer before it

1 had been reported to the police?

2 A. Well, in hindsight, I -- that was a mistake,  
3 but I think we wanted to act immediately on  
4 the information that we had.

5 Q. And you're aware that Father McDonough and  
6 Deacon Vomastek met with Wehmeyer that morning  
7 at the parish?

8 A. I think it was morning or afternoon, it was --

9 Q. And you're aware that they retrieved the gun  
10 and got a computer from Wehmeyer, correct?

11 MR. HAWS: Objection. I'm not sure  
12 that that's facts in evidence, counsel.  
13 Again, if you've got something to show him  
14 that, ask him.

15 BY MR. ANDERSON:

16 Q. Are you aware?

17 A. I -- I heard about the gun. I didn't know  
18 about the computer.

19 Q. Is that the first you heard of Wehmeyer having  
20 turned a computer over to McDonough?

21 A. To my recollection right now, yes.

22 Q. So you never looked at the computer of  
23 Wehmeyer?

24 A. No.

25 Q. And that if McDonough took possession of it,

1           where is that computer?

2    A.    I don't know, sir.  This is the first I've  
3           heard of that, so --

4    Q.    I'm going to show you Exhibit --

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

7           BY MR. ANDERSON:

8    Q.    Who else did you talk to besides Eisenzimmer  
9           about this, then, that day?

10   A.    That day, I don't believe I spoke to anyone  
11          else about this.

12   Q.    And once you learned it, why didn't you report  
13          it?

14   A.    My presumption was that the one that would  
15          normally do the reporting is the civil  
16          chancellor.  And so my understanding was that  
17          he was going to report it and -- and had  
18          already reported it, had called the police.

19   Q.    Do you believe that the mandatory reporting  
20          statute that applies to you permits the  
21          delegation of your responsibility to somebody  
22          else?  Don't you --

23   A.    I -- I have the -- the authority, but I  
24          believe that as long as it's -- that things  
25          are done correctly, that that's what's

1 important.

2 Q. The statute provides an obligation, not an  
3 authority, correct?

4 A. I believe so.

5 MR. HAWS: Objection, it's a legal  
6 conclusion. Statute speaks for itself.

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

9 BY MR. ANDERSON:

10 Q. What did Eisenzimmer tell you about when the  
11 archdiocese had first gotten a report when he  
12 talked to you?

13 A. He told me that morning.

14 Q. That morning of the 22nd?

15 A. Yes.

16 Q. All right. Let me show you Exhibit 18.

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

19 BY MR. ANDERSON:

20 Q. And before I do, let me just ask you,  
21 Archbishop, what did you find out specifically  
22 about who had made the report, then, about  
23 Wehmeyer to law enforcement and when?

24 A. Could you repeat the question?

25 Q. What did you find out about who had reported

1 and when they made that report?

2 MR. HAWS: I'm sorry, to the police  
3 or to the archdiocese?

4 MR. ANDERSON: To the archdiocese.

5 A. I think I learned later that day, is my  
6 recollection, that the police had been called  
7 and that Father McDonough and Deacon Vomastek  
8 had gone over to Blessed Sacrament.

9 BY MR. ANDERSON:

10 Q. Who is the first in the archdiocese, then, to  
11 have received the information that minors were  
12 involved?

13 A. That would have been Father John Paul  
14 Erickson.

15 Q. And what were you told about that?

16 A. I was told that he was informed of that, that  
17 the person in question had told him that there  
18 had been an incident of incest in the family.

19 Q. Well, let's go back a moment. I'm talking  
20 about the abuse of the child and by Wehmeyer,  
21 okay? So is it your testimony that that was  
22 imparted by Father Erickson?

23 A. Father Erickson was the first one, I believe,  
24 to have been told of -- of the abuse because  
25 the -- the mother in question had discovered

1           some incest in the family and she had  
2           subsequently, in talking to her children about  
3           that, discovered an involvement of Father  
4           Wehmeyer. And she went back and told Father  
5           John Paul Erickson again and -- but it was in  
6           the context of spiritual direction, so it was  
7           a privileged context, so he had to call her  
8           and get her to report this to us outside of  
9           that context and to the police.

10    Q.    Who told you that?

11    A.    Father John Paul Erickson.

12    Q.    When did he tell you that?

13    A.    I believe that was -- excuse me, I misspoke  
14           myself. I think Andy Eisenzimmer told me the  
15           same day of that.

16    Q.    On June 22nd?

17    A.    Yes.

18    Q.    Were you told that the report had been made in  
19           the context of the confession?

20    A.    I hadn't been told that it was in the context  
21           of confession. What I had been told is that  
22           it was in the context of spiritual direction.

23    Q.    And you also knew that Erickson was a  
24           mandatory reporter?

25    A.    Yes.

1 Q. And that what he'd been told would require a  
2 report?

3 A. Correct.

4 Q. Have you talked to Father Erickson to get some  
5 more clarity about what he was actually told  
6 and the circumstances of it since?

7 A. I have not, no.

8 Q. Why not?

9 A. I thought he did what he should have done and  
10 the end result was what needed to be done to  
11 get Father -- Father Wehmeyer out of the --  
12 the -- to get him reported to the police and  
13 take him out of ministry.

14 Q. What should he have done?

15 A. Well, in -- in hindsight, I suppose he should  
16 have taken this to the police himself once he  
17 had clarified the context of which the  
18 communication had taken place.

19 Q. And do you have any knowledge that he did?

20 A. I do not have.

21 Q. And your knowledge to this date as to who  
22 actually made a report to the police, then, is  
23 limited to -- who is that to?

24 A. To Mr. Eisenzimmer.

25 Q. The same day that you learned?

- 1 A. I believe so, yes.
- 2 Q. Same day that McDonough and Vomastek had gone  
3 to visit Wehmeyer at the parish?
- 4 A. That is correct.
- 5 Q. I'm going to refer you to Exhibit 18. And you  
6 have it before you, Archbishop, and this is  
7 entitled a decree, and it's typewritten with  
8 your name at the bottom, correct?
- 9 A. Correct.
- 10 Q. And it states, "On June 18th, 2012, the  
11 Archdiocese of St. Paul and Minneapolis  
12 received a complaint that Reverend Curtis  
13 Wehmeyer, a priest of this archdiocese,  
14 supplied alcohol and sexually explicit images  
15 to a minor, and fondled or attempted to fondle  
16 the minor's genitals." Correct?
- 17 A. Yes, correct.
- 18 Q. It then goes on to state, "I have concluded  
19 that this constitutes information which 'at  
20 least seems to be true unquote.'" Correct?
- 21 A. Correct.
- 22 Q. So this reflects that on June 18th, the  
23 information was received, does it not?
- 24 A. It does, but it's incorrect.
- 25 Q. And who prepared this?

