

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

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COORDINATION PROCEEDING

SPECIAL TITLE (RULE 1550(b))

THE CLERGY CASES III

JCCP No. 4359

JOHN DOE 39,

Alameda No. RG03 134157

Plaintiffs,

v.

Franciscan Friars OF

CALIFORNIA, INC.; JAMES

ROE 2; and ROES 3-10,

Inclusive,

Defendants. __

DEPOSITION OF FATHER [REDACTED]

VOLUME I - PAGES 1 THROUGH 305

FRIDAY, FEBRUARY 10, 2006

Reported by:

LUCY CARRILLO-GRUBBS, RMR, CRR, RPR, CSR

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---o0o---

1 BE IT REMEMBERED THAT, pursuant to the laws
2 pertaining to the taking and use of depositions, and
3 on February 10, 2006, commencing at the hour of
4 10:05 a.m., thereof, at the offices of LEWIS,
5 BRISBOIS, BISGAARD & SMITH, LLP, One Sansome Street,
6 Suite 1400, San Francisco, California, California,
7 before me, LUCY CARRILLO-GRUBBS, CRP, RMR, CRR, RPR,
8 CSR No. 6766, a Certified Shorthand Reporter in and
9 for the State of California, personally appeared

10
11 FATHER [REDACTED]

12
13 called as a witness by the Plaintiffs; who, having
14 been by me first duly sworn, was thereupon examined
15 and interrogated as hereinafter set forth.

16 -O-

17 VIDEOTAPE OPERATOR: Good morning.

18 This marks the beginning of Volume 1,
19 Videotape 1 in the deposition of [REDACTED], in
20 the matter of John Doe 39 versus Franciscan Friars of
21 California, et al., in the Superior Court of
22 California, County of Alameda, case No. RG 03 134157.

23 Today's date is February 10th, 2006, the time
24 is 10:02 a.m. The location of this deposition is One
25 Sansome Street, San Francisco, California. This

1 deposition was noticed by plaintiff. Videotape is
2 being produced on behalf of plaintiffs.

3 Videotape operator is Amaris Blackmore,
4 employed by Dan Mottaz Video Productions LLC, 182
5 Second Street, Suite 202, San Francisco, California,
6 phone number 415-624-1300.

7 Will all counsel present please identify
8 themselves and who they represent, please.

9 MR. HALE: Tim Hale for plaintiff, John Doe
10 39.

11 MR. NYE: David Nye for plaintiff.

12 MR. BROSNAHAN: Brian Brosnahan, Heller,
13 Ehrman, LLP for defendant Franciscan Friars of
14 California.

15 MR. MATIASIC: Paul Matiasic, Lewis, Brisbois,
16 Bisgaard & Smith for defendant Franciscan Friars of
17 California and the witness.

18 VIDEOTAPE OPERATOR: Thank you.

19 Would you please swear in the witness.

20 FATHER [REDACTED],
21 having been first duly sworn by the Reporter to tell
22 the truth, the whole truth, and nothing but the truth,
23 testified as follows:

24
25 -oOo-

EXAMINATION

BY MR. HALE:

Q. Good morning, Father. I know we've been introduced off the record, for the record, my name is Tim Hale.

Could you state and spell your name for the record, please?

A. Yeah, my name is [REDACTED], [REDACTED], [REDACTED].

Q. Thanks. I've been bouncing back and forth between the single N and the double N.

A. [REDACTED].

Q. Thanks for clarifying that for me.

I'm sure Mr. Matiasic has had a chance to review the rules of the deposition with you?

A. Yes, yeah.

Q. But just for clarification purposes, I'm going to go over a few of those. Have you had your deposition taken before?

A. Once, but it was -- yes.

Q. How long ago was that?

A. Oh, twelve years.

Q. Okay.

A. At least.

Q. And what kind of case did that involve?

1 A. That was an insurance case, not sexual abuse.

2 Q. Okay.

3 And were you deposed -- twelve years ago, so
4 that would have been '94?

5 A. Well, to be honest, I don't remember
6 exactly --

7 Q. Okay.

8 A. -- when it was.

9 Q. Okay.

10 A. And whether it was a formal deposition or just
11 a hearing or whatever, I'm not quite sure.

12 Q. Were you a -- were you deposed in your
13 capacity as provincial minister?

14 A. Yes.

15 Q. Okay.

16 Can you -- can you give me an idea what -- you
17 said it was insurance?

18 A. They wanted some canonical clarifications of
19 an issue of how the order worked, you know, it was
20 more technical expertise I had as a --

21 Q. Okay.

22 A. -- a priest.

23 Q. Were you testifying as a party or as a -- an
24 agent of a party?

25 A. I don't remember.

1 Q. Okay. Was the Province a defendant or a
2 plaintiff in that lawsuit?

3 A. I don't remember that either. It's all very
4 vague to me.

5 Q. I understand.

6 And that's going to happen throughout today.
7 Obviously we're going to be talking about events from
8 a number of years past.

9 A. This was particularly vague because it was
10 rather insignificant.

11 Q. Okay.

12 Do you remember who the party on the other
13 side was?

14 A. No, I don't.

15 Q. Was it an insurance carrier, though?

16 A. I think it was an insurance carrier.

17 Q. Okay. Was there some kind of dispute over
18 coverage?

19 MR. MATIASIC: Well, object to the extent it
20 calls for a legal conclusion, but --

21 BY MR. HALE:

22 Q. If you know?

23 A. I really don't know.

24 Q. Okay.

25 All right. Do you understand that today even

1 though we're in this relatively informal setting, your
2 testimony has the same force and effect as if we were
3 sitting in front of a judge or jury in a court of law?

4 A. Yes, I do.

5 Q. You understand you've been placed under oath
6 by the court reporter?

7 A. Yes.

8 Q. Okay.

9 Have you consumed any alcohol or drugs in the
10 last 24 hours that might somehow impair your ability
11 to give good clear testimony?

12 A. I have not.

13 Q. Okay.

14 Is there any reason you can't give your best
15 testimony today?

16 A. Not that I can think of.

17 Q. Okay.

18 If you think of anything during the depo,
19 please let me know.

20 You're doing a real good job of not
21 interrupting me when -- when I ask you a question. As
22 you can see, the reporter is taking down everything we
23 say.

24 A. Uh-hmm.

25 Q. So it's important that when I ask you a

1 question, you try and wait for me before you respond.
2 By the same token, I need to wait for you when you're
3 responding before I ask you another question, so
4 hopefully we can avoid talking over each other too
5 much, so we'll have a nice clear record when this is
6 over, okay?

7 A. I would hope so.

8 Q. Okay.

9 As I kind of touched on a second ago, we're
10 going to be going back a number of years regarding
11 questions I'm going to be asking you. In that regard,
12 we don't want you to guess to the answer to any
13 questions I ask you. I am entitled to your best
14 estimate. Do you understand the difference between a
15 guess and an estimate?

16 A. I think so.

17 Q. Do you want me to give you an example just
18 to --

19 A. Sure.

20 Q. Okay. The example I always use is if I asked
21 you to estimate the length of this table, you could do
22 it because it's sitting here in front of you.

23 A. Right.

24 Q. Whereas, if I asked you to tell me the length
25 of the desk in my office, assuming you've never been

1 in my office it would be nothing but a pure guess.

2 Does that -- do you understand that?

3 A. Okay, yeah, thank you.

4 Q. If I ask you a question and you answer it, I'm
5 going to assume you understood what I meant by the
6 question. So if you don't understand what I'm saying
7 or what I'm asking, make sure to ask me to clarify and
8 I'll try to clear up whatever points are causing you
9 any confusion, okay?

10 A. Okay.

11 Q. At the end of your deposition your testimony's
12 going to be placed into a typed booklet form. You're
13 going to get a chance to review that testimony, you
14 can make any changes you think are necessary. But you
15 need to keep in mind that if you do make any changes,
16 either myself or some other attorney in this matter
17 will be free to comment on those changes at the time
18 of trial.

19 So it's important that you give your best
20 testimony here today if at all possible.

21 Do you understand that?

22 A. Yes, I do, yes, and I would want to.

23 Q. Yes. I -- I figured as much.

24 You're also doing a really good job for
25 purposes, again, of having a clear record, we want to

1 avoid answers that involve uh-huh and uh-uhs and nods
2 of the head and that sort of thing. Keep doing what
3 you're doing and we'll have a very clear record when
4 this is all -- all finished, okay?

5 A. Thank you.

6 Q. Do you have any questions?

7 A. No, I don't think so, not at the moment.

8 Q. Okay.

9 We're not holding you hostage here, so if you
10 need to take a break, get some water or something,
11 just say the word and we'll take a break, okay?

12 A. Yes, thank you.

13 Q. Did you review any documents in preparation
14 for your deposition today?

15 A. No, I did not.

16 Q. Okay.

17 All right. I want to just kind of go through
18 your -- your education and employment background a
19 little bit.

20 A. Okay.

21 Q. Can you give me your birth date to start with.

22 A. [REDACTED].

23 Q. Okay.

24 And where were you born?

25 A. Altadena, California.

1 Q. Okay. And where did you go to high school?

2 A. I went to high school at St. Anthony's
3 Seminary in Santa Barbara, California.

4 Q. Okay. And what years did you attend
5 St. Anthony's?

6 A. I was at St. Anthony's from 1959 to 1963.

7 Q. In some of the other depositions I've taken
8 witnesses have testified that there was a fifth year
9 while they were at St. Anthony's. Was there a fifth
10 year as part of the process when you were there or did
11 you get there late in the game?

12 A. No. The system had changed by then and there
13 was no fifth year.

14 Q. Okay. Okay.

15 So Father McKeon was the prefect of discipline
16 while you were at St. Anthony's?

17 A. Father Martin McKeon, yes.

18 Q. McKeon.

19 Was there a vice prefect while you were at
20 St. Anthony's?

21 A. Well, there may have been, I do not recall.

22 Q. Okay, okay.

23 We'll go back to St. Anthony's in a second.
24 After St. Anthony's, did you then go on to your
25 novitiate year or your pre-novitiate year or?

1 A. After St. Anthony's I went to San Luis Rey
2 College, San Luis Rey, California.

3 Q. Okay. And was that three years?

4 A. Two years.

5 Q. Two years.

6 And did you receive a degree from San Luis
7 Rey?

8 A. Eventually, yes.

9 Q. And what was that degree in?

10 A. Bachelor in Philosophy.

11 Q. Okay. Okay.

12 So that would have been the -- from '63 to '65
13 you were at San Luis Rey?

14 A. For the first two years, yes.

15 Q. For the first two years, okay.

16 And then during the '65-'66, what would have
17 been the '65-'66 school year where were you then?

18 A. In 1965 I entered the novitiate as a
19 Franciscan novice, at San Miguel Mission, San Miguel,
20 California.

21 Q. Who was the novice master when you were there?

22 MR. BROSNAHAN: Lacks foundation.

23 THE WITNESS: The novice master was Father
24 Reginald McDough.

25 BY MR. HALE:

1 Q. Were there any Franciscans assisting Father
2 McDough?

3 A. Father [REDACTED].

4 Q. Okay, anyone else?

5 A. I believe that was the novitiate team.

6 Q. Okay. How many other -- is candidate the
7 right word to identify someone whose -- describe
8 someone who is in the novitiate program or is it
9 just --

10 A. Novice.

11 Q. -- novitiate?

12 Novice, okay.

13 How many other novices were there?

14 A. Oh, well, I do not recall the exact number.

15 Q. Just an approximate number is fine.

16 A. Let's say approximately 14.

17 Q. Okay.

18 And when you finished the novice year, how
19 many -- how many were still standing, approximately?
20 In other words, how many had survived the program?

21 MR. MATIASIC: I'm just going to object to the
22 term "survived."

23 MR. HALE: Okay.

24 Q. How many made it through the program before
25 quitting or were asked to leave?

1 A. Again, I don't remember the exact number.

2 Q. Right.

3 A. I would say approximately twelve.

4 Q. Okay. Do you recall who was in the -- the
5 program with you?

6 A. I recall some of them.

7 Q. Okay.

8 A. Yes, I do.

9 Q. Can you give me the names, the ones that you
10 recall.

11 A. I need to clarify the question.

12 Q. Sure.

13 A. Okay.

14 Do you want the names of ones who are still
15 friars or other people who were with me and have since
16 left?

17 Q. Anybody who was there who was a novice with
18 you.

19 A. A novice with me.

20 David Leary.

21 Q. Okay.

22 A. Tom -- Thomas Coates, Ian Brackley, Bradley,
23 Joseph O'Connell, Andre Gaddu, Phil Accardi, John
24 Valentine, Thaddeus -- I don't know his last name.

25 Q. Crey or --

1 A. No, no. This was a Lithuanian from a
2 different Province who attended with us.

3 Q. Okay.

4 A. And has since died, I think.

5 Q. Okay.

6 A. I think obviously there's a few more, but at
7 the moment, those are the names that occur to me.

8 Q. That's fine.

9 Of -- it sounds like there was about two that
10 didn't finish the year?

11 A. Right, yes.

12 Q. Do you recall who the two were who didn't
13 finish?

14 A. No, I don't.

15 Q. Do you know why they didn't finish?

16 A. No, I do not know why they didn't finish.

17 Q. Do you know if they left voluntarily or if
18 they were asked to leave by the novice master?

19 A. I do not know that.

20 Q. Okay.

21 All right, after your year as a novice did you
22 go back to San Luis Rey?

23 A. Yes, I did, yes.

24 Q. And would that have been the '66-'67 school
25 year that you returned?

1 A. Correct, yes.

2 Q. Okay.

3 A. It was 1966-'67, I was a junior.

4 Q. Okay. So you were there for two years, two
5 more years, basically?

6 A. Correct.

7 Q. Okay. So you finished from San Luis Rey in
8 '68?

9 A. I finished -- I graduated in '68.

10 Q. Okay. What was the -- what was the next step
11 in the process for you? Did you then go on to the
12 School of Theology?

13 A. Yes, I would have gone on to the School of
14 Theology in 1968, after I finished college.

15 Q. And how many years were you there at the
16 School of Theology?

17 A. Four years.

18 Q. Okay. So '68 to '72?

19 A. Correct.

20 Q. Graduated in '72 or finished attending the
21 School of Theology in '72?

22 A. Right, yes. The reason I hesitate is, you
23 know, graduation may have been -- I think it was '71.

24 Q. Okay.

25 But that '71-'72 year you were still

1 attending?

2 A. Yes, yes, definitely.

3 Q. When you first arrived to the School of
4 Theology, did you start at Santa Barbara and then
5 finish in Berkeley or was it in Berkeley when you
6 started?

7 A. The school -- I started the School of Theology
8 as a freshman, 1968, in Berkeley.

9 Q. Okay.

10 So it was Berkeley the entire time?

11 A. Yes, it was.

12 Q. And did you receive a degree from the School
13 of Theology?

14 A. I received two degrees from the School of
15 Theology.

16 Q. Okay, what were those in?

17 A. A Master of Divinity and a Master of Arts.

18 Q. Okay. And were you ordained in '72 or '71?

19 A. I was ordained in June 1972.

20 Q. Okay.

21 Is the process such that you become a Brother
22 in the Province before -- well, I guess are all
23 Franciscans technically Brothers?

24 A. We remain friars.

25 Q. Okay.

1 A. Yes. Some of us are ordained --

2 Q. Okay.

3 A. -- Roman Catholic priests.

4 Q. Did you become a full-fledged member of the
5 Province in 1970?

6 MR. MATIASIC: Vague and ambiguous.

7 MR. HALE: Is that --

8 MR. MATIASIC: Go ahead, you can answer.

9 MR. HALE: Is that --

10 THE WITNESS: I became -- I took solemn
11 professions in the Order of Friars Minor Province of
12 St. Barbara in 1970.

13 MR. HALE: Okay.

14 Q. So solemn profession is the line you cross
15 that means you're an official member?

16 A. Correct, yes, it is.

17 Q. Okay. Any education beyond when you finished
18 in Berkeley in '72?

19 A. Yes, I went to graduate school.

20 Q. Okay. What year did you do that?

21 A. I went to graduate school in September or
22 October 1972.

23 Q. Okay.

24 And how long did that last for?

25 A. I was in graduate school until late 1975.

1 Q. Okay.

2 So three years of graduate school?

3 A. Well, in that period, yes.

4 Q. In that period, right.

5 And where did you attend?

6 A. University of Oxford, England.

7 Q. Did you receive a degree from there?

8 A. A Doctor of Philosophy.

9 Q. Were there any other Franciscans from the
10 province of St. Barbara attending with you while you
11 were there?

12 A. No other friars from the Santa Barbara
13 Province were there.

14 Q. Okay.

15 Any other education, although I don't know
16 where else you would go beyond -- beyond Oxford?

17 A. No, I -- I -- no. That's my terminal degree.

18 Q. I think that pretty much covered it.

19 Okay, so your educational past, is it safe to
20 say, was pretty much uninterrupted except for the
21 novice year until you finished your Ph.D. in '75? In
22 other words, were there any assignments in there that
23 we haven't talked about?

24 A. I -- there were -- there was one assignment,
25 yes.

1 Q. Okay, what was that?

2 A. I was a -- I served as a deacon or an ordained
3 deacon in the Roman Catholic Church in the diocese of
4 Pueblo, Colorado, at Holy Family Parish, for
5 approximately six months, although I don't recall
6 exactly.

7 Q. Do you recall what year that was?

8 A. That would be approximately 1971.

9 Q. Okay.

10 So did you -- did you just take a break from
11 School of Theology?

12 A. Remember when I hesitated about graduation
13 date.

14 Q. Right.

15 A. It may have been, you know -- no, it wasn't.
16 It was a normal part of the training was to be placed
17 in a parish for six months or so as a deacon.

18 Q. When you were placed in that parish, was your
19 work as a -- or your -- was that considered -- did you
20 have a ministry as a deacon?

21 A. As a deacon I would have -- at the time I
22 visited hospitals, preached, helped organize parish
23 gatherings.

24 Q. Okay.

25 A. Worked a little bit administratively in the

1 parish, not much.

2 Q. Okay.

3 A. You know, I did some baptisms.

4 Q. Okay.

5 So this would have been towards your end of
6 time at the School of Theology?

7 A. Yes, yes.

8 Q. Do you know, was that standard procedure
9 for -- for theology students to take six months with
10 that assignment and do something like what you did?

11 A. Well, I certainly know it was standard
12 procedure for me.

13 Q. Okay.

14 A. You know. What everyone else did, I really
15 couldn't testify to.

16 Q. Okay.

17 Have you ever been aware of other Franciscans
18 who at a similar time in their educational career took
19 that six months and -- took six months and did
20 something similar than what you would?

21 A. I think so, yes. Whether it was six months or
22 not, I couldn't testify to.

23 Q. Was that something that developed in the '60s,
24 or had it been a long-standing, to your knowledge,
25 tradition in the Province, to have candidates go and

1 do a similar assignment like that?

2 A. Usually after some studies in theology,
3 towards the end of the program they had what they
4 called a practicum, and the deacon experiences a type
5 of practicum where you have hands-on experience of
6 preaching and working with people in a parish, and
7 that's part of the formation program for the
8 priesthood.

9 Q. Okay. So to your knowledge, was that a
10 component of -- kind of requirement for anyone to
11 become a priest in the Province, going through that
12 six-month sort of training period?

13 A. I think it was generally considered, I don't
14 think I was an exception.

15 Q. Okay.

16 Any other assignments during the -- your
17 educational path, other than that -- that six months
18 in Colorado?

19 A. Well, outside of attending summer school, that
20 would be it. My assignment trajectory is rather
21 simple.

22 Q. Okay.

23 What was your first assignment -- well, let me
24 ask you this: While you were attending San Luis Rey,
25 the School of Theology, what were your summers like?

1 Did you usually -- was school year-round or did you
2 have a summer break of some sort?

3 A. School and the college ended, you know, the
4 usual time, May or June or something like that. At
5 one time or the other we were given the option of
6 going to summer school if we wanted; I don't know that
7 everyone did.

8 Q. Okay.

9 What did you usually do, did you -- did you do
10 parish work in the summers or would you go home or --

11 MR. MATIASIC: This is over the entire time
12 he's at the theology --

13 MR. HALE: Yes.

14 THE WITNESS: While at the theology school?

15 BY MR. HALE:

16 Q. (Nods head up and down.)

17 A. I spent one summer, I remember, taking French
18 at the University of Seattle.

19 Q. Okay.

20 A. In summer school.

21 Q. Any parish work that you can remember?

22 A. I don't recall at the moment.

23 Q. Okay.

24 There wasn't any requirement, though, that
25 students do parish work in their summers off or

1 anything?

2 A. I think the requirement was that we be formed
3 in the best way possible, and my attractions were for
4 teaching.

5 Q. Okay.

6 A. And education.

7 Q. Okay.

8 Okay. So you finish your Ph.D., does your
9 first assignment then follow in 1975 or is it '76?

10 A. I returned from Oxford in late 1975.

11 Q. Okay.

12 A. To begin teaching at the Franciscan School of
13 Theology in 1976.

14 Q. Okay. How long did that assignment last for?

15 A. Well, I -- I taught at the Franciscan School
16 of Theology until I became provincial minister of the
17 Province of St. Barbara.

18 Q. So what is that, 1988?

19 A. Yes, 1988.

20 Q. Was -- did the school -- I'm going to screw up
21 the title here, but did the School of Theology have a
22 president or the equivalent of a rector while you were
23 there?

24 A. Yes. We had the -- the first year I was there
25 and then we had a new one in the second -- second

1 year.

2 Q. What's the appropriate title, is it the
3 president?

4 A. President of the School of Theology.

5 Q. Was Father Harris the president of School of
6 Theology while you were there?

7 A. No, not when I was there as a teacher.

8 MR. MATIASIC: I was just about to say --

9 THE WITNESS: I'm not sure.

10 MR. MATIASIC: -- teacher or faculty.

11 BY MR. HALE:

12 Q. While you were there as a teacher, in other
13 words, from '76 to '88.

14 A. I'm not sure the exact year when Xavier was
15 president of the School of Theology.

16 Q. Okay.

17 A. But I was teaching there, I may have been a
18 professor when he was president. I think I probably
19 was.

20 Q. Okay, you have a recollection, though, of him
21 being president though?

22 A. Sure, definitely, yeah.

23 Q. Okay.

24 Okay, so '76 to '88 you're on the faculty at
25 the FST?

1 A. Correct.

2 Q. '88 you become provincial, and how long does
3 that assignment last for?

4 A. I was provincial minister of the Province from
5 1988 to 1997.

6 Q. While you were at the -- at the School of
7 Theology, where were you in residence?

8 MR. MATIASIC: You're talking about as a
9 faculty member?

10 MR. HALE: Yeah, yeah.

11 Q. From '76 to '88 in other words?

12 A. I was at residence at the School of Theology.

13 Q. Okay. And what about when you became
14 provincial, where were you in residence then?

15 A. I continued to live at the School of Theology,
16 in the room I'd occupied for many years.

17 Q. And did that remain true your entire time as
18 provincial?

19 A. Can't testify with certainty, but most of it I
20 think I was living there.

21 Q. Okay. Did you -- did you have any -- did you
22 continue to teach at the School of Theology while you
23 were provincial or were you too busy to?

24 A. No, I did not teach.

25 Q. Okay. Any other assignments while you were

1 the provincial, other than being the provincial? I
2 would imagine that probably took up all of your time?

3 A. I was mostly occupied --

4 Q. Okay.

5 A. -- completely with being provincial minister
6 in those years.

7 Q. Okay. What about when you were on the faculty
8 at the School of Theology from '76 to '88, did you
9 have any other assignments or responsibilities other
10 than as a faculty member?

11 A. While I was -- at one time I served as
12 assistant academic dean of the School of Theology,
13 that would have been an administrative position.
14 Within the order some of those years I served as
15 director of formation of students living at the School
16 of Theology. I also served as a provincial counselor
17 and eventually vicar provincial or vice president,
18 however you want to phrase that.

19 Q. Vice president to the president of the school?

20 A. To the provincial.

21 Q. To the provincial?

22 A. Yes.

23 Q. Basically the vice provincial?

24 A. Correct.

25 Q. This is while you're on the faculty of the

1 School of Theology?

2 A. Correct.

3 Q. What year did you begin serving as the vice
4 provincial?

5 A. I began -- I don't recall exactly, I believe
6 it was 1984.

7 Q. And did that last until you became the
8 provincial?

9 A. Yes.

10 Q. And -- and do you have a recollection of
11 sometime in that '76 to '88 time period Father Harris
12 being the president of the School of Theology?

13 MR. MATIASIC: Asked and answered.

14 THE WITNESS: I mentioned that I didn't. You
15 know, I -- I think he was at some time there.

16 BY MR. HALE:

17 Q. Are you unsure as to whether maybe he was
18 president sometime after you left the School of
19 Theology?

20 A. Well, I'm trying to place it, the time frame
21 correctly. I think -- I think he must have been, as I
22 reconstruct it, yes.

23 Q. I'm sorry, must have been?

24 A. President of the School of Theology while I
25 was there on faculty.

1 Q. Okay.

2 A. And serving also as vicar provincial.

3 Q. Okay. Do you know if he was ever president of
4 the School of Theology in the 1990s?

5 A. I do not think so.

6 Q. Okay.

7 All right. After you finish your term as
8 provincial, what's the next step in your assignment
9 history?

10 A. Well, after I finished as provincial minister
11 I would have taken some time off, and then I came back
12 to reside basically at a friary associated with the
13 School of Theology, and began to resume some position
14 there on the faculty.

15 Q. Okay.

16 When you say some time off are we talking like
17 a two-week vacation, or sabbatical where you took a
18 number of months off?

19 A. I think it would have been six months. I
20 would have preferred longer but --

21 Q. So sometime do you think you returned to the
22 friary associated with the School of Theology around
23 '97 or was it into '98 that that happened?