1 A. Jennifer Haselberger.

2 Q. And what makes you say that or believe or  
3 assert that it's incorrect?

4 A. Because I have since learned that the  
5 information didn't come to us officially until  
6 the morning of the 22nd.

7 Q. Well, mandatory reporting doesn't make a  
8 distinction between official and unofficial.  
9 So what do you mean by "official"?

10 MR. HAWS: Again, objection to the  
11 legal conclusion in the start of your  
12 question.

13 BY MR. ANDERSON:

14 Q. What do you mean by "official"?

15 A. What I mean by "official" is the -- the  
16 context in which it was first revealed was a  
17 context that was privileged, and so what I  
18 refer to as privileged is the part that's not  
19 privileged.

20 Q. Okay. It goes on to say at the third  
21 paragraph, "Since my other duties prevent me  
22 from conducting this investigation personally,  
23 I hereby appoint Reverend Peter Laird, Vicar  
24 General, to act as investigator in this  
25 matter." Correct, you did that?

1 A. Correct.

2 Q. And then you also, at the fourth paragraph,  
3 instructed that in conducting his  
4 investigation, Father Laird is to take care  
5 that such investigation does nothing to harm  
6 Father Wehmeyer's name or to violate his  
7 rights to protect his privacy, correct?

8 A. Correct.

9 Q. Is there anything in this decree that talks  
10 about protecting the victim or their family?

11 A. The decree, to my understanding, is a  
12 canonical document that pertains particularly  
13 to a priest who has acted out badly.

14 MR. HAWS: The bottom paragraph  
15 (Indicating).

16 BY MR. ANDERSON:

17 Q. Did you sign the decree before Vomastek and  
18 McDonough went to the parish?

19 A. No. I did not.

20 Q. When did you sign it?

21 A. Well, I couldn't have signed it on the 20th,  
22 so the -- the dates here are wrong.

23 Q. Well, that's where we're going to go right  
24 now. It says, "Given on June 20th, 2012," and  
25 then it's signed by you.

- 1 A. Correct.
- 2 Q. So you're now asserting that that date is also  
3 incorrect?
- 4 A. Correct.
- 5 Q. And you're asserting that's incorrect on what  
6 basis?
- 7 A. On the basis that, subsequently, I found out  
8 that I did -- I learned this on the 22nd, so I  
9 couldn't have signed it on the 20th.
- 10 Q. This is a pretty serious matter when it's your  
11 decree for an internal investigation, isn't  
12 it?
- 13 A. Yes, it is.
- 14 Q. Okay. And that is your signature, so you did  
15 sign it?
- 16 A. I did sign it.
- 17 Q. You're just confused on the dates, is that  
18 right?
- 19 A. Right.
- 20 Q. So you did order an internal investigation.  
21 Did you order this internal investigation  
22 before or after the report to the police was  
23 made?
- 24 A. It -- my best recollection, it was after.
- 25 Q. You're not sure about that, are you?

1 A. Well, this whole period I -- is -- is a rather  
2 confusing one.

3 Q. You're not sure about any of these dates, are  
4 you, really?

5 MR. HAWS: Objection, that's  
6 argumentative, counsel. He's testified to  
7 what he can testify to.

8 BY MR. ANDERSON:

9 Q. All right. You're not sure about the dates,  
10 are you?

11 A. I'm sure that these dates are wrong.

12 Q. And what document is there that establishes,  
13 other than this document, this decree, exactly  
14 when you learned, then, of the abuse of the  
15 minor?

16 MR. HAWS: I'll object. First of  
17 all, the decree, Exhibit 18, does not  
18 establish that, as the archbishop said. But  
19 go ahead as to whatever.

20 BY MR. ANDERSON:

21 Q. The question is, is when did you first -- what  
22 document is there, if there is one, that can  
23 establish the date you learned it?

24 A. There would not be a document. I'm giving my  
25 testimony of what I recall.

- 1 Q. The conversation with Eisenzimmer, was that in  
2 person or by telephone?
- 3 A. It was in person.
- 4 Q. At the Chancery?
- 5 A. At the Chancery, yes.
- 6 Q. And in his office or yours?
- 7 A. My office, he came down to my office.
- 8 Q. Anybody else present?
- 9 A. No.
- 10 Q. Did you make any notes of that conversation?
- 11 A. I did not.
- 12 Q. Has there been any record made by him of that  
13 conversation?
- 14 A. I don't know that.
- 15 Q. Has there been made any record by anybody that  
16 you know of, in or out of the archdiocese,  
17 that establishes that the report was actually  
18 received by you on the 22nd versus Exhibit 18,  
19 which seems to demonstrate the 18th?
- 20 A. I don't know of any other document, no.
- 21 Q. There is evidence that on the 19th, there was  
22 -- or 20th, there was a meeting called by  
23 Greta Sawyer and she was employed to interview  
24 this mom and child. Were you aware of that?
- 25 A. I was, yes.

- 1 Q. You ordered that as a part of the  
2 investigation, did you not, and empowered  
3 Laird to do it?
- 4 A. I don't believe that was the right order.
- 5 Q. Well, you decreed an investigation and Laird  
6 was given the authority to do it?
- 7 A. That's correct.
- 8 Q. And he was given the authority to give to her  
9 to interview these people, right?
- 10 A. That I don't remember. I -- my -- my  
11 understanding is that she -- that the mother  
12 had been advised to go to see Greta to reveal  
13 this allegation.
- 14 Q. Right. Been advised by either Erickson or  
15 Laird, correct?
- 16 A. I think it was Father Erickson.
- 17 Q. Right.
- 18 A. Yes.
- 19 Q. And so she did and she brought the child at  
20 the request of Father Erickson, correct?
- 21 A. That I don't know.
- 22 Q. And you're aware that an interview was  
23 conducted of the child at that time?
- 24 A. I wasn't aware of that, no.
- 25 Q. Is that news to you?

1 A. That is news to me. My understanding was that  
2 the mother went and I did -- until now I had  
3 not heard that she brought the child with her.

4 Q. The child was interviewed, according to the  
5 records that we have, at one of the Chancery  
6 offices on the 20th by Greta Sawyer and tape  
7 recorded. Is that news to you?

8 A. That is.

9 Q. And that it could have been the 19th or the  
10 20th. In any case, that would be before you  
11 claim a report was even made to the police,  
12 correct?

13 A. Well, my understanding of the sequence of  
14 things all revolves around this privileged  
15 context, and I -- my understanding was that  
16 Father Erickson had suggested, because he  
17 didn't feel he could break the confidentiality  
18 of the conversation, that she should go to see  
19 Greta Sawyer.

20 Q. Well, the interview done by Greta Sawyer was  
21 done at your offices at the Hayden Center?

22 A. At the Hayden Center, yes.

23 Q. And that was not a confessional secret kind of  
24 thing, that was done at the request of Greta  
25 Sawyer and Father Laird, correct?

- 1 A. That I don't know.
- 2 Q. Well, weren't you overseeing this?
- 3 A. I was overseeing it. My understanding is that  
4 it was Father Erickson that had advised the  
5 woman to go to see Greta Sawyer and to -- and  
6 to reveal this event and the allegation  
7 therein.
- 8 Q. Did Greta Sawyer tell you about the meeting  
9 before it happened?
- 10 A. No. She did not.
- 11 Q. Did Laird tell you that they were going to  
12 meet before it happened?
- 13 A. No. He did not.
- 14 Q. Did Erickson?
- 15 A. No. He did not.
- 16 Q. So you didn't know there was going to be?
- 17 A. I did not know.
- 18 Q. On the 21st of June, there's an indication of  
19 a meeting in the morning between Haselberger,  
20 Laird and Eisenzimmer. Are you aware of that?
- 21 A. No.
- 22 Q. That's news to you?
- 23 A. It is.
- 24 Q. Have you looked at any of the documentation  
25 pertaining to this matter at all?

1 A. No. I didn't know it existed.

2 Q. At 9:42 there's an indication that a  
3 litigation hold was placed and there was an  
4 instruction given by Andy Eisenzimmer on that  
5 day to not destroy any files or evidence. Are  
6 you aware of that?

7 A. I'm not, no.

8 Q. Had there been some destruction of files and  
9 evidence before this time --

10 A. No.

11 Q. -- on any cases that you're aware of?

12 A. No.

13 Q. That you know of?

14 A. No. I do not.

15 Q. Why would he give such an instruction if that  
16 hadn't been a practice in play before --

17 A. I have no --

18 Q. -- do you know?

19 A. I have no idea. It was not our practice.

20 Q. After you, then, first met with Eisenzimmer  
21 and learned what you claim to have learned,  
22 what was the next thing you did or what did  
23 you do responsive to the information you  
24 received?

25 A. I instructed him to do what he had told me we

1           should do as the next steps, which was to  
2           inform the law -- legal -- I mean, the -- the  
3           police and then to inform Father Wehmeyer of  
4           the accusation.

5   Q.    And it's your belief you prepared the decree,  
6           then, after that time?

7   A.    That's my recollection, yes.  I didn't prepare  
8           it.  Jennifer Haselberger prepared it.

9   Q.    But you signed it?

10  A.    I did sign it, yes.

11  Q.    And she was authorized to prepare it as --

12  A.    Correct.

13  Q.    -- your canon lawyer?

14  A.    Correct.

15  Q.    Did you read it?

16  A.    I read it, but I wasn't paying attention to  
17           the -- the dates per se.  I was looking at the  
18           content of the -- the statement.

19  Q.    In the first paragraph you are reciting when  
20           you received the information and you used both  
21           a quote and an "I," don't you?

22  A.    Yes.

23  Q.    You read that, didn't you?

24  A.    I did.

25  Q.    Okay.  When's the next time you received any

1 information from any source pertaining to  
2 either the internal investigation or  
3 Wehmeyer's status?

4 A. Well, I had asked, as the document indicates,  
5 I asked for a regular report from Father  
6 Laird, and so that would have been given to  
7 me, generally speaking, at our weekly  
8 meetings, which is on Tuesday mornings.

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

11 BY MR. ANDERSON:

12 Q. Was that after the arrest?

13 A. Yes, it would have been after the arrest.

14 (Discussion out of the hearing of  
15 the court reporter)

16 BY MR. ANDERSON:

17 Q. So is it correct to say, then, the only  
18 information you had and the only source of  
19 that information before the arrest of Wehmeyer  
20 was that told you by Andy Eisenzimmer and  
21 nothing else --

22 A. Correct.

23 Q. -- is that what you're saying?

24 A. Correct.

25 Q. And you've told us everything that Andy

1 Eisenzimmer told you?

2 A. Correct.

3 Q. And --

4 A. That I can recall, yes.

5 MR. HAWS: Talking about that day,  
6 right?

7 MR. ANDERSON: Pertaining to that  
8 subject, yes.

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

11 BY MR. ANDERSON:

12 Q. Did you have any discussions of having  
13 meetings with your top officials at that time,  
14 Haselberger, Laird, Eisenzimmer, about whether  
15 it either should be reported or should have  
16 been reported sooner?

17 A. I don't recall any discussions on that at that  
18 time. I know that there were discussions of  
19 that subsequently when it was reported in the  
20 newspaper, but at that time I don't recall any  
21 discussion of that.

22 Q. What discussions are you talking about  
23 subsequently? What was said and by whom?

24 A. When -- there -- there was a sequence of  
25 discussions that took place, I believe, in

1 early October of 2013 about what the -- the  
2 dates were and how the sequence fell out. And  
3 there was a great deal of confusion about  
4 that. Of course, Jennifer had already left  
5 our employ at that point, so we weren't able  
6 to ask her about the confusion of the dates.

7 Q. Who have you asked about it to try to clear  
8 it?

9 A. We talked about it in terms of my staff at the  
10 time, it would have been Mr. Kueppers and  
11 Susan Mulheron and I believe our  
12 communications director. We were trying to  
13 figure out the sequence of how that all  
14 happened.

15 Q. And you're talking about Jim Accurso?

16 A. He was not involved in the --

17 Q. Who was the communications director then?

18 A. Sarah Mealey.

19 Q. So, really, discussions were more about  
20 communications management and crisis  
21 management than trying to get to the bottom of  
22 really what happened?

23 A. No. No.

24 MR. HAWS: Objection, that's  
25 argumentative and misstates facts.

1 A. I would not agree to that.

2 BY MR. ANDERSON:

3 Q. Then why have a communications person  
4 involved?

5 A. Because she was involved in all of our  
6 discussions.

7 Q. But that's for purposes of public relations.  
8 I'm interested in what you did about  
9 protecting the children and making sure you  
10 adhere to the law. Why did you bring the  
11 communications person into that conversation?

12 A. Well, because this was subsequent, this was in  
13 October 2013 is what I'm saying, but when I  
14 first discussed it after the event had taken  
15 place, we acted immediately to inform the  
16 police and to make sure that he was taken off  
17 of the premises so that he couldn't be a  
18 threat to the -- to the -- the children.

19 Q. You have made and your office has made a  
20 number of statements that you have acted  
21 immediately to inform the police concerning  
22 Wehmeyer. And do you make those statements to  
23 try to assure the people that they can trust  
24 what you say about child safety and your  
25 reporting of it?