24 A. It was probably late '97.

25 Q. What was the name of the friary that

1 associated with the School of Theology that you were
2 in residence in late '97?

3 A. Arch -- well, Arch Street Friary.

4 Q. A-r-c-h Street?

5 A. Correct. It's just the name of the street
6 where the friary is.

7 Q. Where was that at?

8 A. Berkeley.

9 Q. Okay.

10 Did you have any duties or responsibilities
11 while you were there?

12 A. I need a clarification on that, while I was
13 where?

14 Q. At the Arch Street Friary.

15 MR. MATIASIC: Are you talking duties and
16 responsibilities outside of the context of the friary
17 or --

18 MR. HALE: Yeah.

19 MR. MATIASIC: -- in the friary?

20 BY MR. HALE:

21 Q. In the friary or outside the friary.

22 A. Well, I began to teach again on the faculty at
23 the Franciscan School of Theology.

24 Q. Okay.

25 A. I did not have any -- that I recall, I had no

1 internal order responsibilities.

2 Q. Okay.

3 And how long has that assignment lasted?

4 A. I became academic dean of the School of
5 Theology in the year 2000.

6 Q. So are you still at the school of Theology?

7 A. Right now?

8 Q. Yes.

9 A. Yes, I'm teacher there.

10 Q. Okay.

11 So when you returned to the Arch Street Friary
12 in late '97, was that also the time when you began
13 teaching again at the School of Theology?

14 A. Well, sometime in there. I don't know whether
15 it was that semester or the following year or
16 whatever.

17 Q. Have you been teaching the School of Theology
18 ever since you recommenced your time?

19 A. I both taught and administered --

20 Q. Okay.

21 A. -- the school as academic dean.

22 Q. But you've been back at the School of Theology
23 since probably late -- around 1997 to the present?

24 A. '97, '98, yes, I've been at the School of
25 Theology.

1 Q. Okay. Any other assignments in the Province
2 during -- since late '97, other than work at the
3 School of Theology?

4 MR. MATIASIC: And serving as academic dean?

5 BY MR. HALE:

6 Q. Right, and serving as academic dean.

7 A. Assignments?

8 Q. Right.

9 A. In terms of places or --

10 Q. No, just responsibilities, duties.

11 A. The only -- I've served as a consultant on the
12 finance council of the Province.

13 Q. What year did you start doing that?

14 A. I don't recall. To be honest, sometime in
15 that time frame we're talking about.

16 Q. Okay.

17 Anything else?

18 A. I don't think so. At the moment I don't
19 recall any other, you know, Province responsibilities.

20 Q. Okay.

21 Who else is on the finance council currently?

22 A. Currently the finance council is the
23 provincial treasurer, the vice treasurer, one or two
24 friars, and an outside consultant.

25 Q. And are you -- well, you're not an outside

1 consultant, obviously, you're from within the
2 Province, correct?

3 A. Right, I meant a nonfriar.

4 Q. Okay.

5 And I take it you're still in residence at the
6 School of Theology or, I'm sorry, at the Arch Street
7 Friary?

8 A. That's where I live. Yes.

9 Q. Okay.

10 A. Continue to live.

11 Q. Okay.

12 Other than your time as provincial, have you
13 ever held any other elected positions in the Province?

14 MR. MATIASIC: Well, and he also testified
15 that he served as the vicar provincial as well.

16 BY MR. HALE:

17 Q. Is that an elected position?

18 A. And counselor.

19 They're all elected positions.

20 Q. Okay. When were you on the provincial
21 council?

22 A. I was on the provincial council -- well, the
23 provincial is on the provincial council, so I began
24 service on the provincial council in 1979, and
25 obviously would have continued on the provincial

1 council as vicar provincial and provincial.

2 Q. Okay.

3 Is the provincial council also called the
4 definitorium?

5 A. Yes, correct.

6 Q. Okay.

7 So you were a definator from '79 until '88 and
8 then provincial/definitor from '88 until '97, is that
9 a fair statement?

10 A. Correct. Except for the time I served as
11 vicar provincial.

12 Q. Sorry.

13 A. Which is part of the definitorium also.

14 Q. Kind of worked your way up the ladder,
15 basically.

16 A. If you want to call it that.

17 Q. Okay, all right.

18 What about -- what about boards within the
19 Province, have you served -- or committees, have
20 you -- and we talked about the formation, I believe?

21 A. Yes.

22 Q. Any others?

23 A. Well, certainly formation, as provincial
24 minister I would have been the -- serving on several
25 boards. And I'm sure there were boards I served on,

1 but, you know, they might be too many or too few to --

2 I don't recall at the moment all the exact names.

3 Q. Okay. What about ordination, were you on the
4 ordination?

5 A. Committee?

6 Q. Yes.

7 A. No, I don't think I was.

8 Q. What about the novitiate?

9 A. No, I never served in the novitiate.

10 Q. Profession? I'm going to throw some names
11 out.

12 A. Profession?

13 Q. Yeah. Have you heard of a committee or board
14 called the profession board or committee?

15 A. No, I don't know that board.

16 Q. What about ongoing formation?

17 A. Ongoing formation, I don't think I did.

18 Q. Okay.

19 What about retreat?

20 A. Retreat board. As a retreat master, no, I
21 never did.

22 Q. In your capacity as provincial were you
23 required to sit in on retreat board meetings?

24 A. Well, the provincial minister often sits where
25 he wants.

1 Q. Okay.

2 A. You know, so I certainly attended those
3 meetings. You know, whether I was an ex officio
4 member or just attended them, I would have been at
5 some, not at others. It's hard to -- to say, it's a
6 question of presence.

7 Q. Okay.

8 What about the -- the St. Anthony's features
9 committee, did you ever sit on that or attend any of
10 those meetings?

11 MR. MATIASIC: Compound.

12 THE WITNESS: To be honest, I don't know what
13 the committee you're talking about is.

14 BY MR. HALE:

15 Q. Fair enough, okay.

16 A. Wait a minute. I have served on a committee
17 for the St. Anthony's Seminary projecting what would
18 we do with the property, this sort of thing.

19 Q. Okay.

20 A. I don't remember the name of that committee.

21 Q. When was that?

22 A. Well, I don't know. It probably would have
23 been early or late 1980s.

24 Q. Okay. Who else was on that committee?

25 A. At that time, right after the closure of the

1 seminary, probably in residence there was Robert Van
2 Handel, so I think he was on it.

3 Q. Okay. Anyone else?

4 A. Oh, there may have been but, to be honest,
5 it's a little vague to me.

6 Q. Okay.

7 Were you in the same class year as Father Van
8 Handel or was he a year after you?

9 A. I was not in the same class with Robert Van
10 Handel.

11 Q. Going back to your time at the seminary, did
12 you ever get in any trouble while you were a student?
13 Were you ever disciplined by the prefect of discipline
14 while you were at the seminary?

15 MR. MATIASIC: Vague and ambiguous.

16 BY MR. HALE:

17 Q. I'm not accusing you of getting in trouble,
18 I'm just curious, just asking.

19 A. Let's see now, I was -- I wouldn't say that I
20 was a model student.

21 Q. Okay.

22 A. But you know, there's nothing extraordinary or
23 anything like that.

24 Q. Do you recall ever being disciplined by Father
25 McKeon?

1 A. I recall once, now, this is -- I think we had
2 to work on the grounds as opposed to having intermural
3 sports.

4 Q. Okay.

5 A. For, you know, some time or whatever, that was
6 about the --

7 Q. Okay.

8 A. -- discipline.

9 Q. Were you aware of Father McKeon -- strike
10 that.

11 Were you ever disciplined by any other faculty
12 members?

13 A. Once I had to stand out in study hall because
14 I talked.

15 Q. Okay.

16 When you say stand out, you mean leave the
17 room?

18 A. No, stood up in front, and read a book in
19 front of the study hall instead of sitting down.

20 Q. Okay.

21 Were you aware of Father McKeon punishing or
22 disciplining other seminary students?

23 MR. MATIASIC: Vague and ambiguous.

24 THE WITNESS: I was not aware of any.

25 BY MR. HALE:

1 Q. Okay.

2 A. Nothing stands out in my mind.

3 Q. Do you recall your classmates getting into any
4 trouble for conduct at school, while you were in the
5 seminary?

6 MR. MATIASIC: Same objection.

7 THE WITNESS: No, I do not recall.

8 BY MR. HALE:

9 Q. Do you recall any of your classmates being
10 punished or disciplined by other faculty other than
11 Father McKeon?

12 A. I do not.

13 Q. Okay.

14 While you were at the seminary, were you ever
15 aware of students being spanked by any faculty or
16 staff member?

17 A. No, I'm not.

18 Q. Okay.

19 Did you spend any time in the infirmary while
20 you were attending the seminary?

21 A. Well, yes, I did. I mean, we had periodic
22 outbreaks of the flu and if it got serious enough we
23 went to the infirmary. Something like that.

24 Q. Okay.

25 Did you ever spend the night in the infirmary?

1 A. Yes, yes.

2 Q. Okay.

3 Was there a -- a procedure in place when you
4 were going to spend the night in the infirmary, in
5 other words, did you have to check in?

6 MR. MATIASIC: If you know.

7 MR. BROSNAHAN: Objection, vague and
8 ambiguous.

9 THE WITNESS: Generally we would need the
10 permission of the -- yes, some kind of procedure.

11 MR. HALE: Okay.

12 Q. Was there a sign-in sheet?

13 A. I don't recall.

14 Q. Would you need to tell someone that you were
15 going to the infirmary?

16 A. Yes, yes, you definitely had to tell someone.

17 MR. MATIASIC: Father, let him finish his
18 question first, let him finish his question before you
19 answer.

20 THE WITNESS: Oh, I'm sorry.

21 BY MR. HALE:

22 Q. You're correctly anticipating my question but
23 just for purposes of the record, if you can just let
24 me finish and I'll try to do the same.

25 A. Oh, I'm sorry.

1 Q. No problem.

2 Who would you have to tell if you were going
3 to go spend the night in the infirmary?

4 A. There was a student infirmarian that we could
5 tell.

6 Q. Okay.

7 A. We could also tell the prefect of discipline.

8 Q. Okay.

9 During your four years at the seminary, was
10 the -- was the student infirmarian generally the -- an
11 upper classman?

12 MR. MATIASIC: If you know.

13 THE WITNESS: To the best of my recollection.

14 MR. HALE: Okay.

15 Q. And do you have any knowledge of how that --
16 that student was selected to be the infirmarian?

17 MR. MATIASIC: Lacks foundation.

18 THE WITNESS: No, I have no knowledge.

19 MR. HALE: Okay.

20 Q. When you -- when you spent the night in the
21 infirmary, did someone provide you with aspirin or hot
22 compresses or something like that to -- to help you
23 with your -- sounds like you had the flu?

24 MR. MATIASIC: Lacks foundation. I don't
25 think -- misstates his testimony. He said he spent

1 the night in the infirmary, I don't think he said why,
2 in that specific case.

3 BY MR. HALE:

4 Q. Did -- did you spend the night in the
5 infirmary because you had the flu or some kind of
6 illness?

7 A. One or the other time I would have, I mean, I
8 was there four years.

9 Q. Okay.

10 When -- were there other students spending the
11 night in the infirmary when you -- when you spent the
12 night?

13 A. Yes.

14 Q. Okay.

15 A. Sometimes, sometimes not.

16 Q. Okay.

17 Would someone come and check on you while you
18 were in the infirmary?

19 MR. MATIASIC: Vague and ambiguous.

20 THE WITNESS: Certainly people knew that if
21 you were sick, they knew you were there and somebody
22 would feed you and, you know.

23 BY MR. HALE:

24 Q. Okay.

25 Do you recall, would -- would it be the

1 infirmarian who would usually come and feed you or
2 would it be Father McKeon as the prefect or would it
3 be somebody else?

4 MR. MATIASIC: So you're asking specifically
5 who came and fed him when he spent the night in the
6 infirmary as a student?

7 BY MR. HALE:

8 Q. Right.

9 A. Generally I would think it would have been the
10 infirmarian.

11 Q. Do you recall Father McKeon coming down and
12 checking on you?

13 MR. MATIASIC: Vague and ambiguous as to the
14 term coming down and check on you.

15 THE WITNESS: Always concerned about health
16 and my health, and yes, one or the other times he
17 would ask me how I was feeling and, you know.

18 MR. HALE: Okay.

19 THE WITNESS: If I felt well enough to go back
20 to school.

21 BY MR. HALE:

22 Q. And do you recall him talking to you while you
23 were in the infirmary, in other words?

24 A. Yes.

25 Q. Okay.

1 Do you recall, would you generally see more of
2 the prefect or would you see more the infirmarian
3 there while you were at the infirmary?

4 MR. MATIASIC: Vague and ambiguous.

5 This is at any time, not just overnight, at any
6 time.

7 MR. HALE: We're just limited to the overnight
8 stays. That's all I'm talking about right now, that's
9 all I'm questioning about.

10 THE WITNESS: Usually it would be the
11 infirmarian.

12 BY MR. HALE:

13 Q. Okay.

14 And again, was there any kind of -- any kind
15 of -- were you given any kind of medicines or any kind
16 of treatment administered to you while you were in the
17 infirmary for these overnight stays?

18 MR. MATIASIC: Vague and ambiguous.

19 THE WITNESS: Aspirin.

20 BY MR. HALE:

21 Q. Okay.

22 A. I think I was given aspirin one or the other
23 time.

24 Q. Okay, anything else?

25 A. I don't recall anything else.

1 Q. Okay.

2 Did the rector ever come down and check on you
3 while you were in the infirmary?

4 MR. MATIASIC: Vague and ambiguous.

5 THE WITNESS: I do not recall that.

6 MR. HALE: Okay.

7 Q. Were you given a sponge bath while you were in
8 the infirmary?

9 A. No, not to the best of my recollection.

10 Q. Okay.

11 Were you ever aware of anyone else receiving a
12 sponge bath while you were in the infirmary?

13 A. Not that I know of.

14 Q. Was there a shower in the infirmary?

15 A. I think there was. I don't remember the exact
16 configuration of the infirmary.

17 Q. Did you ever take a shower in the infirmary?

18 A. I probably did.

19 Q. Okay.

20 A. Yes, I did.

21 Q. Did -- did anyone assist you in taking a
22 shower in the infirmary?

23 A. No.

24 Q. Did anyone assist you in drying off after you
25 took a shower in the infirmary?

1 A. No.

2 Q. Were you aware of anyone else taking a shower
3 in the infirmary while you were there?

4 A. Aware of anyone else taking a shower?

5 Q. Right.

6 A. I guess -- I'm sorry, I don't understand the
7 question.

8 Q. In -- in the infirmary. In other words I --

9 A. You mean if somebody else was sick and --

10 Q. Right, right.

11 MR. MATIASIC: While he was in the infirmary?

12 MR. HALE: Yes.

13 MR. MATIASIC: Do you understand the question,
14 Father?

15 THE WITNESS: I guess I don't. I'm -- I'm
16 perfectly willing to answer but --

17 MR. HALE: No, no, I know.

18 Q. I think if I'm not mistaken you did testify
19 there were times when sometimes it was just you in the
20 infirmary?

21 A. Yes.

22 Q. And there were times when there was
23 potentially other students in the infirmary. So
24 during the times when there were other students in the
25 infirmary, were you ever aware of one of them taking a

1 shower in the infirmary?

2 A. Oh, I'm sorry, I don't remember whether I was
3 aware or not.

4 Q. Okay. Do you remember any faculty members or
5 staff taking showers in the infirmary?

6 A. No, I don't recall that either.

7 Q. Okay.

8 And it sounds like you did attend study hall
9 while you were a student at the seminary?

10 A. Oh, yes, yes, I attended study hall.

11 Q. Would there generally be a -- a Franciscan
12 faculty member supervising the study hall?

13 A. Correct, yes.

14 Q. Do you recall who that would usually be, if
15 there was one person, and if there was more than one
16 person?

17 A. Well, no. I think it largely depended on --
18 could be any number of friars who would walk the study
19 hall, as we would say.

20 Q. Would there generally only be one Franciscan
21 supervising study hall?

22 MR. MATIASIC: While he was a student?

23 MR. HALE: Yes.

24 THE WITNESS: I don't think I could testify
25 one way or the other.

1 MR. HALE: Okay.

2 Q. Were you ever summoned out of a study hall by
3 a faculty member?

4 MR. MATIASIC: Vague and ambiguous.

5 THE WITNESS: Not that I recall.

6 BY MR. HALE:

7 Q. Were you ever aware of any student being
8 summoned out of study hall while you were a student?

9 MR. MATIASIC: Same objection.

10 THE WITNESS: No, I don't recall any
11 instances.

12 BY MR. HALE:

13 Q. Did you ever leave study hall without
14 reporting to the Franciscan who was supervising the
15 study hall?

16 MR. MATIASIC: Lacks foundation.

17 BY MR. HALE:

18 Q. I guess I should probably back up. Did you
19 ever leave study hall before it was over, I mean to go
20 to the restroom or something like that?

21 MR. MATIASIC: Leave permanently or leave and
22 come back?

23 MR. HALE: Well, I think if he's going to the
24 restroom he's probably going to return, he's not going
25 to stay in the restroom.

1 THE WITNESS: I think one or the other time
2 when I was at St. Anthony's, I left the study hall to
3 go to the bathroom. And --

4 BY MR. HALE:

5 Q. Okay. And -- sorry.

6 A. And I would return to the study hall.

7 Q. Did you have to check out with the supervising
8 Franciscan in order to use the restroom?

9 MR. MATIASIC: Vague and ambiguous.

10 BY MR. HALE:

11 Q. In other words, let him know you were leaving?

12 A. I would check out with whoever was walking the
13 study hall.

14 Q. Okay.

15 Would there ever be someone other than a -- a
16 Franciscan faculty or staff member walking the study
17 hall?

18 A. I think on one or the other occasion, probably
19 the senior student there might walk the study hall or
20 take someone's place.

21 Q. Okay.

22 Was that -- was that -- was it common for a
23 student to -- to supervise study hall while you were
24 there?

25 MR. MATIASIC: Vague and ambiguous.

1 THE WITNESS: To the best of my knowledge, no.

2 MR. HALE: Okay.

3 Q. Would it be a fair statement to say that it
4 was not possible for you to leave study hall without
5 informing whoever it was supervising the study hall?

6 A. I don't recall that I ever left study hall
7 without asking someone.

8 Q. And was that because of a rule you were aware
9 of requiring you to check in with whoever was
10 supervising the study hall, or was it just some kind
11 of unspoken rule?

12 MR. BROSNAHAN: Objection, compound.

13 MR. MATIASIC: Lacks foundation.

14 THE WITNESS: Generally I think it was
15 understood that we would need to ask permission to
16 leave the study hall.

17 MR. HALE: Okay.

18 Q. Were you ever aware of a faculty member
19 sending a student into the study hall to summon
20 another student out to see the faculty member?

21 MR. MATIASIC: Vague and ambiguous.

22 THE WITNESS: No. I don't recall that.

23 MR. HALE: Okay.

24 Q. Were you ever aware of a faculty member
25 walking into the study hall to take a student out of

1 the study hall?

2 A. No, I'm not.

3 Q. Okay.

4 Were you ever aware of any Franciscan, while
5 you were a student at the seminary, providing medical
6 care to any student at the seminary?

7 MR. MATIASIC: Vague and ambiguous.

8 THE WITNESS: I already mentioned that I was
9 given aspirin.

10 MR. HALE: Okay.

11 THE WITNESS: You know, yes. I mean, in that
12 sense, yes; but in no another sense that I know of.

13 MR. HALE: Okay.

14 Q. Did you know Dr. [REDACTED]?

15 A. Yes, I did.

16 Q. Okay.

17 Were you aware that he was on call if a
18 student needed any kind of medical care?

19 A. I don't know that. I know that Dr. [REDACTED] was
20 available to us if we got seriously sick or needed a
21 shot or something.

22 Q. Okay.

23 Did Father McKeon ever send you to Dr. [REDACTED]
24 for any reason?

25 A. Once or twice I went to Dr. [REDACTED].

1 Q. Was that due to an illness of some sort?

2 A. I think it was a flu shot.

3 Q. Okay.

4 And was that where you -- were you sent to
5 Dr. [REDACTED] by Father McKeon or by some other faculty
6 member?

7 MR. MATIASIC: If you know. Calls for
8 speculation.

9 THE WITNESS: I don't know who, you know, gave
10 me permission on that instance or whatever.

11 BY MR. HALE:

12 Q. Was it your idea to go see Dr. [REDACTED] or was it
13 a faculty member's idea for you to go see Dr. [REDACTED]?

14 MR. MATIASIC: On -- well, he testified that
15 he went on a couple of occasions.

16 THE WITNESS: Yeah.

17 BY MR. HALE:

18 Q. On any of those occasions, did you ever
19 unilaterally go to see Dr. [REDACTED]?

20 MR. MATIASIC: Overbroad, vague and ambiguous
21 as to "unilaterally."

22 THE WITNESS: Once I broke my wrist and that
23 required ongoing care.

24 BY MR. HALE:

25 Q. Okay.

1 A. In that sense, you know, I went to the doctor,
2 you know, on -- at that time was it Dr. [REDACTED]? I
3 don't think so. But I went to Dr. [REDACTED] to get a flu
4 shot probably -- or for some other type, maybe I had
5 strep throat or -- I don't recall.

6 Q. Okay.

7 Do you have any recollection of any faculty
8 member sending you to see Dr. [REDACTED]?

9 A. No, I have no recollection.

10 Q. Okay.

11 During your -- strike that.

12 Was the -- was the casa in use while you were
13 a student at the seminary?

14 MR. MATIASIC: Casa, when you mean -- when you
15 say in use, are you talking about the students or was
16 there something going on in there?

17 MR. HALE: If he knows.

18 MR. MATIASIC: Vague and ambiguous.

19 THE WITNESS: The -- one of the recreation
20 rooms was over at the Hoffman estate, if that's what
21 you mean by the casa.

22 BY MR. HALE:

23 Q. Do you understand the casa to mean that --
24 that residence -- if we're facing the seminary, to the
25 left, far left corner?

1 A. Far left, that would be the Hoffman estate,
2 yeah.

3 Q. Okay. Was --

4 A. We may have called it the casa, I don't really
5 recall. We had a recreation room over there.

6 Q. You say "we," was it a certain class would
7 have been?

8 A. I'm not -- I don't recall exactly, it may have
9 been when I was senior.

10 Q. Okay.

11 Were you aware of there being any beds in the
12 casa or the Hoffman estate?

13 A. No.

14 MR. MATIASIC: This is -- hold on.

15 This is at any time?

16 MR. HALE: While he's at the seminary.

17 THE WITNESS: No, and I wouldn't -- the
18 library was there.

19 BY MR. HALE:

20 Q. Aside from the library there and the use as a
21 recreation room, were you aware of any other uses for
22 the casa or the Hoffman estate, while you were a
23 student at the seminary?

24 A. I don't recall any.

25 Q. Was -- was Father Brian Lyons on the faculty

1 at San Luis Rey while you were there?

2 A. No, he was not.

3 Q. Have you ever heard of any Franciscan spanking
4 students at San Luis Rey?

5 MR. MATIASIC: Vague and ambiguous.

6 THE WITNESS: No, I have not.

7 MR. HALE: Okay.

8 Q. Have you ever heard of any Franciscan spanking
9 students at St. Anthony's Seminary?

10 A. I was not aware when I was there that there
11 was any spanking or anything like that.

12 Q. And I should -- I should -- I should rephrase
13 the question.

14 Obviously I know you were involved in the
15 Board of Inquiry?

16 A. Yes.

17 Q. And that so prior to the Board of Inquiry,
18 were you ever aware of any -- any -- any Franciscan
19 spanking students at St. Anthony's?

20 A. I was not.

21 Q. Have you ever been aware of any Franciscan
22 spanking any minors within the Province?

23 MR. BROSNAHAN: You mean before the Board of
24 Inquiry?

25 MR. HALE: Yeah.

1 THE WITNESS: No, I was not.

2 MR. HALE: Okay.

3 Q. When you -- when you took your sabbatical in
4 '97 did you go anywhere for that or where -- where did
5 you go? Where were you for your sabbatical?

6 A. After I was provincial, got out of being
7 provincial minister, I went to a rest and renewal
8 program at St. Isadore's College, Rome.

9 MR. HALE: We've been going a little over an
10 hour. Everybody okay?

11 THE WITNESS: I think I'll take a break.

12 MR. MATIASIC: Why don't we take a break.

13 VIDEOTAPE OPERATOR: Videotape deposition off
14 record at 11:01 a.m.

15 (Recess.)

16 VIDEOTAPE OPERATOR: Videotape deposition,
17 back on record at 11:17 a.m.

18 BY MR. HALE:

19 Q. Father, when you became definitor in 1979
20 you -- that's an elected position, correct?

21 A. Pardon?

22 Q. An elected position?

23 A. Yes, it is, yes.

24 Q. Who else was on the definitorium when you
25 began serving in 1979? Is it usually -- are there

1 usually five other definitors or four other
2 definitors?

3 A. There would be five in addition to me.

4 Q. Okay.

5 So total?

6 A. So six definitors.

7 Q. So is that counting the provincial?

8 A. No, nor the vicar.

9 Q. Okay.

10 So total, does the council -- is the council
11 made up of seven Franciscans, technically?

12 A. Technically the council would be made up of
13 eight.

14 Q. Eight, sorry. Obviously I was not a math
15 major.

16 A. Yeah.

17 Q. So who else was on the definitorium while
18 you -- when you first were elected -- was elected in
19 1979?

20 MR. MATIASIC: Well, do you -- do you want to
21 break it down? In 1979 specifically?

22 BY MR. HALE:

23 Q. Yeah, 1979.

24 MR. MATIASIC: Okay.

25 THE WITNESS: In 1979. Well, I'm not sure

1 that I recall the entire composition.