1 A. We say that because that's our policy, and as  
2 we would say in any other situation, we would  
3 quote our policy and this is the way we -- we  
4 act and we let people know that.

5 Q. Jennifer Haselberger has been very critical of  
6 you and the way you handled Wehmeyer, has she  
7 not?

8 A. I don't know. I haven't talked to her about  
9 it.

10 Q. Well, you've seen the MPR reports where she  
11 has?

12 A. I've heard her quoted, but I haven't talked to  
13 her directly about this.

14 Q. And she has reported very publicly that you  
15 did not report when you learned that Wehmeyer  
16 had abused?

17 A. Well, she's -- she's inaccurate on that.  
18 She's not correct.

19 Q. And as a canon lawyer, she's your record  
20 keeper, isn't she?

21 A. She should be.

22 Q. And you have no records today, nor are you  
23 aware of any, that contradict the assertions  
24 she has about what you told her and when it  
25 was reported, correct?

1 A. I have my memory and my memory doesn't  
2 correspond to what you're telling me she has  
3 said.

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

6 MR. ANDERSON: I think we need to  
7 take a break here, so let's take a short  
8 break.

9 MR. HIBBEN: We're going off the  
10 record at 1:44 p.m.

11 (Recess taken)

12 MR. ANDERSON: This will be on the  
13 the transcription record and not used for  
14 purposes of time. We just took a break  
15 because we were posed with the dilemma of the  
16 time limitation and the fact that the  
17 archbishop began the last segment with a  
18 correction to his earlier testimony concerning  
19 Shelley, and he began it with a correction by  
20 stating that a report, he believed, had been  
21 made to law enforcement in 2004, he corrected  
22 that by saying that the report had been made  
23 to a person working for the archdiocese who  
24 had been in law enforcement earlier. That  
25 correction changes the questions that we now

1 need to ask or would have asked, had he not  
2 made it, regarding Shelley. So I just had a  
3 discussion with counsel about taking more time  
4 to make sure, using that correction, we ask  
5 the questions that need to be asked. And your  
6 position on that, counsel, was and is?

7 MR. HAWS: The archbishop testified  
8 when you asked him the questions, and you did  
9 do follow-up questions, and he testified that  
10 when you asked specifically, "Does that change  
11 any of your testimony that I've asked you  
12 about and how you took actions," his answer  
13 was no, only as to today when he said it was  
14 his belief it was a report to St. Paul Police,  
15 but it was a report to what was a retired  
16 police officer. That's all that it changed.  
17 It changed nothing else and he told you that.

18 MR. ANDERSON: Well, it may not  
19 change how he answers some of the questions,  
20 but those are questions that haven't been  
21 asked and the questions that now need to be  
22 asked are very different than those that were  
23 asked pre-correction. So if you're not going  
24 to give the time, just state it on the record.

25 MR. HAWS: You have 20 minutes. You

1 can ask whatever questions you want.

2 MR. ANDERSON: Wait a minute. Well,  
3 I just want to see if you're going to agree to  
4 the additional time by reason of the  
5 correction or not. And I think it's 15  
6 minutes -- there was actually 32 minutes taken  
7 on Shelley -- no. There was actually 32  
8 minutes remaining, according to our  
9 calculation, and, you know, if I can get  
10 through it, I just want to know if we're going  
11 to have more time or not.

12 MR. HAWS: You have what time is  
13 left. I don't think it's 32 minutes, either.

14 MR. ANDERSON: Well, we've been  
15 keeping time on that and excluding your  
16 speaking objections, counsel, and so we're  
17 going to start the deposition of the  
18 archbishop. I'm going to assume that you are  
19 not affording more time and I'm going to, for  
20 purposes of Shelley, given the correction  
21 made, I'm going to use the 32 minutes  
22 remaining to do the best I can to get through  
23 what I can today, knowing that that isn't  
24 feasible.

25 MR. HAWS: You have the opportunity

1 to ask whatever additional questions on  
2 Shelley to clear up what you need to do now.  
3 And, again, the time left is whatever it is.

4 MR. ANDERSON: Okay. We're going to  
5 go back to the video record now.

6 MR. HIBBEN: All right. I just need  
7 one moment, please.

8 MR. HAWS: What is the actual time,  
9 videographer, of what we've got on the  
10 videotape deposition?

11 MR. HIBBEN: I have three hours, 35  
12 minutes and 52 seconds.

13 MR. HAWS: Thank you.

14 MR. HIBBEN: Yes, sir. We're back  
15 on the record at 2:03 p.m.

16 BY MR. ANDERSON:

17 Q. Archbishop, because you made a correction at  
18 the start of the last section concerning  
19 Shelley, I'm going to go back and try to get  
20 your testimony concerning some of the things  
21 that need to be asked, given that correction,  
22 that weren't asked because of your testimony  
23 given before it.

24 I'm going to show you an Exhibit 38  
25 and it is a memo from you -- excuse me, from

1 Jennifer Haselberger to you, correct?

2 A. Correct.

3 Q. And pertaining to Shelley in February of 2012?

4 A. Correct.

5 Q. At that time, at the bottom of the second  
6 paragraph, it reflects Shelley was without  
7 supervision. Is that your understanding?

8 MR. HAWS: Archbishop, just read the  
9 document, the entire document --

10 MR. ANDERSON: No.

11 MR. HAWS: -- so you have it in  
12 context.

13 MR. ANDERSON: No. No, he's not.

14 MR. HAWS: Well, counsel, you can't  
15 ask out of context.

16 MR. ANDERSON: Go off the record.  
17 Let me --

18 MR. HAWS: Well, no. He's not going  
19 off the record. He has a right to read the  
20 deposition --

21 MR. ANDERSON: No. We're not going  
22 to have him reading documents, taking the time  
23 on the record. That's intended to delay the  
24 process.

25 MR. HAWS: You want to ask a

1 question about a document that's in front of  
2 the archbishop and you want to be unfair and  
3 not let him read to see what the context is,  
4 is that your position?

5 MR. FINNEGAN: No. We'll take a  
6 break and let him read it.

7 MR. HAWS: Well, why would you take  
8 a break? When do you ever do that in a  
9 deposition? This is a deposition. Ask your  
10 questions.

11 MR. FINNEGAN: We don't have people  
12 that are trying to delay the depositions like  
13 you.

14 MR. HAWS: I hardly am trying to  
15 delay the deposition. If questions were  
16 asked properly, it would have been much  
17 quicker.

18 MR. ANDERSON: Mr. Haws, you're an  
19 officer of the court. You know better than  
20 this.

21 MR. HAWS: I am.

22 MR. ANDERSON: We'll take it up with  
23 the judge, but I'll tell you right now, I'm  
24 going to read a portion from this and ask you  
25 a question, Archbishop.

1 BY MR. ANDERSON:

2 Q. In this memorandum to you, she states, "The  
3 reason this was not given more attention in  
4 2008 only became clear recently. For, while  
5 there is reference to the misconduct in Father  
6 Shelly's green personnel file, the detailed  
7 information relating to the misconduct,  
8 including the investigator's report, was of 48  
9 restricted files that were archived (meaning  
10 moved to the basement, without reference to it  
11 being placed in the personnel files) in the  
12 early months of 2008." Do you remember  
13 discussing that with her at that time?

14 A. (Examining documents) I don't at this moment,  
15 I don't recall discussing that with her.

16 Q. She goes on to state, and I'll ask you, "I  
17 have attached a list of files that were moved  
18 to the archives, although we have not been  
19 able to locate all the files on the list."  
20 Were there files moved to the archives,  
21 Archbishop?

22 A. We have -- we have two archive rooms and the  
23 files of active priests are in one, files of  
24 priests who have left and priests who are dead  
25 would be in another room.

1 Q. And in the same memo at the second page,  
2 there's a recitation of various things known  
3 about Shelley that -- my question to you as is  
4 stated in the memo to you, she says, "In 2004  
5 while Shelley was assigned to St. Jude, Father  
6 Shelley's" --

7 MR. HAWS: Where are you reading?  
8 Counsel, can you just tell him where you're  
9 reading from?

10 BY MR. ANDERSON:

11 Q. At the top. "Shelley's personal computer (one  
12 of three) was mistakenly donated to a  
13 parishioner during the parish garage sale."  
14 Do you know what happened to the three  
15 computers?

16 A. (Examining documents) I only see here one  
17 computer -- one of three.

18 Q. Yeah, but I'm talking about there were three  
19 computers. Do you know what happened to those  
20 three computers?

21 A. I know that the one computer that they  
22 referred to was ultimately turned in by the  
23 person who received the donation. He came to  
24 the archdiocese about it. I don't know what  
25 happened to the other two computers.

- 1 Q. There's also reference to the archdiocese  
2 ordering an investigation and a computer  
3 analysis to be done of the machine. Did you  
4 see that yourself?
- 5 A. I did not.
- 6 Q. You were told there were images on there by  
7 the experts that did the analysis that there  
8 was questionable or borderline child  
9 pornography, were you not?
- 10 A. I did read the context and I think they would  
11 -- it said they were borderline, but they  
12 didn't think it was child pornography.
- 13 Q. But there were questions about that, were  
14 there not?
- 15 A. I think there were questions for Jennifer.
- 16 Q. And you had questions about that?
- 17 A. I did.
- 18 Q. And aren't questions the same as suspicions  
19 enough to justify a report to the police at  
20 that time?
- 21 A. I sincerely thought that what we were doing  
22 with this outside investigation, that the  
23 person -- the forensic person and the retired  
24 policeman had the wherewithal to make that  
25 investigation.

1 Q. You say "outside investigation." The fact of  
2 the matter is, this is a --

3 A. Well, internal.

4 Q. -- internal investigation?

5 A. Internal investigation with an outside  
6 company.

7 Q. An outside company hired by the archdiocese --

8 A. Correct.

9 Q. -- to find out for them what's on it, right?

10 A. Right.

11 Q. And all of this investigation was done and  
12 handled by those retained and those in your  
13 office, correct? Nobody outside the  
14 archdiocese?

15 MR. HAWS: You're now referring to  
16 the 2004 time frame here?

17 MR. ANDERSON: I'm referring to the  
18 -- yes.

19 A. Well, what I meant by "outside" was that they  
20 weren't people that worked directly for us on  
21 our staff.

22 BY MR. ANDERSON:

23 Q. Father Shelley's still in ministry, isn't he?

24 A. Father is not in ministry. He's on a leave of  
25 absence.

1 Q. Okay. Excuse me, he took a sabbatical?

2 A. Took a sabbatical and then he was placed on  
3 leave of absence.

4 Q. The point that this memo was sent to you and  
5 you read it, Shelley was in ministry, was he  
6 not?

7 A. He was.

8 Q. And he was continued in ministry, was he not,  
9 by you?

10 A. I don't have those dates. This is 2012. He  
11 was -- 2012 he would have been out of  
12 ministry.

13 Q. It was June 2012 that he took a sabbatical?

14 A. (Examining documents) I don't -- I don't know  
15 where you're getting that date.

16 Q. Archbishop, Haselberger refers also at the  
17 bottom paragraph that she's attaching a copy  
18 of a September 23rd, 2004, letter -- 2004  
19 letter of referral to the SLI. That would be  
20 St. Luke's Institute, correct?

21 A. Correct.

22 Q. And you had seen that report, had you not?

23 A. (Examining documents) I can't recall at this  
24 moment whether -- whether I did. I'm confused  
25 by this.

1                   MR. HAWS:  You're referring to the  
2                   letter or the report?

3                   MR. ANDERSON:  The report, the St.  
4                   Luke's Institute report.

5                   BY MR. ANDERSON:

6   Q.    Had you ever seen that?

7   A.    I don't believe I did.  If it came in  
8           September of 2004, I wouldn't have been  
9           present on the site at the time.

10  Q.    The records seem to reflect that they actually  
11           got the report and sent him there before they  
12           got the computer evaluated or completed.

13                   MR. HAWS:  Archbishop, if you know.  
14                   I don't know if those are facts or not, but if  
15                   you know.

16  A.    Well, I would have to look more carefully at  
17           this.

18                   BY MR. ANDERSON:

19  Q.    Okay.  Well, let's just look at the sentence.  
20           It says, at the last paragraph she says,  
21           "Archbishop, I'm attaching the copy of our  
22           September 23rd, 2004, letter of referral to  
23           SLI as well as their report to this memo."  
24           Correct?

25  A.    Correct.

- 1 Q. That means you received it, correct?
- 2 A. That somebody would have received it, yes.
- 3 Yes.
- 4 Q. Well, this is to you?
- 5 A. Yes.
- 6 Q. So you're not disputing you received it --
- 7 A. No.
- 8 Q. -- correct?
- 9 A. No.
- 10 Q. That is correct?
- 11 A. That's correct.
- 12 Q. Okay. The last paragraph, and she writes to
- 13 you, "Father Shelley has not been assessed by
- 14 SLI since the computer was determined to have
- 15 images that were borderline illegal." Did you
- 16 do anything responsive to that information,
- 17 Archbishop?
- 18 A. I don't recall.
- 19 Q. At the next page, the last sentence, she
- 20 writes to you, "You will recall that this has
- 21 not been without problems, including" --
- 22 A. Where -- where are you reading, please?
- 23 Q. The next page.
- 24 A. Yes.
- 25 Q. Last sentence of the first paragraph.