2 BY MR. HALE:

3 Q. Okay, just do your best.

4 A. I think Michael Whyshour (phonetic) was on it.

5 Q. Uh-hmm.

6 A. I think Luis Maldonado was on it.

7 Q. Okay.

8 A. I think Berard Connolly was on it. I think
9 Bead McKinnon was on it. I think I was on it. There
10 would be one more, beyond that.

11 Q. Okay. What were your duties as a definitor,
12 as you understood them?

13 MR. MATIASIC: Lacks foundation.

14 THE WITNESS: My duties as a definitor were
15 co-extensive with the time in which we met, so that
16 the definitor is a counselor to the provincial
17 minister. And the position of being a counselor
18 operates while you're at the meeting. Outside of the
19 meeting you do not have authority or -- you know, you
20 have a position, yes, I mean --

21 Q. Okay.

22 A. But pretty much your duties as such with that
23 job go with the presence at the council meetings.

24 Q. Okay.

25 And does -- does the definitorium ever vote

1 and make decisions affecting the Province or decisions
2 made by the provincial?

3 MR. MATIASIC: Vague and ambiguous. I think
4 it's overbroad as to time.

5 You're talking about when he was on the
6 definitorium?

7 BY MR. HALE:

8 Q. Well, let's start with that and then I'm going
9 to ask you if there's been a change in that regard.
10 But let's start with while you were on the
11 definitorium.

12 MR. BROSNAHAN: Still object, the question's
13 overbroad.

14 THE WITNESS: In the first period, 1979,
15 you're elected for three years. The definitorium is a
16 consultive body, largely. The determinative vote is
17 determined -- is -- is set by the constitutions of the
18 Order of Friars Minor, which would give the
19 definitorium largely a consultive vote, and only in
20 certain matters a determinative vote.

21 Q. In what kind of matters would the definitorium
22 have the determinative vote?

23 MR. MATIASIC: And is this -- are you asking
24 him what kind of matters did they have it or -- or
25 just generally?

1 MR. HALE: Just generally.

2 I'm just trying to get an understanding of --

3 MR. MATIASIC: I think it's still overbroad.

4 THE WITNESS: Generally the determinative vote
5 extended to financial issues beyond a certain
6 threshold. I think I probably, on other ones, the --
7 the determinative vote is rare. I would have to
8 consult the canon law at the moment, I mean.

9 BY MR. HALE:

10 Q. Okay, that's not necessary.

11 A. Yeah.

12 Q. Aside from these circumstances where the
13 definitorium would have had the -- the determinative
14 vote --

15 A. Yeah.

16 Q. -- were decisions generally made by the
17 provincial after he consulted with the definitorium?

18 MR. MATIASIC: Again, Counsel, I think you
19 need to narrow that as to time. You're talking about
20 in 1979?

21 BY MR. HALE:

22 Q. Yeah.

23 A. Generally the -- the final decisions are made
24 by the provincial minister --

25 Q. Okay.

1 A. -- after hearing the consultation of the
2 counselors.

3 Q. Okay.

4 And -- and in your experience on the
5 definitorium and as vice provincial and provincial
6 from '79 until '88, is -- is your experience
7 consistent with what you just testified to, regarding
8 the roles of the definitors and the provincial in
9 1979?

10 MR. MATIASIC: Vague and ambiguous and
11 overbroad.

12 BY MR. HALE:

13 Q. Did things change or was that -- is your -- or
14 is your testimony pretty representative of -- of the
15 way business was conducted by the definitorium and the
16 provincial from '79 to '80, while you were involved?

17 MR. MATIASIC: Vague and ambiguous and
18 overbroad.

19 THE WITNESS: For me there's -- there's too
20 many factors in the question. Sometimes the issue of
21 the style of the provincial minister factors into the
22 consultation. For example, if one has a more
23 consultive style as opposed to a more determinative
24 style, although the limits may be set canonically, the
25 style of consultation is set to a large extent by the

1 style of the minister himself.

2 MR. HALE: Okay.

3 Q. And you were vice prefect of Father [REDACTED],
4 correct?

5 MR. MATIASIC: Misstates his testimony, not
6 vice prefect.

7 THE WITNESS: Vice provincial.

8 MR. HALE: I'm sorry, I'm sorry.

9 Q. Vice provincial?

10 A. I was vicar provincial.

11 Q. To anyone other than Father [REDACTED]?

12 A. No, no.

13 Q. Okay. And then after that you became a
14 provincial yourself?

15 A. In -- yes, correct.

16 Q. Okay.

17 Describe two possible styles for a provincial,
18 where would you say Father [REDACTED] fit in that
19 spectrum?

20 MR. MATIASIC: Vague and ambiguous.

21 THE WITNESS: Again --

22 MR. MATIASIC: And overbroad to the extent it
23 may have changed over the course of his tenure as the
24 provincial.

25 Go ahead, you can answer.

1 THE WITNESS: Again, I think it would depend
2 once the canonical limits are set. It depends to a
3 large extent on the issues, the confidentiality
4 involved in them, the necessity of consultation, the
5 knowledge that a counselor might have, the benefit to
6 be obtained by discussion. And -- and that's a
7 working relationship.

8 BY MR. HALE:

9 Q. But beyond just discussion, was it your
10 experience from '79 to '88, in your experience as a
11 definitor and a vice provincial and provincial, that
12 more often than not it was the provincial that was
13 making the final decision regarding matters that came
14 before the council?

15 MR. MATIASIC: Vague and ambiguous, it's
16 overbroad as to time and he already testified he only
17 became the provincial in 1988, so you limited your
18 question.

19 MR. HALE: I'm sorry, I'm sorry, yeah.

20 Q. So the time frame should be 1979 to 1997.

21 MR. MATIASIC: Same objections.

22 THE WITNESS: The entire time?

23 MR. HALE: Yeah.

24 MR. BROSNAHAN: Can we have the question read
25 back? You want to restate it?

1 MR. HALE: Just read it back.

2 (The Reporter read back as follows:

3 "Question: But beyond just discussion, was it your
4 experience from '79 to '88, in your experience as a
5 definator and a vice provincial and provincial, that
6 more often than not it was the provincial that was
7 making the final decision regarding matters that came
8 before the council?")

9 BY MR. HALE:

10 Q. And, again, the time frame should have been
11 '79 to '97?

12 MR. MATIASIC: Same objections, overbroad as
13 to time, vague and ambiguous.

14 If you can answer the question, go ahead, Father.

15 THE WITNESS: Well, I have difficulty
16 answering it, simply because the -- the type of
17 decision you're making depends on the circumstances,
18 people, knowledge, law, that varies. You always try
19 to act with prudence and with the welfare of people in
20 mind.

21 So it would be hard for me to say whether or not
22 it was always generally the provincial minister.

23 BY MR. HALE:

24 Q. Well, I'm not asking for always.

25 But is it more often than not -- I mean, does

1 the buck stop with the provincial minister as far as
2 the decision-making process goes, of matters that are
3 brought before the council?

4 MR. MATIASIC: Counsel, you've already asked
5 him that question, he already gave you an answer and
6 said that it depends and varies on the situation. You
7 basically asked him the same question over again,
8 so --

9 MR. HALE: I don't think it's the same
10 question over. I'm following up on very specific
11 points that he's making.

12 MR. MATIASIC: I'm going to incorporate the
13 same objections as before.

14 You can answer if you can, Father.

15 THE WITNESS: Well, again, I would qualify
16 that with the issue of, like finances, which I
17 mentioned, there are certain consultations that
18 require vis-a-vis solemn profession, I think.
19 Although I can't be certain of that, because I don't
20 have the law before me at the moment.

21 The provincial minister is the -- I suppose in
22 these kinds of terms, the chief executive officer and
23 is recognized as having, you know, the authority in
24 many matters. But, on the other hand, that authority
25 is very much responsible to the rule and constitutions

1 of the order, and the necessities that come from
2 working with people.

3 MR. HALE: Okay.

4 Q. Let me kind of flip that question. From '79
5 to '97, in your experience, how common was it for
6 the -- the council to have a vote that included
7 obviously all members of the council, to determine
8 what the right course was when an issue was brought
9 before the council?

10 MR. MATIASIC: Vague and ambiguous and
11 overbroad as to time.

12 BY MR. HALE:

13 Q. As opposed to the provincial having the final
14 say, in other words.

15 MR. MATIASIC: Same objections.

16 THE WITNESS: The council votes on very
17 significant issues, and on those issues it's
18 determinative in the areas that I mentioned, finances
19 and elsewhere.

20 BY MR. HALE:

21 Q. Okay.

22 A. That's what I mean by a vote.

23 Q. Okay. And -- and by vote, you mean a
24 determinative vote?

25 A. Oh, correct, yes.

1 Q. And when you say very significant issues,
2 how -- in your experience during this time frame, from
3 '79 to '97, how common was it for the council to have
4 the determinative vote on issues brought before the
5 council?

6 MR. MATIASIC: Overbroad as to time.

7 THE WITNESS: I couldn't really say. I mean,
8 you know, the -- the issues, if it was determined in
9 law that the council had the determinative vote,
10 that's what would have taken place. There were
11 clearly issues of finances and solemn profession that
12 would have come up during those entire time.

13 Q. Okay. Now, you're not a canon lawyer,
14 correct?

15 A. No.

16 Q. Okay. Who -- who within the provincial would
17 be able -- would be most knowledgeable regarding what
18 issues are determined by the council through a vote
19 versus what issues are decided by the provincial
20 unilaterally?

21 MR. MATIASIC: At what time, Counsel?
22 Currently or --

23 BY MR. HALE:

24 Q. From -- I'd like to know right now who in the
25 provincial could talk to us about during that time

1 frame, from '79 to '97?

2 MR. BROSNAHAN: I'm also going to object to
3 the word "unilaterally" since he's described a
4 consultative process in any event. So it's vague and
5 ambiguous.

6 MR. HALE: Well, I think he also described
7 instances where the provincial does make a final call,
8 so I don't think unilateral is inappropriate.

9 You're free to disagree with me.

10 MR. BROSNAHAN: The question at this point is
11 simply who -- who in the Province would have knowledge
12 from a canon law perspective on that issue.

13 MR. HALE: I'm just trying to understand the
14 powers of the provincial versus the powers of the
15 council and how they relate.

16 MR. MATIASIC: So -- but the pending question
17 is who within the Province would have knowledge of the
18 canonical principles he's been talking about
19 currently; is that right?

20 MR. HALE: Well, no.

21 MR. MATIASIC: I'm trying to clarify, that's
22 all.

23 BY MR. HALE:

24 Q. Who within the Province would have knowledge
25 of -- based on those canonical principles which you

1 referenced, you know, on what matters the council
2 votes and decides an issue versus what matters the
3 provincial has the ultimate power and deciding power.

4 MR. MATIASIC: As to what time?

5 MR. HALE: Again, '79 to '97.

6 MR. MATIASIC: Overbroad as to time.

7 Do you understand the question, Father?

8 THE WITNESS: I have to say, I do and I don't.

9 If by powers you mean juridical powers granted to
10 us by the constitutions of Order of Friars Minor, that
11 is fairly well-known and spelled out in the
12 constitutions, someone like myself being in the
13 position that I was in as provincial minister, '88 to
14 '97, would know the limits. That's the outside limit,
15 that's a juridical situation.

16 The power of -- that is every bit as real is
17 consultation, advice. Must it be followed
18 juridically, clearly since the limits of the juridical
19 power are set, the consultations which are given in
20 many instances do not have to be followed juridically.

21 BY MR. HALE:

22 Q. Okay.

23 A. Are they? That is a different question.

24 Q. Okay.

25 Who -- who within the Province currently would

1 be most knowledgeable regarding the requirement of
2 following it? Is it juridic?

3 A. Juridical.

4 Q. Juridical process?

5 A. Currently?

6 Q. Yeah.

7 A. The Province has a canonist, Father Ken
8 Laverone.

9 Q. Okay. And how do you spell his last name?

10 A. L-a-v-e-r-o-n-e.

11 Q. Okay.

12 And how long -- is he the Province's
13 current -- current canon law lawyer?

14 A. Correct.

15 Q. And is there usually a canon law lawyer that
16 either serves on the council or advises the council?

17 A. Well, during what period, I guess?

18 Q. In your experience from '79 to '97 was there
19 someone the council could turn to if they needed a
20 canon law lawyer's advice?

21 MR. MATIASIC: Overbroad.

22 And you're talking about within the Province?

23 MR. HALE: Yeah.

24 Q. Or maybe outside the Province, I don't know,
25 you know. Maybe you contact someone in Rome, I don't

1 know.

2 MR. MATIASIC: Vague and ambiguous and
3 overbroad as to time.

4 THE WITNESS: One of the, you know, major
5 canonists during certainly much of this period would
6 have been Father [REDACTED].

7 MR. HALE: Okay.

8 Q. Is that someone you recall the council turning
9 to with questions related to the juridical process?

10 A. Questions related to the juridical process
11 come up so rarely that I do not recall explicit
12 instances that I consulted with Father [REDACTED].

13 Q. Okay.

14 What about just general canon law questions,
15 is Father [REDACTED] who you would turn to from that '79 to
16 '97 period?

17 MR. MATIASIC: Overbroad as to time.

18 THE WITNESS: In the process of seeking
19 canonical consultation in my position as counselor and
20 vicar, I would not have been, you know, exposed to
21 that type of consultation, I had no need to it, to do
22 it.

23 MR. HALE: Okay.

24 Q. Would you compare the definitorium more to,
25 for instance, the president of the United States

1 cabinet or is it more of a legislative body?

2 MR. MATIASIC: Vague and ambiguous.

3 MR. BROSNAHAN: Lacks foundation.

4 MR. MATIASIC: If you can answer that, Father,
5 go ahead.

6 THE WITNESS: I have no idea how the president
7 works with his cabinet, you know.

8 BY MR. HALE:

9 Q. The impression, though, under the difference
10 between a cabinet that is advising an elected official
11 versus a legislative body?

12 A. Uh-hmm.

13 Q. What would -- is that a "yes"?

14 A. You asked me if I understood the difference,
15 yes, I do understand the difference.

16 Q. Okay. In light of that, would you -- the
17 impression I'm getting from you is that the
18 definitorium is more of a -- is less of a legislative
19 body, maybe not a legislative body at all, is more a
20 consulting body to the -- to the provincial, is that a
21 fair statement?

22 MR. MATIASIC: Lacks foundation, it's vague
23 and ambiguous.

24 MR. BROSNAHAN: Asked and answered several
25 times.

1 THE WITNESS: The definitorium sets Province
2 policies. If that would be included in the term
3 legislative, yes, I would say so.

4 BY MR. HALE:

5 Q. Okay. Does the definitorium vote on -- on an
6 approved Province policy?

7 MR. MATIASIC: At what time?

8 BY MR. HALE:

9 Q. Same time frame, while you were -- in your
10 experience?

11 A. Many of them, yes.

12 Q. Okay. And is it a circumstance where
13 provincial has the final say in what policies are
14 approved or is it definitely a decision that's left up
15 to -- to the -- to the definitorium?

16 MR. MATIASIC: Counsel, I think you've already
17 asked and he's answered this question on numerous
18 occasions.

19 MR. HALE: I don't think so.

20 MR. MATIASIC: I'll let him answer one more
21 time.

22 MR. BROSNAHAN: Can we have the question read
23 back, please.

24 (The Reporter read back as follows:

25 "Question: Okay. And is it a circumstance where

1 provincial has the final say in what policies are
2 approved or is it definitely a decision that's left up
3 to -- to the -- to the definitorium?")

4 MR. MATIASIC: And I think he's already
5 elaborated on the difference between determinative
6 issues and consultative issues.

7 MR. BROSNAHAN: I'll also object the
8 question's vague and ambiguous.

9 MR. HALE: Okay.

10 Q. You can answer.

11 We're talking about policies for the Province
12 right now.

13 A. Depends on the nature of the policies, its
14 influence on the fraternity, its significance, the
15 extent to which it touches the life of -- and identity
16 of the friars in their internal life and mission.

17 There are levels of policies and approaches,
18 that's why it's hard for me to define it in -- we're
19 talking about a long period of time, so the different
20 policies would be generated at different times.

21 Q. Okay.

22 A. Depending on circumstances and needs.

23 Q. So in your experience, would it be a fair
24 statement to say that some policies are decided and
25 approved by the definitorium as a group, whereas some

1 policies, in your experience, were approved by the
2 provincial?

3 MR. MATIASIC: Vague and ambiguous.

4 THE WITNESS: At the moment I -- I cannot
5 think of a -- you know, policies of differentiation
6 there. Financial policy, for example, would come
7 before the whole council for a consultation which is
8 determinative, because it affects the life of the
9 friars and the fraternity.

10 MR. HALE: Okay.

11 Q. But would there be other policies that would
12 come before the council that would be decided by
13 the --

14 A. The minister?

15 Q. -- the minister, yeah.

16 MR. MATIASIC: Objection, vague and ambiguous.

17 MR. BROSNAHAN: Objection, vague and
18 ambiguous.

19 THE WITNESS: At the moment I don't recall
20 policies in my time as provincial minister that, you
21 know, I would have determined solely by myself.
22 The -- yes.

23 MR. HALE: Okay, okay.

24 Q. Would you describe your duties while you were
25 a definitor as being equivalent to serving on a

1 personnel board for the Province?

2 MR. MATIASIC: And lacks foundation too.

3 Sorry Father, go ahead.

4 THE WITNESS: In some instances we would be
5 discussing personnel, you know, of the friars.

6 BY MR. HALE:

7 Q. Would the definitorium decide friar
8 assignments or would the provincial minister make the
9 final decision regarding friar assignments?

10 MR. MATIASIC: And again, what time period are
11 we talking about?

12 MR. HALE: In his experience.

13 MR. MATIASIC: It's overbroad.

14 MR. BROSNAHAN: Objection, vague and ambiguous
15 and overbroad.

16 THE WITNESS: Generally there is consultation
17 on personnel assignments. The determination would be
18 made by the provincial minister.

19 MR. HALE: Okay.

20 Q. What were your duties as vice prefect?

21 MR. MATIASIC: Vague and ambiguous.

22 MR. BROSNAHAN: Vicar of religion.

23 MR. HALE: There I go again, sorry.

24 Q. Vice provincial.

25 Or is -- is it vice provincial, vicar

1 provincial, are those interchangeable or is it --

2 A. No, it's vicar provincial.

3 Q. Okay.

4 As vicar provincial, what were your duties?

5 I have now removed vice prefect from my

6 outline so it will not happen again, I promise.

7 A. Computers are lovely.

8 Q. Yeah.

9 So the question is what were your duties as
10 vicar provincial?

11 A. If the provincial left the geographical
12 confines of the Province, the vicar provincial takes
13 his place.

14 Q. Okay.

15 A. While he's outside the boundaries of the
16 Province.

17 Q. Okay.

18 A. That's the clearest definition of defined
19 duties.

20 Q. Okay. What about when the provincial --

21 MR. BROSNAHAN: Had you finished your answer?

22 BY MR. HALE:

23 Q. I'm sorry, go ahead.

24 A. No. Then obviously he is a consultor, you
25 know, and a confidante in some instances, in some

1 others, not.

2 Q. Okay.

3 Did you feel that you were a confidante to
4 Father [REDACTED] while he was provincial and you were
5 vicar provincial?

6 A. In some instances, yes, I did, I was his
7 confidante.

8 Q. What about your duties when -- when the
9 provincial is in the Province, how -- how does it --
10 how -- how is it different?

11 MR. MATIASIC: Again, you're talking about
12 when he was the vicar provincial?

13 THE WITNESS: When I was vicar provincial,
14 yeah.

15 When I was functioning as a vicar, I would be a
16 consultant on some personnel issues, on others not, on
17 some placements. Once in a while I would serve as
18 a -- it would be a -- a particular assignment, please
19 go visit so and so, and talk with them about this,
20 where they want to go, whatever it might be, and
21 report to me.

22 So it was kind of like a right-hand man in some
23 instances.

24 BY MR. HALE:

25 Q. You were kind of helping to grease the wheels

1 for a transfer to happen?

2 A. Yeah, that could be. We had various, you
3 know, modus operandi.

4 Q. Okay.

5 You said there would be some decisions where
6 you would be consulted for personnel decisions by him
7 and some where you weren't. What -- what was the
8 dividing line, to your knowledge, where you would be
9 consulted versus where you weren't?

10 A. I don't know.

11 Q. Okay.

12 Is it normal -- is it -- in your experience,
13 is the provincial generally someone who is elected
14 after serving or while serving on the definitorium to
15 become a provincial?

16 That was a poorly-stated question.

17 In other words, is the provincial a former
18 definitorium member?

19 MR. MATIASIC: Based upon your experience.

20 THE WITNESS: On my experience, I'd have to
21 say [REDACTED], myself, and again, current
22 provincial. Current provincial did not serve on the
23 definitorium, he was secretary of the Province.

24 MR. HALE: Right.

25 THE WITNESS: So I guess in most instances,

1 there's generally a period of service on the
2 provincial council.

3 MR. HALE: Okay.

4 Q. Does the secretary -- is the secretary
5 considered part of the provincial council?

6 A. He is not a --

7 MR. MATIASIC: Well, and again, you're talking
8 about when -- when he was the provincial minister or
9 just currently?

10 MR. HALE: In his experience.

11 MR. MATIASIC: Overbroad.

12 THE WITNESS: Canonically the secretary of the
13 Province is the secretary of the provincial
14 definitorium. In rare instances he has a vote in --
15 and he's there at the meetings.

16 BY MR. HALE:

17 Q. So the secretary does attend, though, all the
18 definitorium meetings?

19 MR. MATIASIC: Based upon your experience,
20 Father.

21 THE WITNESS: Based on my experience, yes. I
22 mean, one or the other instance, the secretary might
23 be sick or something.

24 MR. HALE: Okay.

25 Q. Has there been a new provincial elected in the

1 Province currently or is Father Jurisich still the
2 provincial?

3 A. Father Jurisich is still provincial minister.

4 Q. Has he been elected for a second term?

5 A. No.

6 Q. Okay.

7 Is there -- is there a date set when a new
8 provincial takes office, so to speak?

9 A. When a provincial minister is elected his
10 first term of service is six years.

11 Q. Okay.

12 A. And then if he is reelected, he serves only
13 for three years.

14 Q. Okay.

15 A. At which time he ceases to be available for
16 the position.

17 Q. Okay. But is there a specific time of year
18 when the transfer from the old minister to the new
19 minister happens? Is there a set date?

20 A. The transfer usually occurs almost -- it does
21 occur at a provincial chapter.

22 Q. Okay.

23 A. When the friars gather, the provincial
24 chapter, when that is held, in my experience, has
25 varied. So in any given year when that happens, I

1 couldn't tell you whether it was January or June.

2 Q. Okay.

3 So it's not like the president where we know
4 there's going to be an inauguration ceremony on a
5 certain date?

6 MR. MATIASIC: Lacks foundation.

7 BY MR. HALE:

8 Q. After he is elected?

9 A. We know when the chapter is and we know when
10 the election at the chapter is.

11 Q. Okay.

12 A. So in that sense we know when the provincial
13 minister is elected.

14 Q. Okay.

15 Is the chapter not at the same time -- how
16 often is the -- how often does the chapter happen, is
17 that once a year, once every couple years?

18 A. Provincial chapter occurs every three years.

19 Q. Okay.

20 And is it always the same time -- same date or
21 does it vary?

22 A. No. The dates vary, have varied in my
23 experience.

24 Q. I mean, sometimes can it be in the summer,
25 sometimes during the winter? There's definitely no

1 time frame when a chapter meeting is going to happen?

2 A. I would describe the -- you know, the
3 esoterics as somewhat consistent but not entirely the
4 same.

5 Q. When you say somewhat consistent, is there --
6 is there a season of the year where you probably most
7 likely have a chapter meeting?

8 A. Well, for example, probably most recently our
9 chapters have occurred in January.

10 Q. Okay.

11 A. I believe I was elected at a chapter in June.

12 Q. Okay.

13 A. So yes.

14 Q. After a chapter meeting where a provincial is
15 elected, is there a certain amount of time that will
16 pass before he comes in the office or is -- is it
17 again kind of -- it just happens when it happens?

18 A. Once the election occurs and the votes are
19 counted, the -- the -- the candidate for provincial is
20 announced. And at that moment he is -- takes an oath
21 of office and becomes the provincial minister.

22 Q. Okay.

23 So it's -- sounds like it's -- it's -- it
24 differs from on the big picture, the US system, where
25 a president will remain in office for a number of

1 months before the new president is actually
2 inaugurated?

3 MR. MATIASIC: Vague and ambiguous and lacks
4 foundation, that he's familiar with the US system.

5 MR. HALE: Oh, give me a break.

6 THE WITNESS: The -- there's no break -- well,
7 what, ten minutes, 15 minutes, you know, between
8 election and assumption of office.

9 MR. HALE: Okay.

10 Q. So is there -- is there some kind of transfer
11 process from the old provincial to the new provincial?
12 When I say transfer process, I mean is there some kind
13 of discussion between the old provincial and the new
14 provincial regarding important issues or events from
15 the outgoing provincial to the incoming provincial
16 that need to be communicated?

17 A. Uh-hmm.

18 MR. MATIASIC: Based upon his experience?

19 BY MR. HALE:

20 Q. Yeah.

21 A. Yes, I think there's certainly a -- a --
22 there's a discussion that takes place between -- and
23 it may be, you know, a day, it may be, you know, over
24 a period of time, where there's consultation and what
25 the provincial feels are significant issues that must

1 be attended to or addressed.

2 Q. What the outgoing provincial feels?

3 A. Yes. With the -- with the newly-elected
4 provincial minister.

5 Q. Okay.

6 A. There's a -- a capitular, what we call once
7 the chapter is finished, there's a post-chapter
8 meeting which occurs of the new provincial council,
9 with the new provincial and the old provincial.

10 Q. Okay.

11 A. And if there's a -- if -- well, at that time,
12 again, significant issues or themes are communicated
13 to the provincial council.

14 Q. Okay.

15 A. Some are communicated to the council, some to
16 the minister.

17 Q. Okay.

18 So it sounds like there is some kind of
19 process that has to -- has to happen, occur during the
20 transfer, as far as -- as far as the -- as far as
21 information from the prior administration being
22 provided to the new administration?

23 MR. MATIASIC: I think it misstates his
24 testimony.

25 THE WITNESS: Yeah.

1 MR. MATIASIC: I think he said that it had to
2 happen, he said based upon his experience that's what
3 happened.

4 THE WITNESS: In my experience, yes.

5 BY MR. HALE:

6 Q. And did that happen when you -- when you took
7 over for Father [REDACTED]?

8 A. Oh, yes.

9 Q. Okay.

10 And -- and then Father [REDACTED] followed you,
11 correct?

12 A. Correct.

13 Q. And did that happen with him, where you --

14 A. Yes.

15 Q. -- sat down with him?

16 A. Yes.

17 Q. Okay.

18 What kind of things are discussed generally?
19 I mean, are Province finances discussed in this
20 transfer process, is there some kind of report made?

21 MR. MATIASIC: Again, based upon your
22 experience, Father.

23 BY MR. HALE:

24 Q. Right.

25 A. The life of the Province touches many

1 different dimensions. We could talk about major
2 issues or themes we see occurring in the fraternity,
3 we could talk about personnel.

4 Q. Okay.

5 A. And transfers.

6 Q. Okay.

7 A. We could talk about finances, would be among
8 them. We could talk about new ministries.

9 Q. Okay.

10 A. And how the -- the -- you know, their -- I
11 think the idea is to communicate significant concerns
12 or issues --

13 Q. Okay.

14 A. -- that are felt to be ongoing.

15 Q. For instance, if there was litigation ongoing
16 against the Province, I would assume there would be
17 some kind of discussion between the outgoing and the
18 incoming provincial minister, is that a fair
19 statement?

20 MR. MATIASIC: Are you asking him in his
21 experience?

22 MR. HALE: Yeah.

23 Q. In your experience?

24 A. In my experience, yes.

25 Q. Okay.

1 What about if there were requests for
2 assistance from a diocese or an arch diocese, is that
3 something that would be discussed?

4 MR. MATIASIC: Again, based on your
5 experiences, Father.

6 THE WITNESS: In my experience some instances
7 yes, some instances no.

8 BY MR. HALE:

9 Q. What about obtaining insurance coverage, would
10 that be --

11 A. Pardon?

12 Q. Obtaining insurance, would that be something
13 that was discussed?

14 MR. MATIASIC: Again, based on your
15 experience.

16 THE WITNESS: Probably not.

17 MR. HALE: Okay.

18 Q. What about if there were reports of misconduct
19 by Franciscans, for instance, in the transfer from --
20 from you to Father [REDACTED], was there a discussion of
21 whatever was ongoing subsequent to the Board of
22 Inquiry?

23 MR. MATIASIC: Vague and ambiguous.

24 MR. BROSNAHAN: Lacks foundation.

25 THE WITNESS: The -- we've had a fairly

1 consistent policy on misconduct and the -- addressing
 2 those, both individuals and situations, so clearly
 3 there has been and will continue to be great sense of
 4 the necessity of continuity.

5 MR. HALE: Okay.

6 Q. So in other words, what was -- was there
 7 discussion in that regard between you and Father
 8 [REDACTED]?

9 MR. MATIASIC: Same objections.

10 THE WITNESS: I had, yeah, a great desire and
 11 communicate the -- the necessity of continuity.

12 MR. HALE: Okay.

13 Q. Would it generally have included discussion of
 14 how various properties owned by the Province were
 15 performing?

16 MR. MATIASIC: Based upon --

17 MR. BROSNAHAN: Objection, vague and
 18 ambiguous.

19 MR. MATIASIC: Again, based upon his
 20 experience?

21 MR. HALE: Right.

22 THE WITNESS: It may or may not, I don't
 23 recall at the moment any particular property issues.

24 MR. HALE: Okay.

25 Q. In the transfer from Father [REDACTED] to you, was

1 there any kind of report provided on -- on issues from
2 Father [REDACTED]'s time that were going to be relevant to
3 your time?

4 MR. MATIASIC: Vague and ambiguous.

5 THE WITNESS: Certainly Father [REDACTED] was very
6 committed to the insurance of the continuity also.

7 MR. HALE: Okay.

8 Q. But do you recall there being any kind of
9 written report regarding the transfer of whatever
10 issues were outstanding?

11 MR. MATIASIC: Vague and ambiguous.

12 THE WITNESS: Issues that Father [REDACTED] felt
13 were significant and needed to be addressed were given
14 to me and --

15 BY MR. HALE:

16 Q. Just orally or in written form?

17 A. There was some written form.

18 Q. Okay.

19 And what about in your transfer to Father
20 [REDACTED], was it just an oral discussion you had with
21 him or was it something -- was there some sort of --
22 something given to him in writing?

23 MR. MATIASIC: Lacks foundation.

24 THE WITNESS: On what issues are you talking
25 about?

1 BY MR. HALE:

2 Q. Just these -- in other words, continuing
3 issues, issues that were relevant during -- during
4 your time as provincial that obviously were continuing
5 on. For instance, if there was a lawsuit during your
6 time as provincial, that was not resolved, would there
7 have been a report written and provided to Father
8 [REDACTED] about whatever the status of that lawsuit was?

9 MR. MATIASIC: Vague and ambiguous.

10 BY MR. HALE:

11 Q. Or is this just something you would have
12 discussed with him verbally?

13 MR. MATIASIC: Sorry, Counsel.

14 Vague and ambiguous.

15 THE WITNESS: It's very broad.

16 In some instances there would be discussion, in
17 other instances, a report.

18 BY MR. HALE:

19 Q. Do you have a recollection providing Father
20 [REDACTED] any reports regarding issues that were
21 continuing from your time to his time?

22 MR. MATIASIC: Same objection.

23 THE WITNESS: I think in the last six months
24 of my being provincial minister, since I was well
25 aware of the importance of continuity, the -- I

1 invited [REDACTED] into more of the discussions which I
2 had, and was taking place on various levels, touching
3 property, personnel, finances, so that the provincial
4 minister always has the desire to make for a smooth
5 transition.

6 BY MR. HALE:

7 Q. So in other words, before he became
8 provincial?

9 A. Yeah.

10 Q. You were involving him in the process?

11 A. Right.

12 Q. Okay.

13 Did Father [REDACTED] do that with you as well?

14 A. The situation with Father [REDACTED] and myself
15 would have been somewhat different, in that I was
16 fairly certain Father [REDACTED] would be elected, my --
17 my own election was less than certain. So, you know,
18 that type of -- that form of continuity did not occur.
19 On the other hand, I did receive reports from Father
20 [REDACTED] of issues that he felt were of significant
21 interest that I should pay attention to.

22 Q. Okay.

23 Are the -- are there political parties within
24 the Province? Do you understand what I'm saying? In
25 other words, is there the equivalent of Republican and

1 Democrats within the Province?

2 MR. MATIASIC: Vague and ambiguous, lacks
3 foundation as to the witness's knowledge of Democrats
4 and Republicans.

5 MR. HALE: The equivalent, I'm obviously
6 not --

7 THE WITNESS: The -- I think the Province
8 defines itself as a fraternity of friars and we tend
9 not to politicize on issues.

10 MR. HALE: Okay.

11 THE WITNESS: We do have obviously preferences
12 as to who occupies offices and things like that --

13 BY MR. HALE:

14 Q. Okay.

15 A. -- of great trust, so --

16 Q. Okay.

17 Then is -- is there a transfer of provincial
18 documents from an outgoing provincial to an incoming
19 provincial?

20 MR. MATIASIC: Vague and ambiguous.

21 And, again, you're asking based upon his
22 experience?

23 MR. HALE: His experience, yeah, yeah.

24 MR. BROSNAHAN: Still vague and ambiguous.

25 BY MR. HALE:

1 Q. Or is it simply a matter of you leave the
2 office he walks in and whatever's there is there?

3 MR. MATIASIC: Same objections.

4 THE WITNESS: Well, the -- yeah, it -- I found
5 it confusing to be clear about it. The -- when the
6 provincial -- since the provincial minister, as I've
7 indicated, is immediately out of office once the new
8 one is elected --

9 BY MR. HALE:

10 Q. Right.

11 A. And sworn in, the -- by that time generally
12 the minister is moved out of the provincial office
13 itself. And so you walk into the provincial office,
14 all the files are there, et cetera. There are the
15 issues, then, that you go through, you either have
16 gone through them with the provincial minister or go
17 through them or receive, let's say, reports, files
18 that are outstanding.

19 Q. Okay. Is there -- is the definitorium usually
20 involved in any discussions regarding -- between the
21 outgoing and the incoming provincials, regarding these
22 outstanding issues, or is it usually just between, in
23 your experience, the two provincials?

24 MR. MATIASIC: Vague and ambiguous.

25 THE WITNESS: We have -- in the course of the

1 election of a provincial minister, the process for the
2 Order of Friars Minor is always to have a -- if it's
3 an elected chapter for a provincial minister, you have
4 what we call a visitator, which is a friar appointed
5 from another Province, who comes to visit our Province
6 for six months, interviews everybody, et cetera. He
7 also attends the meeting immediately after the
8 chapter.

9 So it would be the old provincial minister and
10 this one who has done as kind of a -- a way of getting
11 outside voices into the procedure. And so the -- the
12 provincial counselors, though, once their office is
13 over, they do not go to these meetings.

14 MR. HALE: Okay. I think we need to change
15 the tape. Do you want to break for lunch now? I can
16 keep going.

17 MR. MATIASIC: Change the tape. I'll talk
18 with the witness.

19 VIDEOTAPE OPERATOR: Videotape deposition, off
20 record at 12:10, this ends tape 1, Volume 1.

21 (Recess.)

22 VIDEOTAPE OPERATOR: Videotape deposition,
23 back on record at 12:10 p.m.

24 This marks the beginning of Tape 2, Volume 1 in
25 the deposition of [REDACTED].

1 BY MR. HALE:

2 Q. Father, we were talking about the transfer of
3 documents from the outgoing provincial to the incoming
4 provincial. Were there any -- in your experience,
5 were there any documents that are for provincial eyes
6 only involved in that transfer?

7 A. Yes.

8 Q. And what -- what is the nature of those
9 documents?

10 A. Those would be --

11 MR. MATIASIC: Based, again, on your
12 experience.

13 THE WITNESS: On my experience.

14 MR. HALE: Right.

15 THE WITNESS: Those would be very confidential
16 personnel files.

17 BY MR. HALE:

18 Q. So if -- if there were allegations of abuse by
19 a Franciscan, would those be in the provincial eyes
20 only documents category?

21 MR. MATIASIC: Based upon your experience.

22 BY MR. HALE:

23 Q. Or would those be part of the personnel file?

24 MR. BROSNAHAN: Objection, vague and
25 ambiguous.

1 THE WITNESS: In my experience, I would
2 receive a report of, for example, alcoholism, this
3 friar had a difficulty with that, you know, and would
4 I deal with it. And that would be, yes, of that kind,
5 yes.

6 BY MR. HALE:

7 Q. So if there was a report of alcoholism by a
8 Franciscan, that would be in this -- was that the
9 confidential file you're referring to?

10 A. It was at -- I'm sorry.

11 Q. Is it the confidential file, the -- the
12 Franciscan confidential file that you're referring to
13 or is there something separate from that?

14 MR. BROSNAHAN: Objection, vague and
15 ambiguous.

16 BY MR. HALE:

17 Q. Do you know what the confidential file is for
18 a Franciscan friar?

19 A. The -- you're -- I think -- I took you to
20 refer to, of the provincial minister receiving a
21 written report from the previous provincial minister.

22 Q. Okay.

23 A. Correct?

24 Q. That's one of the things, yes.

25 A. And that the issues of ongoing concern and --

1 and merit that -- that required attention would be
2 communicated through that form, possibly, or orally.

3 Q. Okay.

4 And then -- and then would there be documents
5 involved in that process that were for provincial eyes
6 only?

7 MR. MATIASIC: You're talking about separate
8 and apart from the report that he's already indicated?

9 MR. HALE: Yeah, yeah.

10 Q. In other words, that no one else could see,
11 that it was involved in -- that the outgoing
12 provincial would make the incoming provincial aware
13 of, provincial documents only for provincial eyes
14 only, in other words?

15 MR. MATIASIC: Vague and ambiguous.

16 MR. BROSNAHAN: Other than the report.

17 MR. MATIASIC: Other than the report. Vague
18 and ambiguous.

19 MR. HALE: Right.

20 THE WITNESS: The -- there would be a written
21 summary of concerns to be dealt with with that friar
22 which would be for provincial eyes only.

23 MR. HALE: Okay.

24 Q. But were there -- were there -- for instance,
25 do you know what a sub secreto file is?

1 A. I've heard of that canonically, yes.

2 Q. Okay, are you aware of there being sub secreto
3 files in the Province? Secreto is s-e-c-r-e-t-o.

4 MR. MATIASIC: Vague and ambiguous.

5 You're talking about his experience, correct?

6 MR. HALE: Yeah.

7 THE WITNESS: Within my experience a -- a
8 confidential file, I don't believe we used the term
9 sub secreto.

10 BY MR. HALE:

11 Q. Let's do this --

12 A. A confidential file.

13 Q. Sorry, go ahead.

14 A. The conclusions of it and the recommendations
15 would be summarized, which the new provincial minister
16 would get.

17 Q. Okay. And would that file remain wherever it
18 was stored with the prior provincial?

19 A. General -- correct, yes, generally.

20 Q. Okay.

21 Regarding the files of an individual
22 Franciscan, there's a personnel file?

23 A. Correct.

24 Q. And then there's some sort of confidential
25 file for each Franciscan?

1 A. No.

2 MR. MATIASIC: Based upon your experience.

3 THE WITNESS: On my experience, no.

4 BY MR. HALE:

5 Q. Some do and some don't have a confidential
6 file?

7 A. In my experience, yes, some have a
8 confidential file; others, vast majority do not.

9 Q. Okay. Other than the personnel file and the
10 confidential file for some, any other files for a
11 Franciscan friar?

12 A. Not that I know of.

13 Q. Okay.

14 And where would -- would the personnel files
15 and the confidential files, in your experience, be
16 stored in the same location?

17 A. The storage for confidential files would be in
18 the safe upstairs, the storage for the personnel files
19 would be in -- generally in the secretary --
20 provincial secretary's office.

21 Q. Okay.

22 And what kind of -- what kind of -- you
23 identified alcoholism, what other kind of issues would
24 generally be relegated to a Franciscan's confidential
25 file?

1 MR. MATIASIC: Overbroad.

2 Based upon his experience?

3 MR. HALE: Right.

4 THE WITNESS: Based on my experience, let me
5 say with respect to alcoholism, it would have to be an
6 ongoing issue.

7 MR. HALE: Okay.

8 THE WITNESS: If it had been resolved, many
9 times it was --

10 MR. HALE: Okay.

11 THE WITNESS: -- you know, that would be
12 considered a matter handled.

13 The -- an issue of misconduct that was ongoing,
14 legally, financially with a friar, if that's a
15 possibility, certainly the -- the -- in my experience,
16 the issues of sexual misconduct --

17 MR. HALE: Okay.

18 THE WITNESS: -- of minors that I dealt with
19 would be summarized and given to, you know, my
20 successor.

21 BY MR. HALE:

22 Q. Would there generally be, in your experience,
23 reference in a Franciscan's personnel file to the
24 existence of a confidential file?

25 A. During what period?

1 Q. At any time while you were on the definitorium
2 or vice provincial or provincial?

3 MR. MATIASIC: Overbroad.

4 MR. BROSNAHAN: And lacks foundation.

5 THE WITNESS: Part of the time when I was
6 minister I think there would have been, yes.

7 MR. HALE: Okay.

8 Q. And did that change? In other words, was a
9 policy adopted where there would no longer be
10 reference in the personnel file to the existence of a
11 confidential file?

12 MR. MATIASIC: During his -- during what
13 period of time?

14 MR. HALE: In his experience.

15 THE WITNESS: I can't speak --

16 MR. MATIASIC: Overbroad.

17 THE WITNESS: -- to the present situation,
18 I --

19 MR. HALE: Okay.

20 Q. But it sounds like in your -- during your time
21 as provincial, if I didn't misunderstand you, there
22 was a period where there was reference in a personnel
23 file, if a confidential file existed, to the existence
24 of that confidential file?

25 A. I don't recall the exact details. I would

1 think so. But I may be, you know, not exact there.

2 Q. And do you have an understanding that there
3 was a change in Province policy at some point that
4 eliminated reference in the personnel file to the
5 existence of a confidential file?

6 A. I have no idea.

7 MR. MATIASIC: Vague and ambiguous, and lacks
8 foundation.

9 THE WITNESS: I have no understanding of that.

10 BY MR. HALE:

11 Q. When you -- when you were the outgoing
12 provincial and Father [REDACTED] was the incoming
13 provincial --

14 A. Right.

15 Q. -- what discussions, if any, did you have with
16 him regarding outstanding litigation involving sexual
17 abuse?

18 A. The -- I'm trying to remember. The sexual
19 abuse issues that I dealt with were -- by the time I
20 left office the information was probably generally
21 available, so it was not an issue of divulging new
22 information. The friars had been placed -- removed
23 from ministry and an independent board had been set up
24 to care for the victims and monitor friars, so a whole
25 system was in place.

1 I bequeathed to my successor the system with,
2 you know, the information that went with it, so --

3 Q. When you say the information was generally
4 available, do you mean to the entire Province or just
5 to members of the council?

6 A. The -- the dispositions of the friars
7 involved, I think, was available to the council.

8 Q. Okay.

9 A. Certainly directly, and definitely to the
10 minister.

11 Q. Okay.

12 A. And the -- whether the entire Province was
13 aware of any individual case and its details, that I
14 could not testify to.

15 Q. Okay.

16 And did you -- did you -- did you have -- did
17 you sit down and have any kind of meeting with Father
18 [REDACTED] to discuss any cases that were still pending
19 involving sexual abuse by Franciscans?

20 MR. MATIASIC: Lacks foundation.

21 THE WITNESS: I don't recall it to have any
22 pending cases regarding sexual abuse.

23 BY MR. HALE:

24 Q. Okay. So your recollection is, at the time
25 you exited as provincial, there were no more pending

1 cases?

2 A. I guess I would need clarification on pending
3 cases; legally?

4 Q. Something had been filed, yeah.

5 A. Litigation?

6 Q. Right.

7 A. Well, there was certainly ongoing litigation.

8 Q. Okay, that's what I mean, that's what I mean.

9 A. There was ongoing litigation which he would
10 have been aware of and made aware of.

11 Q. Did you sit down and have a meeting with him
12 about the ongoing litigation?

13 A. Yes, I did.

14 Q. Do you recall what you discussed with him?

15 A. I would -- no, I don't recall the details. I
16 would have given him the knowledge necessary to do his
17 job.

18 MR. HALE: Okay.

19 Now, at this point I want to ask noted questions
20 for not only the perpetrator in this case but for all
21 Franciscans we know about. Obviously we've had a
22 disagreement about this for quite some time.

23 So rather than us restate our positions and waste
24 a bunch of time on the record, what I propose is that
25 we just stipulate that the record that I have made and

1 you and Bob have made in the last -- last couple of
2 depositions be incorporated by reference, so that we
3 don't have to go over and over and over again all our
4 areas --

5 MR. MATIASIC: Sure.

6 MR. HALE: -- and positions why I think and
7 you don't think we should be allowed to conduct
8 discovery regarding other Franciscan perpetrators in
9 addition to Father Cimmarrusti.

10 MR. MATIASIC: That's fair enough.

11 MR. HALE: Okay.

12 MR. MATIASIC: Sure.

13 MR. HALE: Just to be clear, our intent is to
14 conduct discovery regarding all Franciscan
15 perpetrators related to notice evidence involving
16 those perpetrators, not related to damages evidence,
17 just so we're clear.

18 MR. MATIASIC: Right. And just to summarize
19 our position in one sentence, we believe that that
20 wouldn't be permissible under the applicable discovery
21 rules.

22 MR. HALE: So --

23 MR. MATIASIC: And Clergy I.

24 MR. HALE: If you agree, let's incorporate the
25 arguments that -- the positions that have been stated

1 on the record in the four depositions which I know you
2 didn't attend but Bob made a lengthy record about the
3 position, the [REDACTED] deposition, the [REDACTED] deposition,
4 and the [REDACTED] deposition (phonetic), I think is
5 going to lay out everything we have to say and you
6 have to say about this issue.

7 MR. MATIASIC: You know, I think we can be
8 more expansive.

9 MR. HALE: Okay.

10 MR. MATIASIC: I think any of the records
11 we've created --

12 MR. HALE: Okay.

13 MR. MATIASIC: -- with this issue, we can
14 incorporate.

15 MR. HALE: Okay, that's even better.

16 Q. All right. Do you recall having any
17 discussions with Father [REDACTED] about outstanding
18 litigation involving Father Cimmarrusti? And again,
19 that's during this transfer process.

20 MR. BROSNAHAN: Object, the question lacks
21 foundation that there was any such litigation.

22 THE WITNESS: I don't recall at the moment any
23 outstanding litigation with respect to Mario
24 Cimmarrusti when I left office.

25 MR. HALE: Okay, fair enough.

1 Q. Regarding when you became the provincial, I
2 think -- did you say you were -- you were elected in
3 June?

4 A. Yes.

5 Q. So June of '88?

6 A. June of 1988.

7 Q. Okay.

8 Do you recall Father [REDACTED] sitting down with
9 you and discussing any outstanding litigation related
10 to sexual abuse during that transfer process?

11 MR. MATIASIC: Lacks foundation.

12 THE WITNESS: I was not aware that Father
13 [REDACTED] dealt with outstanding litigation with respect
14 to that.

15 BY MR. HALE:

16 Q. Were you -- were you aware, when you became
17 provincial, of any outstanding litigation involving
18 sexual abuse by Franciscans? So that would have been
19 June '88.

20 A. If my recollection -- I think my recollection
21 is correct, but no, I was not.

22 Q. Okay.

23 And same time frame, were you aware -- when
24 you became provincial in June of '88, were you made
25 aware of any outstanding claims or allegations of

1 sexual abuse by a Franciscan?

2 MR. MATIASIC: I think overbroad.

3 Are you speaking of Cimmarrusti or --

4 MR. HALE: No, any Franciscan. And then I'm
5 going to lead into a Cimmarrusti question.

6 And for our stated reasons I won't ask any further
7 questions, although I'd like to.

8 MR. MATIASIC: Well, I mean, you should --
9 based upon our respective positions I think you should
10 limit it to Cimmarrusti, but --

11 MR. HALE: I'm not asking for the identity of
12 any perpetrators though.

13 MR. MATIASIC: Fair enough. You're not going
14 to follow up with any individual perpetrators.

15 MR. HALE: I'd like to but because of what
16 we've put on the record I'm not going to.

17 MR. MATIASIC: Okay, that's fine. I'll let
18 him answer the question.

19 MR. BROSNAHAN: Do you have the question in
20 mind?

21 THE WITNESS: Repeat the question.

22 MR. HALE: Believe me, Father, it can get a
23 lot of worse than this, with the amount of discussion
24 going on between us on the record.

25 Q. When you became provincial in June of '88 were

1 you aware of any outstanding claims or allegations of
2 sexual abuse by Franciscans at that time?

3 MR. MATIASIC: Vague and ambiguous.

4 BY MR. HALE:

5 Q. Do you understand? The distinction I'm
6 drawing is, in other words, I've asked about ongoing
7 litigation, and now I'm asking about simply claims or
8 allegations that have not -- where a lawsuit hasn't
9 been filed.

10 MR. MATIASIC: Same objection.

11 THE WITNESS: When I became provincial
12 minister in 1988?

13 BY MR. HALE:

14 Q. Yes, yes.

15 A. I don't recall that there were any claims
16 outstanding at the time.

17 Q. Okay.

18 And then same question for when you left in
19 '97, we've talked about whether you had any
20 discussions regarding outstanding litigation, now I'm
21 going to ask, were you -- did you have any discussions
22 regarding claims or allegations that were outstanding
23 at the time, when that transfer happened from you to
24 Father [REDACTED]?

25 MR. BROSNAHAN: Objection, vague and

1 ambiguous.

2 THE WITNESS: I would need a clarification.

3 MR. HALE: Sure.

4 THE WITNESS: Okay.

5 Are you talking of historic cases that had taken
6 place before the transfer or are you talking about
7 ongoing cases or --

8 BY MR. HALE:

9 Q. Both. Something that happened before the
10 transfer or if there was something that was ongoing,
11 either way. Just some -- any kind of claim or
12 allegation involving sexual abuse by Franciscans prior
13 to that -- that transfer date in -- in '97?

14 MR. MATIASIC: Hold on.

15 I'm not sure I understand the question. So you're
16 asking whether there was any discussion of any claims
17 at the time of transfer between Father [REDACTED] and
18 Father [REDACTED].

19 MR. HALE: Right.

20 MR. MATIASIC: Not ongoing claims at the time
21 of transfer?

22 BY MR. HALE:

23 Q. In other words, somebody had come forward and
24 said, this happened to me, and the Province was
25 dealing with it however the Province was dealing with

1 it, whether it was providing therapy or investigating
2 it or whatever. Something that remained -- something
3 that still needed to be done with regards to someone
4 notifying the Province about a prior instance or a
5 prior allegation of sexual abuse?