- 1 A. Okay.
- 2 Q. She writes, "You will recall that this has not  
3 been without problems, including the fact that  
4 Father Shelley had an 18-year-old male living  
5 in the rectory of St. John the Baptist in  
6 2009." Did you know that, Archbishop, before  
7 having received this?
- 8 A. I don't believe I knew it before receiving  
9 this.
- 10 Q. So when you got this information, did you do  
11 anything about it?
- 12 A. I -- I -- I do believe that it was looked into  
13 by -- by somebody on the staff and I think it  
14 was my delegate for clergy, who would have  
15 been Father Tiffany.
- 16 Q. Okay. And did he give you a report or take  
17 any action?
- 18 A. I think it was past the time that the young  
19 man was living there.
- 20 Q. Was Shelley interviewed by you or any of your  
21 delegates --
- 22 A. I believe by my --
- 23 Q. -- to find out?
- 24 A. I believe by my delegate.
- 25 Q. And was that recorded or reported to police?

1 A. I believe it should have been. I don't know  
2 -- I can't say definitely it was, but it  
3 should have been reported.

4 Q. Do you have any knowledge that it was?

5 A. No, I don't.

6 Q. The next paragraph goes on to state, at the  
7 second sentence, beginning -- the paragraph  
8 starts with "However."

9 A. Yes.

10 Q. And the second -- I'll read it, it says,  
11 "However, now that you have access to the  
12 information that was recently recovered  
13 (including DVDs of the material that was found  
14 on the computer) I think there is a great risk  
15 of associated" -- "a great risk associated  
16 with reassigning Father Shelley." I read that  
17 correctly?

18 A. You did.

19 Q. You did reassign him, didn't you?

20 A. I believe -- no. I don't believe I did re --  
21 reassign him at that point. He was already in  
22 Hugo.

23 Q. Actually, you left him there for six months,  
24 didn't you, in the parish he was?

25 A. I believe I did, yes.

1 Q. Without notifying anybody of this information  
2 that you had received from her, correct?

3 A. That would be correct, but I don't know that  
4 her information was -- was correct here. I'm  
5 just looking at this again for -- it's been a  
6 long time since I've seen it.

7 Q. Well, let me ask you another question. Under  
8 that same paragraph enumerated number 1, she  
9 states, I'll read and then ask you questions.  
10 "Collecting all the personal computers/  
11 laptops that Father Shelley is using at this  
12 time and sending them for similar analysis."  
13 This is a recommendation action?

14 A. Uh huh.

15 Q. It states, "If the SLI report is correct and  
16 Father Shelley has an ongoing problem with  
17 compulsive sexual behavior in his Internet  
18 pornography use, it is very likely that this  
19 use will have continued, and since Father  
20 Shelley's never received treatment to address  
21 this." Did that alarm you or do you remember  
22 that alarming you at the time?

23 A. I believe that would have alarmed me at the  
24 time, yes.

25 Q. What did you do about it?

1 A. I can't -- I can't remember what I did about  
2 it.

3 Q. Did you alert any of the parishioners or the  
4 public or the police of what you were alarmed  
5 about and the information you're receiving in  
6 this memo that concerns you?

7 A. I honestly can't say right now what I -- what  
8 I did or didn't do.

9 Q. At the last paragraph you do state -- it is  
10 stated by her, "I shared this information with  
11 Father Laird last July." Do you have any  
12 memory of having taken any action to report  
13 Shelley to law enforcement, to alert the  
14 parishioners or the public about the risks now  
15 discerned concerning Shelly's danger to  
16 children or use, possible possession of child  
17 pornography?

18 MR. HAWS: Objection, that misstates  
19 the facts, the evidence, the document you just  
20 read, counsel. There's not a word in there  
21 that says that there's a danger to children,  
22 so you've misstated the record again,  
23 inserting your own facts. If you ask it  
24 another way, it would be a proper question.

25 BY MR. ANDERSON:

1 Q. Did you take any action responsive to the  
2 information contained in this memo?

3 A. I believe that there was a question of the  
4 ongoing nature of the -- the images that were  
5 on that computer and I believe I was waiting  
6 for a final analysis of that in order to make  
7 some kind of reaction.

8 Q. And so it is correct that four months later,  
9 Shelley was allowed to resign from his parish,  
10 claim to the parishioners he was taking a  
11 sabbatical, correct, with your permission?

12 A. I -- I'd have to look at the record.

13 Q. Do you have a memory of that?

14 A. I don't have a memory of that. I know that he  
15 did ask for a sabbatical and he was granted a  
16 sabbatical, and then I put him on leave after  
17 other information came to the fore.

18 Q. And did you or anybody under your direction  
19 ever alert the police or the public of what  
20 you knew as contained in this memo about  
21 Shelley?

22 A. Not to -- not to my knowledge.

23 Q. And I'm going to refer you to Exhibit 45.  
24 Before I do, do you remember a dispute between  
25 Jennifer Haselberger and Kevin McDonough about

1           whether these images on this computer were  
2           illegal and child porn and, thus, a form of  
3           sexual abuse?

4   A.    I do remember there was an argument, yes.

5   Q.    Tell us about that argument, what you heard  
6           and what you did responsive to it.

7   A.    Well, Jennifer maintained that the images were  
8           those of child pornography and Father  
9           McDonough said they were not. And we had the  
10          -- at the time the investigation that was done  
11          with the retired policeman indicating that  
12          these were borderline. And so there was a  
13          dispute, obviously, about the nature of these  
14          images.

15   Q.    And Kevin McDonough took the position that 60  
16          percent of the images are created by law  
17          enforcement and because he had not been  
18          caught, he had not been guilty and he made  
19          that case to you, didn't he?

20   A.    I don't recall that at all, no.

21   Q.    He also claimed that they may have been pop-up  
22          images and innocently, then, on that computer.  
23          Do you remember that?

24   A.    Subsequent to this, yes, I remember that.

25   Q.    Jennifer Haselberger disputed that vigorously,

1 did she not?

2 A. I believe she did.

3 Q. And she went to the length to even copy some  
4 of those images and put them on your desk,  
5 didn't she?

6 A. Those were the same images I believe that you  
7 referred to before.

8 Q. How many images?

9 A. I think there were only three, that I recall.

10 Q. And she told you that she had showed those to  
11 McDonough and he ordered her to put them back  
12 in the archive, didn't she?

13 A. I believe she did, yes.

14 Q. And she was upset about that?

15 A. I believe she was, yes.

16 Q. And she wanted you to take action, didn't she?

17 A. I believe she did, yes.

18 Q. And you chose not to, didn't you?

19 A. Well, I didn't think they were child  
20 pornography.

21 Q. She also urged you to report to law  
22 enforcement what those images were and what  
23 the archdiocese knew and included in Shelly's  
24 file, including the earlier stuff, correct?