6 MR. MATIASIC: Vague and ambiguous.

7 THE WITNESS: I went over it with Father
8 [REDACTED], the -- he was well aware of the friars who had
9 been placed on restricted life. There may have been
10 litigation or claims, you know, that were ongoing. I
11 don't recall at the moment, because I don't have the
12 dates of when we settled many things.

13 MR. HALE: Okay.

14 THE WITNESS: And there was certainly the
15 whole purpose of -- of the therapeutic process we had
16 set up to take care of victims and its operations,
17 which were also handed on.

18 BY MR. HALE:

19 Q. Do you recall having any discussions with
20 Father [REDACTED] about, for instance, if -- if a Father
21 Cimmarrusti -- one of Father Cimmarrusti's victims had
22 come forward and said this happened to me, any
23 instances where the Province was investigating that
24 allegation or was in informal settlement negotiations
25 with that victim, without the filing of a lawsuit?

1 MR. MATIASIC: Vague and ambiguous.

2 MR. BROSNAHAN: You're asking him whether he
3 discussed a -- with Father [REDACTED], an allegation that
4 had been raised about Father Cimmarrusti?

5 MR. HALE: Yes.

6 THE WITNESS: Yes, in the sense that Father
7 [REDACTED] knew there had been allegations raised against
8 Father Cimmarrusti because he had been removed from
9 ministry.

10 MR. HALE: Right.

11 THE WITNESS: And was not to conduct ministry
12 in the future.

13 Were there any outstanding claims against Father
14 Mario Cimmarrusti --

15 BY MR. HALE:

16 Q. That's my question.

17 A. -- when I left office?

18 Q. Right.

19 A. That I don't recall.

20 Q. Okay.

21 Other than with your attorneys, have you ever
22 discussed with anyone the fact that you were going to
23 be deposed today?

24 A. No. I informed people that I was being
25 deposed, period.

1 Q. Okay.

2 Did you ever have -- have you had any
3 discussions with anyone other than your counsel about
4 the testimony that's been elicited at prior
5 depositions in this lawsuit?

6 A. Not at all.

7 Q. Have you ever been aware of the Province
8 holding any meetings where there were no attorneys
9 present to discuss Code of Civil Procedure Section
10 340.1?

11 MR. MATIASIC: Lacks foundation, that he
12 knows.

13 MR. BROSNAHAN: That he knows.

14 MR. MATIASIC: That he knows what that is.

15 BY MR. HALE:

16 Q. If you look at me and say what the hell is
17 340.1 that will be the end -- the end of the question.
18 Do you know --

19 A. No, I do not know what it is.

20 Q. Have you heard of the one-year window?

21 MR. MATIASIC: Other than anything you may
22 have heard from your attorneys.

23 MR. HALE: Right, other than your counsel.

24 THE WITNESS: You mean in terms of the papers
25 and the --

1 BY MR. HALE:

2 Q. Well, in other words, was there any discussion
3 within the Province when there was -- there was some
4 media coverage around July of 2002 about the fact
5 there was this one-year window was going to be open
6 for lawsuits to be filed?

7 MR. MATIASIC: Again, any discussion where
8 counsel was not present.

9 MR. HALE: Right.

10 THE WITNESS: No. I think I was aware of it
11 at the time, you know, inasmuch as we were aware of
12 it.

13 BY MR. HALE:

14 Q. Okay.

15 A. But there was no discussions or formal
16 discussions.

17 Q. Okay.

18 A. Structure it or whatever.

19 Q. Okay.

20 Did you play any role in assembling any of the
21 documents to be produced in this litigation as part of
22 Father Cimmarrusti's personnel file?

23 MR. MATIASIC: Vague and ambiguous.

24 And by this litigation, you're talking about John
25 Doe 39 matter?

1 MR. HALE: Yes, right, right.

2 MR. MATIASIC: Do you understand --

3 THE WITNESS: Part of this litigation?

4 BY MR. HALE:

5 Q. Right.

6 MR. MATIASIC: If you don't --

7 THE WITNESS: I was just thinking, I'm not
8 quite sure how to answer the question. On the one
9 hand, no, I did not. My understanding is there was a
10 request for education files, which were at the School
11 of Theology. Having been the former academic dean, I
12 turned the copies of the education files over to the
13 provincial secretary.

14 BY MR. HALE:

15 Q. Okay.

16 A. Inasmuch as I did that, I did it.

17 Q. Okay.

18 A. In terms of preparations of other documents,
19 no.

20 Q. Okay.

21 What about -- so you weren't involved in
22 the -- in checking the personnel file to make sure it
23 contained all correspondence to and from you related
24 to Father Cimmarrusti?

25 A. No, I was not.

1 Q. Okay.

2 Did anyone ever ask you to confirm that all
3 correspondence to and from you regarding Father
4 Cimmarrusti -- aside from your counsel -- were
5 included within the file?

6 A. No.

7 Q. Okay.

8 Do you know who in the Province was
9 responsible for assembling the personnel file for
10 Father Cimmarrusti for production in this litigation?

11 MR. MATIASIC: Lacks foundation.

12 THE WITNESS: I've not been involved in it and
13 no.

14 MR. HALE: Okay.

15 Q. And same questions regarding his confidential
16 file, did you have any role in assembling that to be
17 produced in this litigation?

18 A. No.

19 Q. Do you know who was involved in assembling
20 that to be produced in this litigation?

21 A. No, I do not.

22 Q. Okay.

23 Do you know who [REDACTED] is?

24 Are you --

25 MR. BROSNAHAN: Fine.

1 MR. HALE: Okay.

2 THE WITNESS: [REDACTED]?

3 BY MR. HALE:

4 Q. Yes.

5 A. The psychologist, the humanistic psychologist
6 famous in the '60s.

7 Q. How are you familiar with him?

8 A. I certainly have read his technique of
9 counseling, I'm familiar with him as a -- not major,
10 but certainly more than minor psychological counseling
11 theorist of the 20th century. I knew of his
12 techniques and participated in, you know, a session
13 demonstrating the techniques.

14 Q. Was -- was that session in the -- at the Serra
15 Retreat House?

16 A. No, it was not.

17 Q. Were you -- did you participate in any -- are
18 you familiar with the concept of sensitivity training?

19 A. Yes.

20 Q. You relate that to [REDACTED]?

21 A. I do, yes.

22 Q. Okay.

23 Did you ever -- have you ever participated in
24 sensitivity training?

25 A. We had -- I would need to be -- clarification.

1 I participated in sensitivity sessions --

2 Q. Okay.

3 A. -- in La Jolla, California, which was [REDACTED]
4 [REDACTED]' base of operations at the time, when I was a
5 student at San Luis Rey College.

6 Q. Did anyone else from the Province participate
7 in those with you?

8 MR. MATIASIC: That you were aware of.

9 THE WITNESS: I think at the time there were
10 several of my classmates who participated with me
11 in --

12 BY MR. HALE:

13 Q. What about any -- any faculty members from the
14 School of Theology in Santa Barbara?

15 A. I was at San Luis Rey College when this took
16 place.

17 Q. Okay.

18 Were you aware of any sensitivity training
19 being provided to St. Anthony's students at any time
20 or sensitivity sessions?

21 MR. MATIASIC: Overbroad as to time.

22 THE WITNESS: I don't recall.

23 MR. HALE: Okay.

24 Q. Have you ever had any discussions with anyone
25 regarding who -- well, have you ever had any

1 discussion with anyone who -- who blamed or assigned
2 fault to the sensitivity training for somehow
3 contributing to the scandal, the sex abuse scandal at
4 St. Anthony's?

5 MR. MATIASIC: Vague and ambiguous.

6 THE WITNESS: Well, no, not to the best of my
7 knowledge. I mean, it could be in passing comment or
8 something like that, no discussions.

9 BY MR. HALE:

10 Q. Do you recall who made -- do you recall a
11 passing comment to that effect, though?

12 A. I do not recall a passing comment. The
13 information that Chuck Coulson wrote about was fairly
14 well-known in many circles. I mean, I read the
15 article, there may have been a passing comment on the
16 article, that's about the extent of my knowledge.

17 Q. Have you ever had any conversations with
18 Mr. Coulson?

19 A. I have not.

20 Q. Do you -- do you agree with the position he
21 took regarding assigning blame to the scandal to the
22 sensitivity sessions or training, whatever you want to
23 call them?

24 MR. MATIASIC: Vague and ambiguous, lacks
25 foundation.

1 You can attempt to answer --

2 THE WITNESS: I've never discussed with --

3 MR. MATIASIC: You can attempt to answer that,
4 Father.

5 THE WITNESS: I have never discussed with
6 Charles Coulson the extent of his analysis of the
7 situation. What I know in terms of what he's written,
8 and I am a professional historian, I would say lacks
9 foundation and credibility and continues to make the
10 issue of his particular psychological theories the
11 center of the universe.

12 MR. HALE: Okay.

13 Q. So I -- I take it it's safe to say you would
14 disagree with his opinion with regard to the scandal
15 and the sensitivity training?

16 MR. MATIASIC: Same objections.

17 THE WITNESS: I would.

18 MR. HALE: Okay.

19 Q. Are you -- have you ever had any discussions
20 with anyone in the Province who agrees with his
21 opinion in that regard?

22 MR. MATIASIC: Same objections.

23 THE WITNESS: I've not had any discussions.

24 MR. HALE: Okay.

25 Q. I've been referring to childhood sexual abuse

1 throughout this deposition. Do you understand a child
2 of sexual abuse to mean the abuse of a child under the
3 age of 18?

4 A. Yes, that's a sexual abuse of a minor as I
5 understand it.

6 Q. Okay. Do you draw any distinction between the
7 sexual abuse of an adolescent versus a sexual abuse of
8 a pre-adolescent or younger child?

9 MR. MATIASIC: Calls for expert opinion and
10 potentially a legal -- legal conclusion and vague and
11 ambiguous.

12 MR. BROSNAHAN: And it's overbroad.

13 BY MR. HALE:

14 Q. You can answer.

15 MR. MATIASIC: You can attempt to answer that,
16 Father.

17 THE WITNESS: I draw no distinction as to the
18 legality or morality of the situation. There is
19 clearly a psychotherapeutic distinction which
20 professionals make between pedophilia and hebephilia,
21 depending on the age of the victim.

22 MR. HALE: Okay.

23 Q. Do you know who Pat McKinley is?

24 A. Pat McKinley is an attorney, I think, in Santa
25 Barbara.

1 Q. How -- how do you know Pat McKinley?

2 A. Only by hearsay, really.

3 Q. What have you heard about Pat McKinley?

4 A. He was district attorney or -- I think
5 district attorney, although I may be incorrect. I
6 mean, I did not -- I don't ever remember meeting him
7 or dealing with him in Santa Barbara.

8 Q. Do you recall hearing anyone in the Province
9 discuss Pat McKinley?

10 A. Pat McKinley knew the friars at St. Anthony's
11 Seminary and knows or knew the current provincial
12 minister, I know that.

13 Q. Okay. How do you -- what's the basis for your
14 knowledge in that regard? How do you know that? How
15 do you know the --

16 A. I think remarks were made to me that the
17 friars at the seminary knew Pat McKinley.

18 Q. Who -- who made those remarks to you?

19 A. Well, specifically it could have come from
20 different sources. The provincial minister currently,
21 Mel Jurisich, who was director of the seminary, I know
22 knew Pat McKinley.

23 Q. Okay.

24 MR. MATIASIC: Counsel, would this be a good
25 time?

1 MR. HALE: Sure.

2 MR. MATIASIC: Want to take a lunch break?

3 THE WITNESS: Actually, if it were up to me,
4 I'm kind of hungry.

5 MR. HALE: Whatever you want is fine with me.

6 MR. MATIASIC: Want to do an hour?

7 MR. HALE: Yeah, sure, that's fine. Unless
8 you want to do more. I rather not but --

9 MR. MATIASIC: No, won't be more.

10 VIDEOTAPE OPERATOR: Videotape deposition off
11 the record at 12:40 p.m.

12 (Recess.)

13 (Whereupon, a lunch recess was taken from
14 12:40 p.m. to 1:40 p.m.)

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1 AFTERNOON SESSION; 1:49 P.M.

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3 VIDEOTAPE OPERATOR: Videotape deposition,
4 back on record at 1:49 p.m.

5 EXAMINATION RESUMED

6 BY MR. HALE:

7 Q. Father, did you have any discussions with
8 Father [REDACTED] about Father Cimmarrusti during that
9 transfer process? I should say, regarding allegations
10 involving Father Cimmarrusti during that transfer
11 process, regarding between you and Father [REDACTED]?

12 MR. MATIASIC: Vague and ambiguous.

13 THE WITNESS: No, I don't think so because all
14 the information was already obtainable and well-known.

15 MR. HALE: Okay.

16 Q. Prior to you becoming the provincial minister,
17 were you aware of any claims related to sex abuse by
18 Franciscans against the Province?

19 MR. BROSNAHAN: Asked and answered.

20 MR. MATIASIC: And vague and ambiguous.

21 THE WITNESS: The first case of sexual abuse
22 of minors that I came across was Phil Wolfe and the
23 [REDACTED] family, so, no, I did not know that situation,
24 you know, before.

25 MR. HALE: Okay.

1 Q. And what -- was that 1989?

2 A. '88 when I became minister, and exactly when
3 the Phil Wolfe case first came up, I couldn't give you
4 the exact date. But it's --

5 Q. But it was after?

6 A. It was '88 or '89.

7 Q. But it was after you became minister?

8 A. Yes.

9 Q. All right. As provincial, are you responsible
10 for preparing the -- is there something call a Quin
11 Quennial report, Q-u-i-n, Q-u-e-n-n-i-a-l?

12 A. The religious --

13 MR. MATIASIC: Based upon his experience did
14 he prepare a Quin Quennial report?

15 MR. HALE: Yeah.

16 THE WITNESS: No, I did not.

17 BY MR. HALE:

18 Q. Do you know who in the Province is responsible
19 for preparing that?

20 A. None of us.

21 A Quin Quennial report is a technical term
22 referring to a report bishops give, religious spirits
23 do not give Quin Quennial.

24 Q. Do the Franciscans give the equivalent of --
25 of that, as something equivalent like that, sent to

1 the order in Rome?

2 A. The Friars Minor give us, I think, a
3 statistical survey of the Province every year to the
4 authorities, our Roman curia -- "our" Roman curia not
5 "the" Roman curia. And the report given to our -- our
6 Order of Friars Minor Roman curia after each chapter.

7 Q. Okay.

8 A. But they're not really equivalent. I -- to be
9 honest, I don't know what's in a Quin Quennial report.

10 Q. Okay.

11 From -- from 1979 until the closure of
12 St. Anthony's in '87, were you involved in any
13 decisions regarding curriculum at St. Anthony's?

14 A. No, I would not have been involved in that.

15 Q. Okay.

16 And same question, same time frame, were you
17 involved in any decisions regarding personnel
18 assignments at St. Anthony's?

19 MR. MATIASIC: Vague and ambiguous.

20 THE WITNESS: Well, I was on the provincial
21 council so there must have been some discussions with
22 respect to personnel placements there, but I don't
23 recall any.

24 MR. HALE: Okay.

25 Q. Do you recall there being any other decisions

1 you made in that 1979 to '87 time frame related to
2 St. Anthony's?

3 MR. MATIASIC: Vague and ambiguous.

4 THE WITNESS: St. Anthony's was closed. We
5 made the decision to close St. Anthony's while I was
6 on the provincial council.

7 MR. HALE: Okay.

8 THE WITNESS: As I suppose vicar provincial at
9 that time.

10 BY MR. HALE:

11 Q. Anything else prior to -- between '79 and '87,
12 any other decisions you recall making while you were
13 on the definitorium or as a vice provincial or vicar
14 provincial?

15 MR. MATIASIC: Same objections.

16 THE WITNESS: I do not recall.

17 MR. HALE: Okay.

18 Q. While you were on the definitorium, and before
19 the St. Anthony's closed, do you recall receiving
20 reports from -- strike that.

21 Yeah, while you were on the -- on the
22 definitorium or acting as vicar provincial from '79 to
23 '87, do you recall receiving reports from the
24 St. Anthony's rector regarding students?

25 MR. MATIASIC: Vague and ambiguous.

1 You're talking about written reports?

2 MR. HALE: (Nods head.)

3 THE WITNESS: No, I do not recall that.

4 MR. HALE: Okay.

5 Q. Do you remember reviewing any reports from
6 St. Anthony's rector during that time period?

7 A. No, I don't believe so.

8 Q. Do you recall receiving any oral reports from
9 St. Anthony's rector during that time period?

10 MR. MATIASIC: Vague and ambiguous.

11 THE WITNESS: With respect to students?

12 BY MR. HALE:

13 Q. Yes.

14 A. No.

15 Q. What about with respect to faculty?

16 A. No. I -- I don't recall any specific reports
17 from them --

18 Q. Okay.

19 A. -- or the rector.

20 Q. Was there any other Franciscan assigned to
21 St. Anthony's during that time period, other than the
22 rector, who would have been providing you either
23 written or oral reports regarding the school?

24 MR. MATIASIC: Lacks foundation and vague and
25 ambiguous.

1 THE WITNESS: I don't recall any specifically
2 directed to that.

3 BY MR. HALE:

4 Q. Were you ever -- sorry, go ahead.

5 A. No, I -- the major discussion that I recall of
6 that period was the closure of St. Anthony's.

7 Q. Okay. Were you ever aware of any written
8 policies or standards for the provincial regarding
9 acceptable methods of discipline at schools owned or
10 operated within the Province?

11 MR. MATIASIC: Lacks foundation.

12 And you're talking about policies within the
13 Province or --

14 MR. HALE: Uh-hmm.

15 THE WITNESS: I'm sorry, could you repeat the
16 question?

17 MR. HALE: Sure.

18 Q. Have you ever been aware of any written
19 policies or standards of some sort regarding
20 acceptable methods of discipline at schools that are
21 either owned or operated by Franciscans within the
22 Province?

23 MR. MATIASIC: Vague and ambiguous.

24 THE WITNESS: I don't recall any in the period
25 I was on the provincial council.

1 MR. HALE: Okay.

2 Q. Have you ever been aware of any at any time?

3 MR. MATIASIC: Over --

4 BY MR. HALE:

5 Q. Including when you were on and when you were
6 off the provincial council?

7 MR. MATIASIC: Overbroad, and same, vague and
8 ambiguous.

9 THE WITNESS: Well, in -- as a student I would
10 not have known --

11 MR. HALE: Right.

12 THE WITNESS: -- of that type of policy.

13 MR. HALE: Right.

14 THE WITNESS: And basically I was unconnected,
15 then, for a number of years. And when I got out of
16 office, I would not have been -- St. Anthony's was
17 closed.

18 BY MR. HALE:

19 Q. Would you have expected any -- any policies or
20 standards regarding discipline to have been formulated
21 by -- by the rector at the seminary?

22 MR. BROSNAHAN: You mean if there were one?

23 MR. HALE:

24 Q. If there were any, right.

25 MR. MATIASIC: And when you say when you

1 expect, when he was provincial minister or --

2 BY MR. HALE:

3 Q. At any time.

4 A. I'm not aware of the internal operations of
5 the St. Anthony's Seminary, what policies governed it
6 as an educational institution, how they were
7 formulated.

8 Q. Okay.

9 A. Or whatever.

10 Q. Okay.

11 Were you aware of any unwritten policies
12 regarding appropriate methods of discipline for
13 schools either owned or operated by Franciscans within
14 the Province?

15 MR. MATIASIC: Same objections.

16 THE WITNESS: I don't know of any unwritten
17 policies. Policies generally published and available
18 to all.

19 MR. HALE: Okay.

20 Q. As a member of the definitorium or as vicar
21 provincial or provincial -- well, not provincial,
22 obviously, but were you ever involved in evaluating
23 faculty at St. Anthony's Seminary, evaluating the
24 performance in other words?

25 A. No.

1 MR. MATIASIC: Vague and ambiguous.

2 THE WITNESS: No.

3 BY MR. HALE:

4 Q. Did you ever receive reports from faculty
5 evaluations from St. Anthony's?

6 MR. MATIASIC: Again, from '79 to --

7 MR. HALE: '87.

8 THE WITNESS: We may have received a report of
9 St. Anthony's, you know, accreditation report or
10 something like that, that was used during the process
11 of discerning whether or not we would keep it open.

12 MR. HALE: Okay.

13 Q. But other than that you don't recall anything?

14 A. I don't recall any.

15 Q. Okay.

16 Same time frame, were you ever -- '79 to '87,
17 were you ever aware of a policy at the seminary
18 requiring a faculty member to review any mail a
19 student was attempting to send out before it was sent?

20 A. I know of no such policy.

21 Q. Okay.

22 Have you ever heard of such a policy?

23 A. I have not.

24 Q. Have you ever heard of something called
25 faculty confrontation at St. Anthony's?

1 A. No.

2 Q. Okay.

3 Have you ever -- did you ever -- aside from
4 when you were a student, have you ever stayed
5 overnight at St. Anthony's?

6 A. If I could ask for a clarification.

7 Q. Sure.

8 A. As to the -- what, since -- since '64 when
9 I -- '-3 when I left.

10 Q. Yeah, exactly, since you graduated from --

11 A. Did I ever stay there overnight?

12 Q. Right.

13 A. I would imagine on one occasion or another,
14 I'm sure I did.

15 Q. Do you have a recollection of any other
16 occasions?

17 A. No. Other than sleeping in one of the guest
18 rooms, no.

19 Q. What about during the Board of Inquiry, did
20 you ever stay overnight at St. Anthony's? Of course
21 St. Anthony's was closed but did you ever stay on the
22 grounds of St. Anthony's, on the property?

23 A. When the Board of Inquiry met I always stayed
24 at the old mission.

25 Q. Okay.

1 Have you ever heard anyone say that they
2 walked in on Father Cimmarrusti with a student in his
3 room?

4 MR. MATIASIC: Vague and ambiguous.

5 THE WITNESS: During what time period?

6 BY MR. HALE:

7 Q. While he's on the faculty of St. Anthony's?

8 A. No. I mean, what time period for me as
9 provincial minister.

10 Q. At any time.

11 A. When I received reports on the Board of
12 Inquiry.

13 Q. Okay, that's a good point.

14 Has any Franciscan ever told you that they
15 walked in on Father Cimmarrusti with a student in his
16 office or living quarters? And again, that's --
17 that's the -- from -- from the time you left St.
18 Anthony's to the -- to the present?

19 MR. MATIASIC: Same objection, and overbroad
20 as to time.

21 THE WITNESS: Not that I recall.

22 MR. HALE: Okay.

23 Q. Have you ever heard that a Franciscan has said
24 that he observed a student in Father Cimmarrusti's
25 living quarters or office?

1 MR. MATIASIC: Same objection.

2 THE WITNESS: I have not heard that.

3 MR. HALE: Okay.

4 THE WITNESS: Information may have come
5 through the Board of Inquiry, but....

6 BY MR. HALE:

7 Q. That a -- that a Franciscan observed a student
8 in --

9 A. I don't know, you know.

10 Q. Do you recall hearing anything like that
11 during the Board of Inquiry?

12 MR. BROSNAHAN: Objection, vague and
13 ambiguous.

14 THE WITNESS: No, I don't. You know, I'm --
15 no, I don't.

16 BY MR. HALE:

17 Q. During your time on -- well, on the
18 definitorium as vicar provincial from '87 -- from '79
19 to '87, were there ever any discussions regarding a no
20 fraternization rule between faculty and students at
21 St. Anthony's?

22 MR. MATIASIC: Vague and ambiguous.

23 THE WITNESS: Not that I recall.

24 BY MR. HALE:

25 Q. Have you ever been aware of a written policy

1 regarding a no fraternization rule between faculty and
2 students at St. Anthony's?

3 MR. MATIASIC: Lacks foundation.

4 THE WITNESS: I didn't know what the internal
5 policies of the seminary.

6 BY MR. HALE:

7 Q. Okay.

8 Would you have expected, during your -- during
9 that time period, that any discussions regarding --
10 whether the setting of a no fraternization policy
11 would have been handled internally at the seminary as
12 opposed to by the definitorium or the provincial?

13 MR. MATIASIC: Lacks foundation, vague and
14 ambiguous.

15 THE WITNESS: I guess I would need
16 clarification, "no fraternization," what that means.

17 BY MR. HALE:

18 Q. For instance, a student spending time in a
19 faculty member's office or living quarters?

20 MR. MATIASIC: Same objections.

21 BY MR. HALE:

22 Q. Or a student spending a lot of time with a
23 faculty member, maybe there being hugging going on or
24 wrestling or, you know --

25 MR. MATIASIC: Just so I'm clear, Counsel,

1 you're wondering whether he would have an expectation
2 whether there be a specific rule about the
3 circumstances you just described?

4 MR. HALE: Right.

5 Q. But -- and whether that rule would be
6 formulated by the rector at the seminary or by the
7 definitorium and the provincial?

8 MR. MATIASIC: Same -- same objections, you
9 can --

10 MR. BROSNAHAN: Just for the record, lacks
11 foundation and compound.

12 THE WITNESS: I don't recall any discussion
13 that we had at a definitorium level with respect to
14 fraternization, the way you describe it.

15 MR. HALE: Okay.

16 Q. But when you've had an expectation as to where
17 such a rule, if it existed, would have been
18 formulated, i.e., in the hierarchy levels of the
19 Province or in the community at the seminary with --
20 with the rector kind of running the show?

21 MR. MATIASIC: Same objections.

22 THE WITNESS: Certainly my belief and
23 expectation would be that the people locally who were
24 responsible would be responsibly governing the
25 institution.

1 MR. HALE: Okay.

2 Q. Prior to the -- the Board of Inquiry, had you
3 ever heard any discussions of a program instituted by
4 Father Cimmarrusti to assess students' physical
5 maturity at St. Anthony's?

6 MR. MATIASIC: Vague and ambiguous.

7 THE WITNESS: No, I never heard anything with
8 respect to that prior to the board, I suppose.

9 BY MR. HALE:

10 Q. Did you hear discussions of that program
11 during the board, the board's investigation?

12 MR. MATIASIC: Same objection.

13 THE WITNESS: I was not involved in the
14 discussions of the Board of Inquiry, that was
15 confidential and independent, you know. And, you
16 know, it may have been mentioned in an internal or
17 they would write me and -- you know. But in terms of
18 discussing that, no, I --

19 BY MR. HALE:

20 Q. Do you recall any communications from the
21 board to you about a -- a program instituted by Father
22 Cimmarrusti to assess students' physical maturity?

23 MR. MATIASIC: Same objection.

24 THE WITNESS: I -- you know, when the board
25 interviewed students I received from the board a

1 summary, you know, of what they found. I certainly at
2 some point became aware of this, but I didn't under --
3 I don't know a program of assessment, that's --
4 carries too much weight for me.

5 I think it was mentioned that in the course of
6 examinations he may have done something, as the
7 victims saw it.

8 BY MR. HALE:

9 Q. Did you ever discuss with Father Harris
10 whether he had approved of some kind of program for
11 physical -- for assessing a student's physical
12 maturity?

13 A. No.

14 MR. MATIASIC: Lacks foundation, vague and
15 ambiguous.

16 THE WITNESS: No, I never did discuss with
17 Father Harris.

18 BY MR. HALE:

19 Q. Have you ever discussed with any of the
20 Franciscans or former Franciscans who were faculty
21 members at the seminary in the '60s, whether they had
22 any knowledge of this -- this program of assessing
23 students' physical maturity?

24 MR. MATIASIC: Same objections.

25 THE WITNESS: I have not discussed that with

1 any Franciscan Friars.

2 MR. HALE: Okay.

3 Q. But -- but do you -- as you sit here today, do
4 you have an understanding that there was some sort of
5 program instituted by Father Cimmarrusti to assess
6 students' physical maturity?

7 MR. MATIASIC: Same objections.

8 MR. BROSNAHAN: Also asked and answered.

9 THE WITNESS: It -- I think I'd need to
10 clarify the question.

11 MR. HALE: Sure.

12 THE WITNESS: I did not -- I mean, a program
13 of assessment? I -- I don't know what that means.

14 MR. HALE: Okay.

15 THE WITNESS: It sounds very formal, and that
16 sort of thing and in that sense I had no knowledge of
17 that.

18 MR. HALE: Okay.

19 THE WITNESS: The knowledge I came -- of
20 Father Cimmarrusti's alleged behavior on -- from the
21 point of view of the victims, came to me through the
22 Board of Inquiry.

23 MR. HALE: Okay.

24 Q. So if I strike the word "program" did you have
25 some knowledge of Father Cimmarrusti attempting to

1 assess a student's physical maturity?

2 MR. MATIASIC: Same objections.

3 THE WITNESS: The -- what I recall is the
4 board mentioned to me that some students, in the
5 course of some type of examination there had been
6 inappropriate misconduct, and that's what they
7 reported to me.

8 BY MR. HALE:

9 Q. Did you ever --

10 A. That's what I knew.

11 Q. Did you ever try and clarify what kind of
12 examination it was?

13 A. Other than the clarifications that came from
14 the report from the Board of Inquiry, no, I did not.

15 Q. Did you ever go to Father Cimmarrusti and ask
16 him if there was some sort of examination going on
17 while he was on the faculty?

18 MR. MATIASIC: Vague and ambiguous.

19 THE WITNESS: No. I removed Father
20 Cimmarrusti from ministry.

21 BY MR. HALE:

22 Q. Were the redemptorists on -- was there a
23 redemptorist at St. Anthony's while you were a student
24 there, a redemptorist priest?

25 MR. MATIASIC: If you know.

1 THE WITNESS: '59 to '63 I don't recall any
2 redemptorist being on the faculty.

3 MR. HALE: Okay.

4 Q. Aside from any discussions you may have had
5 with Father Van Handel, and aside from your counsel,
6 have you ever heard from another Franciscan that while
7 attending St. Anthony's Seminary they were treated
8 inappropriately by a Franciscan?

9 MR. MATIASIC: Vague and ambiguous.

10 THE WITNESS: Could you repeat the question,
11 please.

12 MR. HALE: Sure.

13 Q. Actually I'll -- I'll make it more specific.

14 While you were attending St. Anthony's
15 Seminary, was there ever any instances where you felt
16 you were treated inappropriately by another -- by a
17 Franciscan?

18 MR. MATIASIC: Vague and ambiguous.

19 THE WITNESS: I did not feel that I was
20 treated inappropriately at all.

21 MR. HALE: Okay.

22 Q. Have you ever heard from another Franciscan
23 that a statement to the effect that while they were
24 attending St. Anthony's they believed they were
25 treated inappropriately by another Franciscan?

1 MR. MATIASIC: Same objection.

2 THE WITNESS: Irrespective of the information
3 with respect to Robert Van Handel which later became
4 public, no, I have not.

5 MR. HALE: Okay.

6 Q. What about while you're at the seminary, did
7 any of your fellow seminarians ever tell you they felt
8 they were being treated inappropriately by a
9 Franciscan?

10 MR. MATIASIC: Same objection.

11 THE WITNESS: I never heard anything to that
12 effect.

13 MR. HALE: Okay.

14 Q. Did you ever observe any conduct while you
15 were at the seminary that you felt -- by a Franciscan
16 that you felt was inappropriate?

17 MR. MATIASIC: Same objection.

18 THE WITNESS: I did not observe anything.

19 MR. HALE: Okay.

20 Q. Have you ever heard from another -- well,
21 strike that.

22 While you were San Luis Rey did you ever feel
23 you were treated inappropriately by a Franciscan?

24 MR. MATIASIC: Same objection.

25 THE WITNESS: So that was sometime that I was

1 there.

2 No, no, I never felt I was inappropriately
3 treated.

4 BY MR. HALE:

5 Q. Has any Franciscan ever told you that they
6 felt they were treated inappropriately by a Franciscan
7 at San Luis Rey, in other words, while you were a
8 student there?

9 MR. MATIASIC: Same objection.

10 THE WITNESS: While I was a student there, no
11 friar ever told me that.

12 BY MR. HALE:

13 Q. Well, at any time as a Franciscan, either
14 current or former, ever come to you and said while
15 they were attending at San Luis Rey they believe a
16 Franciscan treated them inappropriately?

17 MR. MATIASIC: Same objection.

18 THE WITNESS: So you're asking me -- if I can
19 clarify the question?

20 MR. HALE: Sure.

21 THE WITNESS: From the time, this would be
22 approximately '65 to the present, I guess is what
23 you're asking, has any friar said that they were
24 treated inappropriately?

25 BY MR. HALE:

1 Q. Come to you and said that, yeah.

2 A. Come to me and said that?

3 Yes.

4 Q. Okay.

5 And what -- who -- how many times has that
6 happened?

7 MR. MATIASIC: Someone coming and telling him
8 that?

9 MR. HALE: Right.

10 THE WITNESS: Well, yeah. I mean, if you -- I
11 would say in the course of a conversation someone
12 mentioned that to me once.

13 MR. HALE: Okay.

14 THE WITNESS: I mean, it wasn't a -- it was
15 neither a formal complaint nor anything else.

16 MR. HALE: Right, right.

17 Q. Well, what did they tell you had happened to
18 them?

19 A. They -- they received a shot, maybe, I guess.

20 Q. Was it related to Father Lyons?

21 A. Yes.

22 Q. Okay.

23 And did they tell you how -- what about them
24 receiving a shot from Father Lyons that they felt was
25 inappropriate?

1 A. Well, why would he be doing -- giving a shot.

2 Q. What exactly did they describe to you about --
3 about the shot?

4 A. Oh, they just described it, you know.

5 Q. Did Father Lyons require them to disrobe?

6 A. No, I think they -- no, I don't know how they
7 specifically described it, whether it was in the arm
8 or the buttocks.

9 Q. Okay.

10 A. So I couldn't answer that explicitly.

11 Q. Was that the first time you'd ever heard of
12 misconduct alleged involving Father Lyons?

13 MR. MATIASIC: Vague and ambiguous.

14 THE WITNESS: I think it probably was,
15 specifically, yeah.

16 MR. HALE: Okay.

17 Q. And when was this conduct alleged to have
18 taken place, approximately? We're talking in the '50s
19 or --

20 MR. MATIASIC: And again, Counsel, I think --
21 frankly, I think we're getting to the whole area that
22 you and I have a running disagreement on in terms of
23 the scope of permissible questioning.

24 MR. HALE: This is a little bit different,
25 though, because we got testimony from Father [REDACTED] that

1 Father Lyons has spanked and asked students to strip
2 naked, despite the fact he had no medical training.
3 Obviously that parallels with what Father Cimmarrusti
4 was doing.

5 So if this has been going on within the Province
6 previously with Father Cimmarrusti and it's been
7 allowed to be going on, I think that's at least
8 corroborative evidence of a pattern and practice of
9 allowing that kind of conduct to occur.

10 MR. MATIASIC: Well, I don't think so. I
11 think each perpetrator should be dealt with
12 separately. But with respect to -- it's one thing if
13 you ask [REDACTED] things based upon his personal
14 experience being there. You're asking him what --

15 MR. HALE: No, no.

16 MR. MATIASIC: What he was told regarding
17 Father Lyons' conduct, I think that's outside the
18 permissible scope of questions.

19 MR. HALE: Father [REDACTED] didn't testify what he
20 observed, he testified just like what Father [REDACTED]
21 is testifying as to what someone else had told him had
22 happened, it's the same context.

23 MR. MATIASIC: Well, like I said, I think
24 we're -- we're in the realm here of -- of outside the
25 scope of permissible questioning in Clergy III.

1 MR. HALE: Okay. I mean, this -- the behavior
2 by this man, I've never come across in this Province
3 behavior that so closely absolutely paralleled what
4 Father Cimmarrusti was doing at St. Anthony's
5 Seminary. I think it's highly relevant that this has
6 happened before and it happened again and it's the
7 same pattern of conduct. And it was also by a
8 Franciscan at San Luis Rey who was, from my
9 understanding, in an equivalent position to Father
10 Cimmarrusti's position as the prefect of discipline at
11 St. Anthony's. There's so many parallels there I
12 think it's inappropriate to stop this line of
13 questioning.

14 MR. MATIASIC: Without getting into any long
15 colloquies on the record here, if you want to ask him
16 when he was told about this, you can ask -- you can
17 ask him that question. But I think anything else
18 regarding the specifics is outside the permissible
19 scope in Clergy III.

20 BY MR. HALE:

21 Q. So when were you told about this, Father?

22 A. Well, it would have been after I -- I -- I
23 would imagine -- in fact, I think it was after the
24 Board of Inquiry was made public.

25 Q. Okay. Did you have an understanding of when

1 this took place?

2 A. No, not really. No specific, you know -- by
3 time you mean?

4 Q. Right, right.

5 A. It must have been when the principals were
6 there, I don't know.

7 Q. In other words, when Father Lyons was on the
8 faculty at San Luis Rey?

9 A. That was certainly my understanding of the
10 conversation.

11 Q. Okay.

12 Have you ever heard any other allegations of
13 misconduct by Father Lyons, other than that one
14 instance?

15 MR. MATIASIC: Father, don't answer that
16 question.

17 Tim, this is -- Father Lyons questions are outside
18 the scope of -- of discovery here. There's -- to
19 my -- to my knowledge there's no pending lawsuit
20 involving Father Lyons, and so how that would relate
21 to Clergy III is beyond me.

22 MR. HALE: But again, unlike the other
23 perpetrators we're in disagreement over, as far as
24 whether it's discoverable, this perpetrator did engage
25 in a pattern of conduct which is identical to what

1 Father Cimmarrusti did. It's discoverable. I think
2 this is improper to instruct not to answer on these
3 questions.

4 If ever, I mean, essentially with regards to
5 this -- this man's conduct, it so closely paralleled
6 what Father Cimmarrusti did, maybe -- and we haven't
7 deposed Father Cimmarrusti yet and maybe he influenced
8 Father Cimmarrusti to engage in similar conduct, maybe
9 this was done with the Province's knowledge and they
10 allowed what happened with Father Cimmarrusti to go on
11 because it already happened before. I don't know.

12 But I think I'm entitled to discover what exactly
13 was known by the Province about what Father Lyons was
14 doing.

15 MR. MATIASIC: Well, again, without these long
16 colloquies on the record, if you want to as
17 Cimmarrusti those questions that may be a different
18 story. But I allowed you to ask him when he heard of
19 this account, and he said it was after the Board of
20 Inquiry. Clearly that's not relevant, then, to any
21 issues that are germane to this lawsuit here, in
22 Clergy III.

23 MR. HALE: When he learned about it doesn't
24 matter, the point is, it was ongoing before Father
25 Cimmarrusti committed the abuse.

1 MR. MATIASIC: I think we'll have to agree to
2 disagree that it does, in fact, matter when this
3 witness learned about it.

4 MR. HALE: All right.

5 Just so I'm clear, the instruction is based on it
6 being not relevant to Clergy III, that's the position
7 you're taking?

8 MR. MATIASIC: Right.

9 MR. HALE: Okay.

10 THE WITNESS: Well --

11 MR. MATIASIC: And based upon the fact that,
12 you know, the only relevant knowledge would be when --
13 arguably when the Province learned about that. And he
14 clearly indicated that he was first told about this
15 after the Board of Inquiry. So to continue to ask him
16 questions about information he obtained after the
17 Board of Inquiry, I don't see how that's even remotely
18 relevant to the issue at hand in Clergy III.

19 MR. HALE: Well, because if a description of
20 the events that took place involving Father Lyons
21 involved some kind of constructive notice to the
22 Province, that those events were taking place, I think
23 it's highly relevant. That's -- that's what I'm
24 trying to get at.

25 MR. MATIASIC: If -- if you were asking

1 questions regarding constructive notice vis-a-vis
2 Cimmarrusti, that would be a different story, but
3 constructive notice vis-a-vis Lyons is not relevant.

4 MR. HALE: Well, again, the conduct is so
5 identical, I think it is. But we'll let the court
6 sort that one out.

7 Q. Did you ever attend any functions or retreats
8 at St. Anthony's in the summertime when school was
9 out?

10 A. What -- what time period are you referring to?

11 Q. From the time you graduated to -- to the time
12 the school closed.

13 A. Did I ever attend any retreats?

14 Q. Right.

15 A. At St. Anthony's Seminary?

16 I don't recall that I did.

17 Q. Okay.

18 Or any other kind of function where -- where
19 you would spend the night at the -- at the seminary?

20 MR. MATIASIC: Vague and ambiguous.

21 THE WITNESS: As to spending nights there I
22 think I already answered that. But, you know, we had
23 a provincial chapter there, I would have attended
24 that. I probably would have stayed at the old mission
25 at the time.

1 MR. HALE: Okay.

2 Q. Have you ever heard any reports -- strike
3 that.

4 Have you ever heard any reports of harassment
5 by one St. Anthony's student against another?

6 MR. MATIASIC: Vague and ambiguous.

7 Is this at any time, including when he was a
8 student?

9 MR. HALE: Yeah, yeah.

10 MR. MATIASIC: Overbroad.

11 THE WITNESS: Not that I recall.

12 MR. HALE: Okay.

13 Q. Have you ever been aware of any reports of
14 inappropriate sexual behavior by one student against
15 another at St. Anthony's?

16 MR. MATIASIC: Same objection.

17 THE WITNESS: I have a vague recollection that
18 something to that effect surfaced at the Board of
19 Inquiry report, but I could not testify to that
20 exactness.

21 MR. HALE: Okay.

22 Q. When was the last time you spoke with Father
23 [REDACTED]? And I realize he's incarcerated.

24 A. He's incarcerated now, so I don't know,
25 sometime in the fall --

1 Q. Okay.

2 A. -- you know.

3 Q. Do you know when he's going to be released?

4 A. I do not.

5 Q. Do you have any understanding when he'll
6 return to California?

7 A. No, I don't.

8 Q. Okay.

9 To your knowledge have there ever been any
10 circumstances where it would be appropriate for a
11 Franciscan at St. Anthony's to order a child or a
12 student to strip naked and then examine that student's
13 genitals?

14 MR. MATIASIC: Vague and ambiguous, lacks
15 foundation, incomplete hypothetical.

16 THE WITNESS: To my knowledge -- just to
17 repeat the question: To my knowledge do I know of
18 whether that would have been appropriate at any time?

19 BY MR. HALE:

20 Q. At any time, to your knowledge?

21 A. No, I don't.

22 MR. MATIASIC: Same objections.

23 Q. Can you think -- are there any circumstances
24 where it would be appropriate for a -- a Franciscan to
25 give a seminarian a massage?

1 MR. MATIASIC: Same objections.

2 THE WITNESS: Well, he could be a sporting
3 accident or something like that.

4 MR. HALE: Okay.

5 THE WITNESS: You know. So it would depend
6 certainly on circumstances and situation and need.

7 MR. HALE: Okay.

8 THE WITNESS: But there's an inappropriate and
9 appropriate.

10 BY MR. HALE:

11 Q. Any circumstance outside of the treating
12 athletic injury where it would be appropriate to give
13 a student a massage?

14 MR. MATIASIC: Same objections, it calls for
15 speculation.

16 THE WITNESS: Yeah, I -- I -- there are many
17 different definitions of massage, so obviously some
18 would be appropriate and others inappropriate.

19 MR. HALE: Okay.

20 Q. Can you think of any circumstances where it
21 would have been appropriate for a faculty member or
22 for a Franciscan to have his hands on a seminarian's
23 thighs?

24 MR. MATIASIC: Lacks foundation, vague and
25 ambiguous, incomplete hypothetical.

1 THE WITNESS: It certainly would have been
2 appropriate if they were hurt.

3 MR. HALE: Okay.

4 Q. What if the Franciscan had no medical
5 training, would it still have been appropriate then?

6 MR. MATIASIC: Same objections.

7 THE WITNESS: Again, I think it depends on
8 circumstances and situation, yes.

9 MR. HALE: Okay.

10 THE WITNESS: Certainly an intention.

11 BY MR. HALE:

12 Q. Did you ever have your temperature taken while
13 you were in the seminary?

14 A. Well, I mentioned that I was there for the flu
15 and in the infirmary they took my temperature,
16 certainly.

17 Q. Did they -- did they take your temperature
18 orally or rectally?

19 A. My temperature was taken orally.

20 Q. Were you ever aware of any -- any seminarians
21 having their temperature taken rectally?

22 MR. MATIASIC: When he was at the seminary?

23 BY MR. HALE:

24 Q. At any time.

25 MR. MATIASIC: Overbroad as to time.

1 THE WITNESS: No, I wasn't.

2 BY MR. HALE:

3 Q. Can you think of any circumstance where it
4 would be appropriate for a Franciscan to take a
5 seminarian's temperature rectally?

6 MR. MATIASIC: Vague and ambiguous, lacks
7 foundation, it's an incomplete hypothetical.

8 THE WITNESS: I have no idea.

9 BY MR. HALE:

10 Q. Was it -- while you were at the seminary was
11 it common or uncommon to see a -- a -- a priest
12 hugging a student?

13 MR. MATIASIC: Same objection.

14 THE WITNESS: I don't recall any incidences of
15 that nature, one way or the other.

16 BY MR. HALE:

17 Q. Do you recall ever seeing a priest hug a
18 student at the seminary while you -- while you were a
19 student?

20 MR. MATIASIC: Well, asked and answered.

21 THE WITNESS: I don't recall.

22 MR. HALE: Okay. Let's take a little
23 five-minute break real quick.

24 VIDEOTAPE OPERATOR: Videotape deposition, off
25 record at 2:26 p.m.

1 (Recess.)

2 VIDEOTAPE OPERATOR: Videotape deposition,
3 back on record at 2:39 p.m.

4 MR. HALE: Father, I want to show you some
5 documents and see if you recognize these. I'll give
6 it to your counsel first. Let's mark this as Exhibit
7 1.

8 (Plaintiffs' Exhibit No. 1 was marked for
9 identification.)

10 MR. HALE: Let's go off the record while this
11 is being reviewed.

12 VIDEOTAPE OPERATOR: Videotape deposition, off
13 record at 2:40 p.m.

14 (Recess.)

15 VIDEOTAPE OPERATOR: Videotape deposition,
16 back on record at 2:43 p.m.

17 MR. HALE: All right.

18 For the record, this is a five-page document Bates
19 stamped 229 through 233, titled "Policies and
20 Procedures in the Santa Barbara Province on Reporting
21 Known or Suspected Instances of Child -- Child Abuse."

22 Q. Father, have you ever seen this document
23 before?

24 A. Oh, yes, yeah.

25 Q. Actually, how do you recognize this document?

1 MR. MATIASIC: Counsel, before you continue
2 asking questions about it --

3 MR. HALE: Sure.

4 MR. MATIASIC: -- you indicated it was Bates
5 stamped. Can you represent to the witness where this
6 was obtained from?

7 MR. HALE: Sure. This was produced in the
8 1999-2000 [REDACTED] litigation.

9 Q. So anyways, how -- how do you recognize this
10 document?

11 A. Well, I think it's late 1980s we generated a
12 couple of documents on prior misconduct, one of them
13 was a sexual abuse document.

14 Q. When you say "we" are you talking about the
15 definitorium?

16 A. From the council, the original council.

17 Q. Okay. What was your role, if any, in drafting
18 this?

19 A. I don't recall if I had any role in drafting
20 it. It would have been minimal.

21 Q. Okay.

22 But did you review it and approve it before it
23 was finalized?

24 A. For a policy of this kind it would be approved
25 by the provincial council. I was vicar provincial at

1 the time.

2 Q. So that's a "yes" then?

3 A. Well, I don't recall it.

4 MR. MATIASIC: Having --

5 BY MR. HALE:

6 Q. But -- but in light of your duties at that
7 time, it would not have been approved after you
8 approving it; is that a fair statement?

9 MR. MATIASIC: Well, he already testified to
10 that, Counsel. It comes under the umbrella of asked
11 and answered.

12 Go ahead, you can tell him again.

13 BY MR. HALE:

14 Q. I just want to be clear, this is something
15 that you did approve?

16 A. I was on the --

17 MR. MATIASIC: Wait a minute, hold on. That
18 misstates his testimony, Counsel. He said something
19 of this nature would have been approved by the
20 provincial council which he was on as vicar provincial
21 at the time.

22 THE WITNESS: Yes.

23 BY MR. HALE:

24 Q. On page 2, Bates stamped 230, the third
25 paragraph down says "Employees who are 'support staff

1 or maintenance staff and who do not work with,
2 observe, or have knowledge of children as part of
3 their official duties' are not included in this
4 statute [California Penal Code 11166.5(a) for the most
5 part, then, cooks, maintenance people, gardeners,
6 et cetera, are not affected."

7 With regards to that paragraph and
8 notwithstanding the law, the Penal Code section, did
9 the Province have any expectation that such
10 individuals would report allegations of -- or
11 suspicions of sexual abuse to anyone?

12 MR. MATIASIC: Calls for legal conclusion, it
13 lacks foundation that there were any reports of sexual
14 abuse at the time, and it's vague and ambiguous.

15 BY MR. HALE:

16 Q. I'm not trying to say there were, but I'm just
17 saying, if one of these people identified in this
18 paragraph were to develop some kind of suspicion of a
19 child abuse was taking place, at that time did the
20 Province have any expectation that these individuals
21 in this -- this third paragraph would report that
22 abuse to -- to anyone?

23 MR. MATIASIC: Same objection, but add
24 incomplete hypothetical.

25 And, Counsel, when you say at that time, what are

1 you referring to?

2 MR. HALE: Sure. If you look at the -- the
3 very last page or, I'm sorry, the fourth page, it says
4 the document was drafted in April 1988.

5 MR. MATIASIC: Same -- incorporate the same
6 objections.

7 THE WITNESS: I don't recall any discussions
8 of that nature, so I don't know one way or the other.

9 BY MR. HALE:

10 Q. And then on the -- on the Bates stamped page
11 231 the very first sentence says: "Even with the
12 above description of 'reasonable suspicion' of child
13 abuse, some doubts might remain. Advice should be
14 sought in such matters from people who have experience
15 in this regard."

16 Do you have an understanding of who such
17 people advice should be sought from?

18 MR. MATIASIC: Vague and ambiguous.

19 THE WITNESS: At the time did I think of this,
20 is that what you're asking?

21 MR. HALE: Sure.

22 THE WITNESS: I don't -- I don't recall a
23 discussion of that particular issue at the time. I
24 think that we would have or I would have understood it
25 to be professional people.

1 BY MR. HALE:

2 Q. By professional you mean mental health
3 practitioners or law enforcement or --

4 A. Someone of that nature that was familiar
5 with -- with what the statute meant and how to apply
6 it.

7 Q. Okay. Were you aware of this policy, this
8 document being communicated to members of the
9 Province?

10 A. I don't recall at the moment. I don't recall,
11 you know, this particular document in its
12 communication paragrination or -- you know, I just
13 don't recall.

14 Q. Okay.

15 Would you have expected, though, that this was
16 somehow disseminated to the members of the Province?

17 A. General policies would be of this kind.

18 Q. Okay. Was there a written policy in effect
19 for the Province regarding reporting instances of
20 child abuse that preceded this document?

21 MR. MATIASIC: That you're aware of.

22 THE WITNESS: I'm not aware of any of this
23 nature, that preceded this document.

24 BY MR. HALE:

25 Q. Between '79 and -- and April of '88, were you

1 a part of any other discussions regarding the
2 Province's policies regarding reporting child abuse?