25 A. I don't recall that.

1 Q. Okay. I'll show you Exhibit 45.

2 A. Yes.

3 Q. And I'll direct your attention to 45, which is  
4 dated February 8th, 2013, it's to you from  
5 her. Fifth paragraph down she writes, "I  
6 would also like to reiterate that I think all  
7 of this information should be turned over to  
8 law enforcement for their determination, in  
9 hopes of avoiding prosecution for you and your  
10 staff by offering an affirmative defense."

11 She wrote that to you, didn't she?

12 A. She did.

13 Q. And then she states, "Finally, I am attaching  
14 a memo written by Father McDonough when he  
15 made a similar assessment of Father Wehmeyer.  
16 His conclusion, which Father Laird supported."  
17 In other words, she's saying, "Don't make the  
18 same mistake here that you made with  
19 Wehmeyer." Is that the way you read this?

20 MR. HAWS: Objection, it's assuming  
21 facts not in evidence. That's not what the  
22 memo says.

23 BY MR. ANDERSON:

24 Q. As you recall, is that the way you read it?

25 A. No.

1 Q. You didn't turn this over because you were  
2 worried that you were in possession and you  
3 could be prosecuted?

4 A. That's not true. I didn't turn it over  
5 because I didn't think it was child  
6 pornography.

7 (Discussion off the record)

8 BY MR. ANDERSON:

9 Q. So what training do you have in the area of  
10 what is and isn't child pornography?

11 A. Not very much.

12 Q. Well, what training at all?

13 A. None.

14 Q. Okay. I'm going to go into the sealed part of  
15 the record and ask you to look to Exhibit 99.  
16 Under the court order, I now believe that we'd  
17 be under a sealed part of the record.

18 I'm showing you sealed Exhibit 99,  
19 Archbishop.

20 A. Uh huh.

21 Q. And it's identified at the top as "Restricted  
22 Files in VG's Office," that's vicar general's  
23 office, correct?

24 A. Correct.

25 Q. Correct. Says, "Can be moved to archives,

1           downstairs." What is this and why is it kept?

2    A.    I cannot tell you why it was kept in the vicar  
3           general's office. I believe this is just a  
4           list of files that are kept in our archives,  
5           which happen to be on the basement floor.

6    Q.    Is it also correct when you look at this and  
7           your knowledge of the protocols in the  
8           archdiocese that this is the list of  
9           individual priests who pose a potential risk  
10          of harm or who have engaged in some  
11          misconduct?

12   A.    I don't -- I don't know that by reading this  
13          list. I don't know what the list is about.  
14          There are priests on this list who have never  
15          done -- never been accused and never done any  
16          abuse at all.

17   Q.    Why were these files restricted in this kind  
18          of manner?

19   A.    I have no idea.

20   Q.    Isn't this an effort to keep secret some of  
21          the names and the information pertaining to  
22          offenders current or past that you don't want  
23          publicly disclosed?

24                       MR. HAWS: Objection, it misstates  
25          evidence, facts and his testimony today.

1 MR. ANDERSON: It's a question.

2 MR. HAWS: It was a statement.

3 A. I would say that -- I would say not. It's a  
4 restricted clergy file, all of our clergy  
5 files at the time were restricted and I don't  
6 know looking at the list what the common  
7 denominator is behind the names that are on  
8 this list.

9 BY MR. ANDERSON:

10 Q. What did you do when you got this list, then,  
11 from Jennifer Haselberger as an attachment to  
12 the memo about it to find out what's behind  
13 it, why you have it and what it means?

14 A. Which -- which memo are you referring to?

15 Q. The earlier memo that we were referring to.

16 A. And where do you --

17 Q. Where she attaches this as a restricted file.  
18 That was Exhibit --

19 A. I didn't make that connection between the two.

20 MR. HAWS: Is that part of that  
21 exhibit that he wasn't allowed to read?

22 MR. FINNEGAN: No. We read it to  
23 him.

24 MR. ANDERSON: No. I read it to  
25 him.

1                   MR. HAWS: But this Exhibit 99, was  
2                   that part of it? Because it didn't refer to  
3                   that and he wasn't allowed to go back and read  
4                   it.

5                   MR. FINNEGAN: It says that it's  
6                   attached, Exhibit 38.

7                   BY MR. ANDERSON:

8           Q.       Exhibit 38 says this was attached. So my  
9                   question to you is -- Exhibit 38 says it was  
10                  attached, Archbishop.

11          A.       Okay. I do see that now, yes.

12          Q.       I'll read it to you, it says, "was one of the  
13                   48 restricted files that were archived," and  
14                   the last paragraph and the last sentence of  
15                   the last paragraph she says, "I have attached  
16                   a list of files that were moved to the  
17                   archives, although we have not been able to  
18                   locate all the files on the list," okay? This  
19                   would be that attachment. So my question to  
20                   you is, when you look at this list of  
21                   restricted files, what did you do responsive  
22                   to the information imparted to you in it, if  
23                   anything?

24          A.       (Examining documents) Well, I'd have to  
25                   determine what the -- the common denominator

1 is among the people on this list. She doesn't  
2 say.

3 Q. Well, what did you do to find out what the  
4 common denominator was, why they're keeping a  
5 list that is so restricted?

6 A. Well, as I said before, all of our archives at  
7 that time were -- were restricted.

8 Q. Well, if you look at the list, you can see  
9 some of the offenders that are publicly  
10 accused --

11 A. Yes, I agree there are some, but not a --

12 Q. -- and are known to us are on this list,  
13 correct?

14 A. Correct, some, I would put the emphasis on  
15 some, but not all.

16 Q. Did you make any effort to share any of the  
17 information here with law enforcement at any  
18 time?

19 A. I don't believe I did.

20 Q. Okay.

21 A. I don't understand the nature of this  
22 attachment.

23 Q. Have you ever turned these files over or the  
24 fact that such a restricted list has been kept  
25 to law enforcement?

1 A. Not to my knowledge.

2 Q. Let me ask you this, Archbishop. You've now  
3 testified and publicly declared that you have  
4 identified those that you believed credibly  
5 accused and that you have files pertaining to  
6 them, don't you think it's past time to turn  
7 it over to law enforcement and, if so, will  
8 you do that now?

9 MR. HAWS: Objection, that calls for  
10 a legal conclusion and something that the  
11 archbishop doesn't have -- isn't going to do  
12 at this point in time.

13 BY MR. ANDERSON:

14 Q. Well, I'm going to ask you. Will you turn the  
15 files over to the law enforcement agencies?

16 A. Well, as I mentioned before in this testimony,  
17 we've had a thorough review of the files by  
18 the Kinsale -- Kinsale and with the -- and  
19 they're still in the process of doing that and  
20 I'm waiting for that -- results of that to be  
21 able to -- to do exactly what you're  
22 suggesting.