3 MR. MATIASIC: Vague and ambiguous and
4 overbroad.

5 THE WITNESS: I don't recall that I was. You
6 know, a discussion on the council of this.

7 MR. HALE: Okay.

8 Q. What about before this document was issued, do
9 you recall ever receiving any kind of communication
10 from the Province setting forth policies and
11 procedures regarding reporting child abuse? And I'm
12 talking about from the time you became a Franciscan up
13 until this document was issued.

14 MR. MATIASIC: Counsel, I think he testified
15 that he didn't know specifically when it was
16 disseminated so you're talking about 1988, the date on
17 the document or --

18 MR. HALE: Let me back up for a second.

19 Q. Does the -- does the date on the back of the
20 document refresh your recollection as to when -- when
21 this policy was discussed and implemented?

22 A. I recall that documents affecting misconduct
23 began to come into -- generally into the public forum
24 and policies were adopted in the late 1980s.

25 Q. Okay.

1 A. This date strikes me as correct.

2 Q. Consistent?

3 A. In response to the state law.

4 Q. And so my question is, prior to this document
5 being created and subsequent to you becoming a member
6 of the Province, do you recall ever receiving any
7 other written policies or procedures from the Province
8 regarding reporting child abuse?

9 A. I do not recall.

10 Q. Okay.

11 All right. I'm done with that document. If
12 you could just pass that over to the court reporter.

13 A. Okay.

14 MR. HALE: The next document I want to ask you
15 questions about is actually contained within the Board
16 of Inquiry report, so I'm going to give you a copy of
17 that and give your counsel a copy of that.

18 And let's go off the record while you guys make
19 sure it's what I'm saying it is.

20 MR. BROSNAHAN: I'm not sure why we're going
21 off the record. If it's to save money on the
22 videotape, I understand that. If it's based on some
23 view that that doesn't count towards the length of a
24 deposition, I think we would disagree.

25 MR. MATIASIC: Absolutely. Well -- and also,

1 I mean, how far are we supposed to read into it?

2 MR. HALE: Well, I can tell you what I want to
3 question him about, actually, appendix V1 and V2.

4 MR. MATIASIC: Let's just take a look real
5 quick.

6 THE WITNESS: To appendix?

7 MR. HALE: Yeah.

8 THE WITNESS: Okay, and any particular one?

9 MR. MATIASIC: Hold on, we're not -- we're not
10 back on the record.

11 THE WITNESS: Oh.

12 VIDEOTAPE OPERATOR: I was rolling.

13 MR. MATIASIC: Oh.

14 BY MR. HALE:

15 Q. Father, did you find the appendix?

16 A. I have the appendix, I guess I don't know
17 which part.

18 Q. What I'm looking at is V1, appendix V1.

19 MR. BROSNAHAN: It's the last few pages,
20 right?

21 MR. HALE: Right.

22 MR. BROSNAHAN: Right.

23 THE WITNESS: V1.

24 MR. BROSNAHAN: Way at the back, not all the
25 pages have numbers.

1 THE WITNESS: Oh, 1, V1.

2 Uh-hmm.

3 BY MR. HALE:

4 Q. Do you recognize that this is a -- for the
5 record, this is a two-page document that's titled
6 "Operating Policies and Procedures in the Santa
7 Barbara Province for Friar Conduct," and on page 2
8 it's dated April 22nd, 1988.

9 Do you recognize this document?

10 A. Yes.

11 Q. How do you recognize this document?

12 A. The development of a misconduct policy,
13 general misconduct policy at the almost simultaneous,
14 I think, minor abuse policy.

15 Q. You mean the Exhibit 1 we discussed?

16 A. Exhibit 1.

17 Q. Okay.

18 Were you involved in drafting this document?

19 A. I do not believe I was. Not on a subcommittee
20 or something like that. Tangentially, I don't recall.

21 Q. Okay.

22 Do you know who was involved in drafting the
23 document?

24 A. No, I don't. I think the -- that would have
25 been the previous provincial minister. You could ask

1 him specifically.

2 Q. And would this document, in order for it to be
3 approved, would it require your approval as the -- as
4 the vicar provincial?

5 A. As a policy statement of the Province it would
6 have been reviewed by the provincial council, and I
7 was vicar provincial, so --

8 Q. Okay.

9 In the second paragraph states, "In recent
10 times there have arisen not infrequently accusations
11 against members of religious communities, and at times
12 members themselves have made self-accusations
13 regarding misconduct in their ministry or even in
14 their general behavior."

15 A. Uh-hmm.

16 Q. Did you approve of that -- that statement with
17 regards to its application with the Province? Was
18 that true of the Province, in other words?

19 MR. MATIASIC: For one, I'm going to object
20 that the document speaks for itself, and, two, he
21 indicated that he specifically was serving as the
22 vicar provincial at the time, so this type of policy
23 would have gone through the -- the provincial council
24 at the time.

25 MR. BROSNAHAN: I'll also object, the question

1 is compound and I'd like to have it read back, please.

2 MR. HALE: Sure.

3 (The Reporter read back as follows:

4 "Question: Did you approve of that -- that
5 statement with regards to its application with the
6 Province? Was that true of the Province, in other
7 words?")

8 MR. BROSNAHAN: Vague and ambiguous.

9 MR. MATIASIC: Right. Counsel, I think that's
10 almost impossible to -- to answer.

11 Which -- which part of the paragraph? There's
12 several different sentences, are you asking him about?

13 MR. HALE: In other words, it says that there
14 have been infrequently accusations against members of
15 religious communities.

16 Q. At the time this document was prepared, were
17 you aware of any accusations against the -- the
18 Province of St. Barbara that led to the inclusion of
19 this paragraph in this statement?

20 MR. MATIASIC: Incorporate the same objections
21 as before.

22 THE WITNESS: My recognition at the time was
23 that in the late 1980s, particularly after the change
24 in the California statute, and the revelations of
25 sexual abuse of minors in Louisiana, that there was a

1 concerted effort, certainly on the part of us, many
2 religious leaders, to have policies in place in the
3 various entities. Our Province felt we wanted to do
4 this and that such a policy would be important.

5 MR. HALE: Okay.

6 Q. Going down to Roman numeral II, paragraph 1,
7 there's a statement at the last sentence says, "If for
8 significant reasons he remains in the same location,
9 appropriate guarantees must be made that the suspected
10 behavior cannot continue."

11 What was your understanding at the time
12 regarding what would constitute an appropriate
13 guarantee?

14 MR. MATIASIC: Same objections as before.

15 MR. BROSNAHAN: Objection, overbroad.

16 THE WITNESS: I'm not sure that we developed,
17 you know, great applications at the time. They would
18 have developed over a period of time as cases arose
19 and we understood the situation more directly.

20 MR. HALE: Okay.

21 Q. What about what -- would an appropriate
22 guarantee include warning any community into which the
23 accused friar was in residence?

24 MR. MATIASIC: Same -- same objections, also
25 lacks foundation, it's an incomplete hypothetical.

1 THE WITNESS: An appropriate -- appropriate
2 limitation would have been no counseling activity.

3 MR. HALE: Okay.

4 Q. But would it have included warning the
5 community, though?

6 MR. MATIASIC: Same objections.

7 THE WITNESS: At that time I wasn't involved
8 in the implementing of the policy, so I don't know
9 whether it did or not.

10 MR. HALE: Okay.

11 Q. What about now, as we sit here today, would
12 you -- do you believe that an appropriate guarantee
13 would now include warning a community where a
14 Franciscan who has been accused of child sexual abuse
15 is in residence?

16 MR. MATIASIC: Vague and ambiguous, lacks
17 foundation, incomplete hypothetical, calls for
18 speculation.

19 THE WITNESS: I think the Province policies
20 speak for themselves in that area, they're pretty
21 clear and direct.

22 BY MR. HALE:

23 Q. Is this the current Province policy?

24 A. No, this has been superseded by subsequent
25 policies.

1 Q. Does the current Province policy require
2 notification to -- warnings to the community into
3 which a -- a -- a Franciscan accused of child and
4 sexual abuse is in residence?

5 MR. MATIASIC: Same objections.

6 THE WITNESS: Current Province policy has, I
7 think, significant areas of monitoring that would
8 follow the friar.

9 MR. HALE: Okay.

10 Q. Is there anything in current Province policy
11 that references warning a community into which a friar
12 accused of child and sexual abuse is either in
13 residence or is performing his ministry?

14 MR. MATIASIC: Same objections and asked and
15 answered.

16 MR. BROSNAHAN: I'll object that it's also
17 compound and overbroad.

18 It also assumes that the friar is still performing
19 his ministry.

20 MR. HALE: I can break that down.

21 Q. Is there any -- any written policy in the
22 Province that you're aware of that requires a warning
23 be issued to a community into which a Franciscan
24 accused of child or sexual abuse is in residence?

25 MR. MATIASIC: Vague and ambiguous, lacks

1 foundation, it's an incomplete hypothetical.

2 You can attempt to answer it, Father.

3 THE WITNESS: I'd have to review the current
4 policies. I can see neither yes or no. I mean, you
5 know, our current policies are quite thorough.

6 BY MR. HALE:

7 Q. So I take it your answer right now is you
8 don't know, is that a fair statement?

9 A. You're asking me for a specific content
10 statement?

11 Q. Right.

12 A. I think I have to consult the Province
13 policies.

14 Q. Okay.

15 If the policy -- if the policies do not
16 include a warning requirement, do you think they
17 should?

18 MR. MATIASIC: Well, vague and ambiguous,
19 lacks foundation.

20 THE WITNESS: I think I -- the -- the
21 intensive program of both education and policy
22 revision, re-revision and publication that the
23 Province has gone through, I trust that process, and I
24 trust what's in our policies, and the people who are
25 making them.

1 BY MR. HALE:

2 Q. Do you -- do you think it's appropriate --
3 well, in your opinion is it appropriate for families
4 in communities where a Franciscan accused is --
5 accused of child sexual abuse is in residence, for
6 them to -- to trust those policies as well, that you
7 just referenced?

8 MR. MATIASIC: Vague and ambiguous, lacks
9 foundation, incomplete hypothetical, and it calls for
10 speculation.

11 You can attempt to answer, Father.

12 THE WITNESS: Families that are in residence?

13 BY MR. HALE:

14 Q. Families in the communities where a Franciscan
15 accused of child or sexual abuse is in residence?

16 MR. MATIASIC: Same objections.

17 THE WITNESS: Can trust the policies we have
18 in place?

19 BY MR. HALE:

20 Q. No. Should they have to -- should they be
21 expected to rely on those policies as well?

22 MR. MATIASIC: Same objections.

23 THE WITNESS: I think they can rely on them,
24 yes.

25 MR. HALE: Okay.

1 Q. Going down to Roman numeral II on the first
2 page, paragraph 5, it says "If there seems to be a
3 basis for the accusations, the team will arrange for
4 appropriate psychological evaluation."

5 A. Okay, I -- I'm sorry.

6 Q. Do you see what I'm talking about?

7 A. I'm sorry, no, I don't.

8 Q. I'm sorry.

9 It's Roman numeral I, B1, and then Roman
10 numeral II, basically the last paragraph?

11 A. Oh, 5, thank you.

12 Q. "If there seems to be a basis for the
13 accusations, the team will arrange for appropriate
14 psychological evaluation."

15 Was that approached followed with each one of
16 the twelve Franciscans in the Board of Inquiry report?

17 MR. MATIASIC: Vague and ambiguous.

18 THE WITNESS: My recollection would be that it
19 was followed in -- if not all the cases, certainly
20 almost all of the cases because it was an appropriate
21 procedure.

22 MR. HALE: Okay.

23 Q. And then the next sentence says, "Normally the
24 recommendations of the evaluation will be followed
25 regarding treatment, limitations on ministry, and

1 other considerations of the friar."

2 A. Uh-hmm.

3 Q. Were there any circumstances where such
4 recommendations would not be followed? Because I read
5 "normally" in this to mean sometimes?

6 A. Uh-hmm.

7 Q. So were there circumstances where such
8 recommendations would not be followed?

9 MR. MATIASIC: I'm going to object, the
10 document speaks for itself, lacks foundation, and it's
11 vague and ambiguous.

12 MR. BROSNAHAN: You're asking whether they
13 were not followed with respect to any of the
14 Franciscans who were accused in the Board of Inquiry
15 report?

16 BY MR. HALE:

17 Q. Well, no. I'm just trying to understand what
18 his understanding of this sentence is. In other
19 words, were there -- were there times where it would
20 be appropriate not to follow the -- the
21 recommendations and whatever the evaluation said
22 regarding treatment and limitations on ministry and
23 other considerations of the friar -- of the accused
24 friar?

25 MR. MATIASIC: Same objections, but it's

1 overbroad, lacks foundation and it's an incomplete
2 hypothetical.

3 THE WITNESS: I'm not aware of any situation
4 where I did not follow the recommendations. And if I
5 did not follow them, it probably would have been in a
6 stricter direction.

7 MR. HALE: Okay.

8 Q. Did you receive these reports regarding these
9 psychological evaluations for each of the twelve
10 Franciscans?

11 MR. MATIASIC: Lacks foundation.

12 BY MR. HALE:

13 Q. In the report?

14 A. I would have -- I would have to go down each
15 name on the twelve friars and right at the moment
16 I'm -- you know, I haven't made that kind of listing.

17 Q. Sure, sure.

18 A. Generally speaking, I would say probably so in
19 any given instance.

20 Q. Okay.

21 A. You know.

22 Q. Do you recall receiving one for Father
23 Cimmarrusti?

24 A. I --

25 MR. MATIASIC: And I'm sorry, Counsel, you're

1 talking about the psychological evaluation?

2 MR. HALE: Yeah, exactly.

3 THE WITNESS: I -- I recall receiving one, as
4 to the contents and particulars, I couldn't testify.

5 BY MR. HALE:

6 Q. Okay. And would that -- would that report
7 have been placed into his personnel file or his
8 confidential file? If not, where would it have been
9 stored?

10 MR. MATIASIC: Lacks foundation.

11 THE WITNESS: At the -- the therapeutic
12 reports are confidential, in that sense, connected
13 with the confidential files.

14 MR. MATIASIC: Objection.

15 THE WITNESS: They're not publicly available,
16 of course.

17 BY MR. HALE:

18 Q. Do you recall placing Father Cimmarrusti's
19 evaluation into his confidential file?

20 MR. MATIASIC: Lacks foundation.

21 THE WITNESS: Specifically, no, I don't recall
22 doing that.

23 BY MR. HALE:

24 Q. But do you believe that's where it would have
25 been stored?

1 A. I would think so.

2 Q. Okay.

3 Going on to the next page, paragraph 6:

4 "Following the treatment program or other appropriate
5 measures to address the behavior, the team will
6 recommend to the provincial council where reassignment
7 is appropriate and if so, what kind of assignment
8 should be made, any possible restrictions that might
9 apply. And any follow-up program that is prescribed."

10 Were there -- was -- was the team involved in
11 working with any of the twelve Franciscans identified
12 or discussed in the Board of Inquiry report?

13 MR. MATIASIC: Vague and ambiguous.

14 THE WITNESS: As the Board of Inquiry report
15 developed and its procedures and process developed,
16 the victims approached the Board of Inquiry that gave
17 me, then, a report of their credible findings as they
18 said it. I talked to the friar in question,
19 instituted administrative leave, and employed this
20 procedure.

21 Did we have an investigative team? That was not
22 necessary at that time because that function vis-a-vis
23 the victims was being fulfilled by the Board of
24 Inquiry.

25 MR. HALE: Okay. That answered my question.

1 Q. Going down to paragraph 9 it says: "Wherever
2 possible, the team will keep the knowledge of
3 accusations on a 'need-to-know' basis."

4 Did the -- did the -- do you have any
5 knowledge of whether the Province considered the team
6 obligated or any members of the team obligated to
7 report their knowledge of these accusations to law
8 enforcement?

9 MR. MATIASIC: Lacks foundation, vague and
10 ambiguous.

11 MR. BROSNAHAN: I'd like to have the question
12 read back, please.

13 (The Reporter read back as follows:

14 "Question: Going down to paragraph 9 it says:
15 'Wherever possible, the team will keep the knowledge
16 of accusations on a 'need-to-know' basis.")

17 Did the -- did the -- do you have any
18 knowledge of whether the Province considered the team
19 obligated or any members of the team obligated to
20 report their knowledge of these accusations to law
21 enforcement?")

22 MR. MATIASIC: Same objections.

23 THE WITNESS: I think that's where this policy
24 would interface with the other policy, which states
25 very clearly the reporting laws of the state.

1 MR. HALE: Okay.

2 Q. Then going down to the -- the paragraph --
3 what's identified as paragraph 10, the second sentence
4 says: "They shall see to it that appropriate
5 superiors and supervisors are informed on the basis of
6 'need to know'."

7 Was there any discussion during the approval
8 of this document or during the creation of this
9 document regarding what circumstances a superior or
10 supervisor would not need to know about allegations?

11 MR. MATIASIC: Same objections.

12 THE WITNESS: I don't recall any discussion at
13 the time. This was, of course, a couple of years
14 before the sexual abuse --

15 MR. HALE: Right.

16 THE WITNESS: -- revelations began at the
17 seminary.

18 MR. HALE: Okay.

19 Q. What about as you sit here now, can you think
20 of any circumstance where a superior or supervisor
21 would not need to know about allegations of sexual
22 abuse by -- by a friar?

23 MR. MATIASIC: Same objections, it's an
24 incomplete hypothetical and calls for speculation.

25 THE WITNESS: Right now that would be beyond

1 my competencies and responsibilities.

2 MR. HALE: Okay.

3 VIDEOTAPE OPERATOR: Five minutes.

4 MR. HALE: Until the tape changes? Okay.

5 Q. When did you first meet Father Cimmarrusti?

6 A. Well, I -- I don't recall, to be honest. Our
7 paths would not have been, you know, in similar
8 situations. So as to the -- even the -- even within a
9 good guess, I don't recall.

10 Q. Okay.

11 Had you ever been assigned anywhere with him?

12 A. Well, no -- most of my assignments, obviously,
13 clearly have been in Berkeley at the School of
14 Theology and Mario was not there.

15 Q. When was the last time you spoke with Father
16 Cimmarrusti?

17 A. I probably saw him in January -- I did see him
18 at January, I think -- no, he wasn't at the provincial
19 chapter. I saw him in the late fall, somewhere. We
20 just said hello.

21 Q. Okay.

22 And it was just a casual greeting?

23 A. Yes, that's all.

24 MR. HALE: All right. We want to switch the
25 tape now.

1 VIDEOTAPE OPERATOR: Videotape deposition, off
2 record at 3:13 p.m. This marks the end of Tape 2,
3 Volume 1.

4 (Recess.)

5 VIDEOTAPE OPERATOR: Videotape deposition,
6 back on record at 3:21 p.m. This marks the beginning
7 of Tape 3, Volume 1 in the deposition of [REDACTED]
8 [REDACTED].

9 BY MR. HALE:

10 Q. Father, I want to backtrack just briefly for a
11 second. We had talked about a decision that the
12 council made while you were on it, regarding the
13 closing of St. Anthony's. Why was -- correct me if
14 I'm misstating your testimony, why was the school
15 closed?

16 A. The school was closed for, you know,
17 combination of reasons, basically student enrollment,
18 I believe, finances and our inability to staff it.

19 Q. Okay. Was there anything related to sexual
20 abuse allegations related to the closing?

21 MR. MATIASIC: Vague and ambiguous.

22 THE WITNESS: Not that I know of.

23 MR. HALE: Okay.

24 Q. Did you -- was there a discussion regarding
25 selling the property?

1 A. At the time?

2 There certainly may have been discussion about
3 selling it and it may have been, we may have looked at
4 it, whether to lease it, sell it, rent it, you know.
5 We obviously had to consider what to do with the
6 property.

7 Q. Okay.

8 Has there ever been any discussion of
9 laicisizing Father Cimmarrusti, if that's the
10 appropriate term? In other words, removing him from
11 the priesthood?

12 MR. MATIASIC: Discussions that he's been
13 involved in?

14 MR. HALE: Yeah.

15 Q. That you've been aware of?

16 A. I've not been involved in any discussion --

17 Q. Okay.

18 A. -- about the laicization of Father
19 Cimmarrusti.

20 Q. Okay. Does he -- does he have the right to
21 attend and vote at chapter meetings currently?

22 MR. MATIASIC: If -- if you know.

23 THE WITNESS: To the best of my knowledge,
24 Mario has not been deprived of active and passive
25 voice.

1 MR. HALE: Okay. If you'd take a look at this
2 document, I'll ultimately attach that as Exhibit 3.
3 It's a document Bates stamped FF-CIMM, C-I-M-M, 282, I
4 believe this is from Father Cimmarrusti's confidential
5 file.

6 THE WITNESS: Okay.

7 MR. HALE: It's dated -- I'm not asking you
8 questions. Go ahead and read it right now. It's
9 dated August 28th, 1990.

10 MR. BROSNAHAN: Do you have an extra copy of
11 that?

12 MR. HALE: I do somewhere. The copies are all
13 mixed up.

14 Do you have the first couple pages of it?

15 MR. MATIASIC: There's two pages of it.
16 Actually, I think the Father has the first page.

17 THE WITNESS: Oh, I thought that was the same
18 one.

19 MR. MATIASIC: Sorry Father, you read that.

20 MR. HALE: They're in there somewhere. I had
21 her make three of each.

22 MR. BROSNAHAN: What's the first page look
23 like? So there's no heading.

24 MR. HALE: I know they're in there.

25 Anyways, this document is entitled "Report to

1 [REDACTED] " and it's dated August 28th, 1990.

2 Just let me know when you're ready to -- ready,
3 Father.

4 MR. BROSNAHAN: Two pages?

5 MR. HALE: Yeah, two pages.

6 MR. BROSNAHAN: Have you got another copy?

7 MR. NYE: I'm looking.

8 Yeah, probably do.

9 MR. HALE: Hold on to it. I think they're all
10 scattered.

11 MR. NYE: Okay.

12 BY MR. HALE:

13 Q. Father, with regards to that -- that first
14 sentence it says "Salvador was informed by a woman of
15 the parish that certain rumors were going around
16 connected with migrant farmworkers..." First of all,
17 do you recognize this document?

18 A. Yes, I do.

19 Q. How do you recognize this document?

20 A. It was a report given to me, as it's stated,
21 and I don't remember the date, but it's dated there.

22 Q. Okay. And then where -- where it refers to
23 certain rumors, do you remember what those certain
24 rumors were?

25 A. No, I don't. I presume that they're related

1 to the points mentioned in the letter.

2 Q. Okay.

3 And then it discusses people, interviewed [REDACTED]

4 [REDACTED], Franciscan?

5 A. Yes, he is.

6 Q. And was Elva -- do you know if she was a -- a
7 parishioner?

8 A. I do not know Elva.

9 Q. Okay. Do you know if Sister -- well, I think
10 "Sister Guadalupe" probably speaks for itself. What
11 about "Tom Hernandez," is that a Franciscan?

12 A. No, Tom, it says below, is an active
13 parishioner.

14 Q. You're right, you're right.

15 In paragraph No. 1, that's numbered 1, last
16 sentence says, "He heard nothing of the 'shower issue'
17 or any kind of sexual overtones."

18 A. Right.

19 Q. Do you have an understanding what the shower
20 issue was?

21 A. Well, in No. 2 it refers to showers in the
22 house, and I presume that he was giving the migrant
23 farm -- or I don't know, migrant farmworkers showers
24 or allowing them to take showers.

25 Q. Do you have any recollection of why -- well,

1 do you know who wrote this? Was it both Father [REDACTED]
2 and Father [REDACTED]?

3 A. I don't know who composed it. I received it,
4 I think, from [REDACTED].

5 Q. Okay.

6 Do you know why there's reference to the
7 shower issue in the context of sexual overtones?

8 MR. MATIASIC: Well, I think that misstates
9 the -- misstates the evidence here, but the document
10 speaks for itself.

11 BY MR. HALE:

12 Q. The sentence says, "He heard nothing of the
13 'shower issue' or any kind of sexual overtones." Do
14 you know what those sexual overtones were, the
15 allegations, in other words?

16 A. I presume that there weren't allegations of
17 sexual overtones.

18 Q. Do you know?

19 A. We would have been concerned had there been.

20 Q. Okay.

21 But do you know why he felt compelled to
22 confirm there were no sexual overtones?

23 MR. MATIASIC: Well, and -- I'm going to
24 object to the extent that it indicates that he -- that
25 you're representing that he felt compelled to sexual

1 overtones.

2 MR. BROSNAHAN: Who do you mean by "he"?

3 MR. HALE: The author of this document.

4 MR. MATIASIC: So assumes facts not in
5 evidence, incorporate the same objections.

6 THE WITNESS: Given the policies in place we
7 were concerned that the friars not engage in sexually
8 inappropriate activity, so my -- the way I read it, or
9 understand it was, they would have said did you hear
10 anything about sexual activity or misconduct on the
11 part of the friars. And the response is, no.

12 MR. HALE: Okay.

13 Q. Going down to the second paragraph under
14 paragraph No. 2, it says "Elva mentioned that perhaps,
15 at times, Mario may have been checking the men for
16 VD." Did you discuss that with Father [REDACTED] or Father
17 [REDACTED], that sentence?

18 A. At the moment, I don't recall discussing it
19 with them.

20 Q. Did you have any understanding as to whether
21 this meant that Father Cimmarrusti was checking these
22 men's genitals, examining these men's genitals, in
23 other words?

24 A. I just don't recall our conversation on that
25 particular issue.

1 Q. Had you ever heard any kind of similar
2 allegations involving Father Cimmarrusti before
3 reading them here?

4 A. I have not.

5 MR. MATIASIC: Vague and ambiguous.

6 THE WITNESS: I had not heard.

7 MR. HALE: Okay.

8 Q. Did you ask Father [REDACTED] or Father [REDACTED] what
9 was meant in the next paragraph that -- with regard to
10 the references "This apparently gave rise to the
11 'picture taking rumor'." Do you know what the picture
12 taking rumor was, in other words?