23 Q. But Kinsale was hired by you, aren't they?

24 A. Correct.

25 Q. Okay. Just like the clergy review board is

1 appointed by you, correct?

2 A. Correct.

3 Q. Just like Setter was hired by your former --  
4 the former archbishop, correct?

5 A. Correct.

6 Q. And just like the forensic investigator was  
7 hired. So the question I put to you, and  
8 maybe it's a request, why not just privately  
9 turn the files over of those priests to law  
10 enforcement to let the professionals review it  
11 instead of trying to do this yourself?

12 MR. HAWS: Same objections.

13 BY MR. ANDERSON:

14 Q. Why not?

15 A. My answer would be, we are prepared to do what  
16 we have to do when the Kinsale file review has  
17 been done.

18 Q. Don't you realize how risky it is and the  
19 danger this poses by keeping all these things  
20 within your control and those you hire and  
21 keeping it under the internal processes that  
22 you have instead of turning it over to the  
23 professionals who are trained in law  
24 enforcement investigation?

25 MR. HAWS: And I'll object again,

1 counsel. You're trying to make sound bites.  
2 There's no evidence that the archdiocese has  
3 not cooperated with any law enforcement  
4 officials, with any person that's been --

5 MR. ANDERSON: That's not a legal  
6 objection.

7 MR. HAWS: That is a legal  
8 objection, counsel, because you continue to  
9 try to create your own clips and that's not --

10 MR. ANDERSON: No. We're trying to  
11 protect kids here, we're trying to protect  
12 kids, counsel. Give me a legal objection  
13 about it.

14 MR. HAWS: Ask him questions about  
15 it.

16 BY MR. ANDERSON:

17 Q. And I ask you, Archbishop, and giving you a  
18 chance to give the law enforcement people to  
19 know what your office knows by turning those  
20 files over to them privately and letting them  
21 investigate it.

22 MR. WIESER: Time's up.

23 BY MR. ANDERSON:

24 Q. Why don't you do that?

25 A. As I indicated to you, once we have the

1 file --

2 Q. Why wait? Kids are at risk.

3 MR. HAWS: Counsel, we're done.

4 MR. ANDERSON: What do you mean  
5 we're done? We're not done with this  
6 deposition.

7 MR. WIESER: What time does --

8 MR. ANDERSON: You're declaring the  
9 time is up?

10 MR. HAWS: Let's take a break and  
11 find out what the time is, okay? Let's take a  
12 break right now from the video and we'll find  
13 out how much time you've been on the video.

14 MR. HIBBEN: We're going off the  
15 record at 2:34.

16 MR. HAWS: We can stay on the  
17 record.

18 MR. HIBBEN: I have four hours and  
19 seven minutes and five seconds.

20 MR. HAWS: We're over the time.

21 MR. ANDERSON: Well, I told you at  
22 the start, you've got speaking objections.  
23 You're not going to get away with creating  
24 delays by your crazy speaking objections,  
25 counsel. There's not one legal objection you

1           have posed that was legitimate. It was either  
2           privileged or, you know, if you want to do  
3           form or something like that. All it has been  
4           is speaking objections and a waste of time. I  
5           warned you in advance and I said I'm not going  
6           to count that on the time. So given that I've  
7           had a timekeeper here and according to my  
8           timekeeper -- and your speaking objections  
9           took up how much time?

10                       MS. ODEGAARD: Two-and-a-half  
11           minutes.

12                       MR. ANDERSON: Two-and-a-half  
13           minutes.

14                       MR. WIESER: For the record, I've  
15           been also keeping track and I have less than a  
16           half a minute of total time spent on what  
17           you're referring to as speaking objections.  
18           So at this point you're saying there are an  
19           additional two minutes left?

20                       MS. ODEGAARD: Two-and-a-half  
21           minutes left.

22                       MR. WIESER: Will you keep track of  
23           that, Mr. Videographer?

24                       MR. HAWS: Well, my speaking  
25           objections, for the record before you go on

1 the video, are because of improper questions  
2 you posed, improper hypotheticals, improper  
3 factual scenarios that require that, counsel.  
4 And as an officer of the court, you should  
5 know that you cannot do that, that is not  
6 appropriate nor is it fair to insert your own  
7 facts in order to create whatever it may be  
8 you're trying to do here. The archbishop has  
9 been here to answer whatever questions he can  
10 as best he can in a proper form, so --

11 MR. WIESER: We're over already. I  
12 think we can wrap it up at this point, if you  
13 want to.

14 MR. HAWS: Yeah, let's just do that.

15 MR. BRAUN: I'm good with that.

16 MR. WIESER: That's fine.

17 MR. ANDERSON: So are we done?

18 MR. HAWS: We're done. You're past  
19 your time.

20 MR. ANDERSON: Well, I consider this  
21 deposition to be open for reasons that were  
22 legitimate at the start of this deposition by  
23 reason of the failure to disclose, which  
24 should have been, and the untimely disclosures  
25 as well as the incomplete ones. And now it's

1 even more acutely problematic by reason of two  
2 things: One, the archbishop's change in  
3 testimony that altered the necessity to ask  
4 questions that otherwise would not have been,  
5 in which after a break was taken, the decision  
6 was made; two, there have been speaking  
7 objections, none of which have been legally  
8 based or identified in law as anything other  
9 than recitations of belief; and, three --

10 MR. HAWS: You can take the  
11 archbishop out.

12 MR. ANDERSON: So I guess counsel is  
13 leaving now, we're considering the deposition  
14 open. They're gone -- and are you prepared to  
15 continue, Archbishop?

16 MR. WIESER: Archbishop, why don't  
17 you come?

18 MR. HAWS: No. Archbishop, you  
19 don't have to. We can go.

20 For the record, you had Shelley  
21 files and the Wehmeyer files beforehand. In  
22 terms of testimony, I believe you've actually  
23 gone beyond what the court had authorized you  
24 to do in the deposition in any event. And the  
25 objections were necessitated by your own

1           conduct.  And we'll deal with what we have to  
2           with the court.  You've preserved your record  
3           and we've made ours, so there's no other  
4           reason to argue about it.

5                       MR. ANDERSON:  No.  We're done.

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1 I, ARCHBISHOP JOHN NIENSTEDT, do hereby  
2 certify that I have read the foregoing  
3 transcript of my deposition and believe the  
4 same to be true and correct, except as  
5 follows: (Noting the page number and line  
6 number of the change or addition and the  
7 reason for it)

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23 Subscribed to and sworn

24 before me this \_\_\_ day

25 of \_\_\_, 2014. \_\_\_\_\_