13 A. At this distance of time I don't recall what
14 that referred to.

15 Q. Okay.

16 A. Other than what's stated on the page.

17 Q. Have you ever heard Father Cimmarrusti was
18 accused of photographing men naked?

19 A. I don't recall that.

20 Q. Okay.

21 Going to paragraph 6.

22 A. Okay.

23 Q. It states Mario -- the second sentence --
24 third sentence starts, "Mario stated the showers were
25 taken but denied any kind of wrongdoing. He also

1 stated he did not practice medicine there. He did
2 admit that he performed some over-the-counter
3 remedies."

4 Do you know what these over-the-counter
5 remedies were?

6 A. I have no idea.

7 VIDEOTAPE OPERATOR: You're blocking your mic
8 with your hands.

9 THE WITNESS: Oh, I'm sorry.

10 I -- I don't know what the over-the-counter
11 remedies refers to.

12 BY MR. HALE:

13 Q. Do you have any idea why Father Cimmarrusti
14 would have felt compelled to state that he was not
15 practicing medicine?

16 MR. MATIASIC: Calls for speculation.

17 THE WITNESS: I don't know at the time why.

18 BY MR. HALE:

19 Q. Were you aware at the time of any prior
20 allegations of Father Cimmarrusti inappropriately
21 practicing medicine?

22 MR. MATIASIC: Vague and ambiguous.

23 THE WITNESS: I don't recall.

24 MR. HALE: Okay.

25 Q. And then right below that it says "We told him

1 there must be no more showers in the house." Do you
2 know why that instruction was given to Father
3 Cimmarrusti?

4 MR. MATIASIC: Calls for speculation.

5 THE WITNESS: Well, I think from the beginning
6 the concern was to avoid any possibility that there
7 would be inappropriate conduct on the part of the
8 friars, and so, as I mentioned before, often in my own
9 approach was to take a stricter interpretation of
10 things, and so I presumed that's what that means.

11 MR. HALE: Okay.

12 Q. Going down to the next line, "Those
13 interviewed expressed that they were sure the men were
14 not minors but adults over 21."

15 A. Uh-hmm.

16 Q. Do you -- do you -- did you ask Father [REDACTED] or
17 Father [REDACTED] whether any of those men were
18 interviewed?

19 A. I'm sorry, I didn't -- excuse me, I didn't
20 hear.

21 Q. Sure.

22 Did you ask -- in that next line that talks
23 about the -- the -- those interviewed expressed they
24 were not sure the men were not minors, or that they
25 were sure that the men were not minors but --

1 A. But adults.

2 Q. -- men over 21.

3 Do you know if any of those men that were
4 purportedly over the age of 21, whether they were
5 interviewed by -- by Father [REDACTED] or by Father [REDACTED]?

6 A. I did not conduct the interviews and I don't
7 know that.

8 Q. Do you recall if you asked Father [REDACTED] or
9 Father [REDACTED] if they were interviewed?

10 A. I do not recall.

11 Q. Okay.

12 Would you have expected Father [REDACTED] or Father
13 [REDACTED] to interview those men?

14 MR. MATIASIC: Are we talking about at the
15 time?

16 MR. HALE: Yes.

17 THE WITNESS: I don't know what my
18 expectations were at the time.

19 BY MR. HALE:

20 Q. Well, as you sit here now, do you think it
21 would have been important to interview alleged
22 victims?

23 A. Well, now we're -- this is 15 years later.

24 Q. Right.

25 A. With a great deal of wisdom and knowledge.

1 Q. Right.

2 MR. MATIASIC: I'm also going to object to the
3 question. Vague and ambiguous as to the term "alleged
4 victim" and it misstates the evidence that the
5 document speaks for itself, that they weren't -- they
6 weren't minors.

7 THE WITNESS: I can't really say one way or
8 the other.

9 MR. HALE: Okay.

10 THE WITNESS: As to this interview.

11 MR. HALE: Okay.

12 Q. In general, if -- if someone raises an
13 allegation of sexual misconduct against a Franciscan,
14 would you agree that it's important to interview the
15 person who raises that allegation?

16 MR. MATIASIC: Incomplete hypothetical, lacks
17 foundation, it's vague and ambiguous and overbroad as
18 to time.

19 Are you talking about now?

20 MR. HALE: Any time.

21 MR. MATIASIC: Overbroad as to time.

22 THE WITNESS: This document refers to second-
23 and third-party hearsay, so the individuals concerned,
24 at least from the document, do not appear to have come
25 forward. The policy now, as I understand it, would be

1 if a victim -- certainly if a victim comes forward or
2 there is an alleged victim, which we operate through
3 the -- our independent board now, they are
4 interviewed.

5 BY MR. HALE:

6 Q. With regards to three paragraphs down, it says
7 "As far as can be determined the sexual information
8 seemed to be hearsay." Did you ask Father [REDACTED] or
9 Father [REDACTED] whether they followed up to try and track
10 down the sources of that hearsay?

11 A. I don't remember the details of the
12 conversation with Father [REDACTED].

13 Q. Okay.

14 And then in what's numbered paragraph No. 3 it
15 says, "There can be no practice of medicine
16 whatsoever, not even the over-the-counter" --

17 A. Right.

18 Q. -- "remedies."

19 Do you know why -- why that limitation was
20 placed on Father Cimmarrusti?

21 MR. MATIASIC: Calls for speculation.

22 THE WITNESS: I presume in the same way that I
23 mentioned before, that we would be instituting
24 procedures that were as strict as possible.

25 MR. HALE: Okay. If you could just give that

1 to the reporter, that will be Exhibit 3.

2 THE WITNESS: This?

3 THE REPORTER: What's 2?

4 MR. HALE: Two is going to be when I pull
5 those documents out of that report.

6 (Plaintiffs' Exhibit Nos. 2 and 3 were marked
7 for identification.)

8 MR. HALE: Here's a copy. If you'd share
9 that. This will be Exhibit 4, this is a two-page
10 document.

11 (Plaintiffs' Exhibit No. 4 was marked for
12 identification.)

13 MR. HALE: Page 1 is correspondence from
14 Father [REDACTED] dated April 4th, 1991 to Father
15 Cimmarrusti, and page 2 is a letter of obedience.

16 THE WITNESS: Yeah, sure.

17 MR. HALE: They are Bates stamped 167 and 168
18 from Father Cimmarrusti's personnel file.

19 THE WITNESS: Right, right.

20 BY MR. HALE:

21 Q. Whenever you guys are ready.

22 Quick question on this one. It says "Enclosed
23 please find a letter of obedience naming you vicar of
24 Our Lady of Delano."

25 Would that have been considered a promotion

1 for Father Cimmarrusti?

2 MR. MATIASIC: By whom? Did Father [REDACTED]
3 consider it a promotion?

4 BY MR. HALE:

5 Q. Well, just -- would it be your understanding
6 as -- I mean, at the time you were provincial, would
7 that have been a promotion for Father Cimmarrusti?

8 MR. MATIASIC: Again, Counsel, I'm asking,
9 from Cimmarrusti's perspective or Father [REDACTED]'s
10 perspective?

11 MR. HALE: From Father [REDACTED].

12 MR. MATIASIC: Okay.

13 THE WITNESS: At this distance I don't know
14 because he may already have been vicar. All it meant,
15 that he was, you know, to be the domestic person in
16 charge of the house.

17 MR. HALE: Okay.

18 THE WITNESS: There.

19 BY MR. HALE:

20 Q. That would make him the superior at the house,
21 basically?

22 A. Yeah, generally.

23 Q. Okay, all right.

24 Do you recognize that document as something
25 you wrote?

1 A. Yes.

2 Q. Okay. And page 2 as well?

3 A. Yes.

4 Q. Okay.

5 All right. We'll attach as Exhibit 4, here's
6 one for you -- 5, sorry. This is a document dated
7 June 5th, 1992 from Father [REDACTED] to Father
8 Cimmarrusti. It's one page and it's Bates stamped
9 169?

10 A. Right.

11 Q. And it's OFM CIMM, C-I-M-M.

12 (Plaintiffs' Exhibit No. 5 was marked for
13 identification.)

14 BY MR. HALE: Are you ready?

15 MR. MATIASIC: Yup.

16 MR. BROSNAHAN: Yup. I need an extra copy.

17 MR. HALE: I think I -- three is all I've got,
18 unless Dave comes up with another one.

19 Q. The last sentence second paragraph says, "The
20 matter is quite serious and I need to speak with you
21 in private."

22 What was the matter you needed to speak with
23 Father Cimmarrusti in private?

24 A. I think -- I don't recall specifically. I
25 think I heard rumors to the effect of a similar

1 situation, and the warning was clear in the earlier
2 letter.

3 Q. A similar situation to what we talked about
4 in --

5 A. Whether it would be showers or whatever the
6 previous memo.

7 Q. Okay. And that was in Delano, again?

8 A. He was stationed -- I don't have Mario's file
9 before me, but I -- this seemed to imply he was still
10 in Delano.

11 Q. Okay. Do you recall who brought the rumors to
12 your attention?

13 A. No, I don't.

14 Q. Do you recall what the allegations involved
15 regarding the age of the -- the -- the third parties?

16 A. To the best of my knowledge, recollection, it
17 did not involve the sexual abuse of minors.

18 Q. Okay.

19 What was the nature of the abuse?

20 A. I don't know that it was abuse either.

21 Q. Okay.

22 What was the nature of the allegations?

23 A. I don't recall at the moment. I think it was
24 along the lines of, giving showers to migrants or
25 allowing them or something to that effect.

1 Q. And was Father Cimmarrusti joining them in the
2 showers?

3 A. That I don't know. I don't remember.

4 Q. Do you know if he was helping to soap them up
5 or something to that effect?

6 MR. MATIASIC: Are you talking about the
7 rumors?

8 MR. HALE: Yeah.

9 Q. The subject of -- of -- that led the witness
10 to say "the matter is quite serious," what the
11 "matter" is what I'm referring to.

12 A. Clearly -- clearly I considered it serious.

13 Q. Okay.

14 A. And what the specific allegations, I don't
15 really recall on this instance.

16 Q. Do you recall how many people had raised
17 allegations in --

18 A. No, I don't.

19 Q. Do you recall how long this had been going on
20 before it was brought to your attention, if you know?

21 A. No, I don't know. It was brought to my
22 attention and I would act upon it.

23 Q. Okay.

24 Had the -- the Board of Inquiry had not yet
25 been formed at this time, correct, June 5th, '92?

1 A. No. The Board of Inquiry was formed in
2 January or February '93.

3 MR. HALE: All right. If you could just give
4 that to the reporter.

5 THE WITNESS: Okay.

6 MR. HALE: No. 6 is going to be -- copy to you
7 Father. I actually got copies for both of you.

8 MR. MATIASIC: Thank you.

9 MR. HALE: It's going to be a two-page
10 document from Father Cimmarrusti's confidential file
11 Bates stamped FF CIMM 265, it's a letter dated
12 July 8th, 1992 from Father [REDACTED] to Father
13 Cimmarrusti. Just let me know when you guys are
14 ready.

15 (Plaintiffs' Exhibit No. 6 was marked for
16 identification.)

17 (Witness reviews document.)

18 MR. HALE: Ready?

19 MR. MATIASIC: Uh-hmm.

20 THE WITNESS: Okay.

21 MR. HALE: Okay.

22 Q. With regards to the first paragraph, toward
23 the last sentence, says "I know the past month has
24 been very difficult for you."

25 Why did you write it had been very difficult

1 for Father Cimmarrusti?

2 A. I think the previous letter indicated that I
3 would -- wanted to talk with him about a very serious
4 matter.

5 Q. Okay.

6 A. And that I was gone, whatever it said, in
7 Europe or whatever, and when I returned I wanted to
8 see him in the office.

9 Q. Okay.

10 A. So that would make him rather anxious.

11 Q. Do you -- do you recognize this -- this
12 correspondence?

13 A. Yes, oh, yes.

14 Q. Something you wrote?

15 A. Definitely.

16 Q. Okay.

17 And by the time you'd written this
18 correspondence, had you met with Father Cimmarrusti
19 yet?

20 A. The -- yes, yes. It says that I have met with
21 him.

22 Q. Right, sorry, I should have read the whole
23 paragraph.

24 And did you ask him about the allegations?

25 A. Yes.

1 Q. And what did he tell you?

2 MR. MATIASIC: Well, I'm just going to object
3 that the previous correspondence said rumors as
4 opposed to allegations but --

5 MR. HALE: Okay.

6 Q. Did you ask him about the rumors?

7 A. Yes, I did.

8 Q. And what did he tell you?

9 A. The letter indicates that he must have given
10 me some indication that the rumor -- there was some
11 merit in the rumors.

12 Q. Okay.

13 Do you remember --

14 A. Otherwise I would not have demanded an
15 evaluation.

16 Q. Do you recall what -- what he described
17 happening?

18 A. No. At this distance I don't recall
19 explicitly.

20 Q. Okay.

21 What action did you take in response to him
22 acknowledging there was -- something had happened?

23 A. I -- he ceased -- as it indicates here, I met
24 with some other friars to determine as to procedures
25 for discipline following the policies.

1 Q. Right.

2 A. Et cetera.

3 And we determined on what's indicated there,
4 that he would be transferred from Delano, he would
5 undergo an evaluation, and future procedures and
6 things would be -- would be put into place responsive
7 to that evaluation.

8 Q. Okay.

9 Did -- did you send out anyone from the
10 Province to interview the people who are raising --
11 who are raising these rumors?

12 A. I don't recall whether I did or not.

13 Q. Okay.

14 And is it -- in paragraph 2 where it
15 references the team of -- of several friars, is that
16 the team that's discussed in the operating policies in
17 Exhibit 2?

18 A. I'm sorry --

19 Q. Paragraph 2, "I met with the team of several
20 friars who had already been aware of the situation."

21 A. Oh, [REDACTED] warned [REDACTED] and myself.

22 Q. So --

23 A. I would have been following -- following
24 Province procedure.

25 Q. That we discussed in Exhibit 2?

1 A. Yes, yes, yes.

2 Q. Okay.

3 Do you recall who was on the definitorium at
4 the time this letter was written?

5 A. Would have been Warren [REDACTED], Father [REDACTED] was
6 not on the definitorium, he was provincial secretary.

7 Q. Right. Okay.

8 And what was -- what was your -- what was your
9 understanding of the purpose of the psychological
10 evaluation? In other words, what was Father
11 Cimmarrusti being evaluated for?

12 A. He would -- he would have been evaluated at
13 the time for -- I guess, propensity for misconduct
14 with adults.

15 Q. Sexual misconduct?

16 A. Inappropriate activity, boundary activity.

17 Q. Okay.

18 A. What kind of activity would be specified in
19 the reports.

20 Q. Do you have a recollection as to whether you
21 considered this at the time to be sexual misconduct by
22 Father Cimmarrusti?

23 A. I don't think that I made that kind of
24 judgment. It seemed to me inappropriate and I took
25 those actions.

1 Q. Okay.

2 A. As the evidence came in, then I made
3 determinations.

4 Q. Okay. And then it says "We will receive some
5 recommendation as to future course of action." Did
6 you receive a recommendation?

7 A. Let me find out where we are.

8 MR. MATIASIC: Where are you?

9 MR. HALE: I'm sorry, I'm sorry, paragraph 3,
10 it was the second sentence from the bottom.

11 THE WITNESS: "Out of which we will receive
12 some recommendation as to a future course of action."
13 And?

14 MR. MATIASIC: Your question, Counsel?

15 THE WITNESS: Please.

16 MR. HALE: Oh.

17 Q. Did you receive a recommendation? Did you
18 ultimately receive a recommendation as to a future
19 course of action?

20 A. I think I did, yes.

21 Q. And do you recall receiving a report about the
22 evaluation on Father Cimmarrusti?

23 A. Well, I don't recall it specifically, but did
24 I receive one, well, at this distance.

25 Q. Okay, so in other words, I'm not -- I'm not

1 asking you to recall the content of the report.

2 A. Okay.

3 Q. But you do recall receiving a report?

4 A. Well, I don't recall receiving it. I mean,
5 I -- this is a little bit blurry for me.

6 Q. Right.

7 A. Because there was a lot of activity, you know.
8 It doesn't mean I didn't, you know.

9 Q. Okay.

10 If you did receive such a report, again, that
11 would be in the confidential file?

12 A. That would be in the psychotherapeutic
13 confidential file, yeah.

14 Q. Is there --

15 A. Confidential files are -- you know, the --
16 the -- the confidential files include the
17 psychotherapeutic examinations. The -- I don't think
18 any distinction, they're both confidential.

19 Q. Okay.

20 So there was one file, confidential file that
21 contained -- included psychotherapeutic evaluations
22 and that kind of -- of matter?

23 MR. MATIASIC: Are you talking about
24 Cimmarrusti or generally or --

25 MR. HALE: Generally.

1 MR. MATIASIC: Overbroad.

2 THE WITNESS: The -- the psychological
3 examinations, because of the client/therapeutic
4 relationship, are put in a folder, a -- an envelope,
5 you know, that says, you know, therapeutic evaluation.
6 The only one that sees it is the provincial minister.

7 Q. Okay.

8 A. That's part of the confidential file. That's
9 not the same thing that's -- that we have here.

10 Q. Right.

11 A. These are all confidential files, so it's --
12 it's a different -- it's not a different
13 classification, it's still confidential, but the --
14 the laws governing it are different.

15 Q. Is there a separate file or is it all in one
16 confidential file?

17 MR. MATIASIC: I think asked and answered, but
18 go ahead.

19 MR. BROSNAHAN: Overbroad.

20 THE WITNESS: I -- I guess could you clarify
21 what separate file.

22 BY MR. HALE:

23 Q. Well, my understanding is there's a personnel
24 file and there's a confidential file?

25 A. Correct.

1 Q. Is there a third confidential file for reports
2 from mental health practitioners or evaluations?

3 A. No, no, no, it's the same confidential file,
4 they're not exactly -- they're not -- one's in a
5 folder.

6 Q. Okay.

7 A. And the other is in a file folder.

8 Q. Okay.

9 So, for instance, this letter was -- was
10 pulled from Father Cimmarrusti's confidential file?

11 A. Correct.

12 Q. You would expect that that -- a report would
13 have been in the confidential file as well?

14 A. Or filed next to it or -- you know, in the
15 drawer next to it or whatever. I mean, they go
16 together.

17 Q. Okay. And on page 2, Bates stamped 266,
18 there's reference to -- in paragraph 4, "Upon
19 receiving evaluation then you and I can discuss the
20 best place as possible."

21 Do you recall ever sitting down with Father
22 Cimmarrusti and discussing the evaluation and the best
23 placement for him?

24 A. I don't recall that specifically. You know,
25 yeah, I just don't recall that --

1 Q. Okay.

2 A. -- what we did.

3 MR. HALE: If you could pass that over to the
4 reporter.

5 This would be Exhibit 7. This is also from the
6 confidential file. It's Bates stamp FF-CIMM No. 260
7 it's labeled confidential, it's dated September 1992.
8 Just let me know when you guys are ready.

9 (Plaintiffs' Exhibit No. 7 was marked for
10 identification.)

11 BY MR. HALE:

12 Q. All right?

13 A. Yes.

14 Q. First of all, do you recognize this document?

15 A. Yes.

16 Q. How do you recognize it?

17 A. It would be the -- probably the -- the
18 confidential minutes of the definitorium that were
19 then placed in his file, his confidential file.

20 Q. So this would have been drafted by the
21 secretary?

22 A. Yeah, that's a summary of the decision.

23 Q. Okay.

24 It says in the second sentence, "He left
25 Delano with no scandal."

1 A. Right.

2 Q. How -- how was this conclusion reached, if you
3 know, after the two -- there was an allegation in '90
4 or rumor in '90 and then there was the rumor in '92.
5 How was that conclusion reached?

6 A. Yes, that's all it was.

7 There was the -- the friars, you know, work in
8 the parish, the -- Mario made the transition out. He
9 was popular with the people and ministered them in
10 many fine ways. And there was no -- it was done
11 smoothly enough so the people were not upset, you
12 know, saying this was -- I was overreaching my
13 authority by removing him.

14 Q. Does -- does this -- so does this reflect a
15 conclusion reached by you that there was no
16 inappropriate conduct, that sentence?

17 MR. BROSNAHAN: Objection, vague and
18 ambiguous.

19 THE WITNESS: I could --

20 MR. MATIASIC: And I think it misstates his
21 testimony to the extent he's already testified that it
22 reflects the minutes of the definitorium.

23 THE WITNESS: I was making judgments and very
24 definite judgments about the ministry of the people --
25 for the people and in the context of the people, and

1 whether the friars were qualified to do that.

2 As to particular instances of whether the -- the
3 accusations or allegations or in this case, rumors
4 were true or not, the issue for me was, the integrity
5 of the fraternity and its ministry. So the issue of
6 the factuality of some situations of rumors was not
7 uppermost in my mind. But what was uppermost in my
8 mind was appropriate service to the people, and that
9 there be no scandal to them.

10 BY MR. HALE:

11 Q. Had you formed an opinion as to whether Father
12 Cimmarrusti had engaged in the misconduct alleged that
13 we've discussed regarding these rumors in '90 and '92?

14 A. I think I formed an opinion as to the
15 diligence that I needed to perform.

16 Q. Okay, well --

17 A. And this is the way I -- I treated it and I
18 made these judgments.

19 Q. Okay. And what was that -- what was that
20 opinion?

21 A. Clearly was that he should be transferred to
22 San Miguel and that, based on the evaluations as it
23 stated, there would be some restrictions in the
24 future.

25 Q. Okay.

1 It's safe to say you wouldn't have placed
2 restrictions on him in the future if you did not
3 believe there was inappropriate conduct by him at
4 Delano?

5 MR. MATIASIC: Misstates his testimony.

6 MR. BROSNAHAN: Vague as to time.

7 You're talking about after the evaluation or
8 before?

9 MR. HALE: Either way.

10 MR. BROSNAHAN: The question's vague and
11 ambiguous.

12 MR. MATIASIC: And overbroad.

13 THE WITNESS: Well, I certainly would make a
14 determination as to rumors, before an evaluation. The
15 rumors are not -- did not clarify in any sense whether
16 an evaluation -- whether a rumor is true.

17 I have the responsibility as a provincial minister
18 to deal not simply with factuality, but also with
19 perception and rumors. And this is the way I
20 approached the situation.

21 BY MR. HALE:

22 Q. Was there a discussion in the definitorium
23 meeting that is reflected in these minute notes as to
24 whether or not -- whether or not Father Cimmarrusti
25 had engaged in misconduct?

1 A. The discussion -- I don't recall specifically.
2 The discussion is probably reflected here. The --
3 clearly the -- the previous letter, which has jogged
4 my memory, you know, of the sequence of events.

5 The determination was made, I think, whether
6 or not the rumors were true, Mario should be
7 disciplined.

8 Q. Why -- why would he be disciplined if the
9 rumors were not true?

10 MR. MATIASIC: Argumentative.

11 THE WITNESS: We're not saying they're true or
12 not true. We're making a determination as to whether
13 we think this friar is fit for ministry in a
14 constructive way. This is in the much larger context
15 of church and church integrity.

16 BY MR. HALE:

17 Q. If he had not engaged -- if -- if -- would he
18 have been transferred if a conclusion had not been
19 reached that he had engaged in misconduct?

20 MR. MATIASIC: Incomplete hypothetical and
21 misstates the evidence.

22 THE WITNESS: I -- I don't know. I know what
23 I did.

24 BY MR. HALE:

25 Q. And the allegations against him at the time

1 this -- these -- these minutes were taken were limited
2 to the two instances we've discussed about, the one in
3 1990 and the one in '92?

4 A. The best of my knowledge, yes.

5 MR. MATIASIC: And again, I'm just going to
6 object that it misstates the evidence, to the extent
7 the correspondence indicates rumors as opposed to
8 allegations.

9 MR. HALE: Rumors, allegations, we're playing
10 semantics.

11 Q. What were the restrictions placed on Father
12 Cimmarrusti by -- by the therapist?

13 MR. MATIASIC: Well -- and I think again that
14 misstates the evidence, it says restrictions placed on
15 him by the provincial.

16 MR. HALE: Okay.

17 MR. MATIASIC: That's recommended.

18 BY MR. HALE:

19 Q. What were the restrictions placed on him by
20 the provincial as recommended by the therapist?

21 A. You know, I'd have to look at the evidence in
22 particular case.

23 Q. No, no --

24 A. I just don't know the particulars of it.

25 Q. Did you ever identify how many people were

1 accusing Father Cimmarrusti of this -- this
2 misconduct?

3 A. Not to my recollection.

4 MR. MATIASIC: And it misstates the evidence
5 that anybody actually -- assumes facts not in evidence
6 that anybody actually accused Cimmarrusti of
7 misconduct.

8 BY MR. HALE:

9 Q. Were there ever any reports made to law
10 enforcement about -- about this rumor and conduct by
11 Father Cimmarrusti?

12 MR. MATIASIC: Lacks foundation, assumes facts
13 not in evidence that there was conduct that needed to
14 be reported.

15 THE WITNESS: Inasmuch as it follows on the
16 previous report, it indicates that any of this
17 behavior would refer to a -- an adult issue.

18 BY MR. HALE:

19 Q. But were any reports made, though, that you
20 were aware of?

21 A. No, no.

22 Q. Okay.

23 San Miguel has a parish, correct?

24 A. Yes, it does.

25 Q. And people will attend -- public mass is held

1 there, correct?

2 A. Sure, sure.

3 Q. Were there any warnings issued to the
4 parishioners at San Miguel about these prior rumors
5 involving Father Cimmarrusti?

6 MR. MATIASIC: Assumes facts not in evidence
7 and lacks foundation.

8 THE WITNESS: I think I'd have to follow --
9 look at the sequence of events and see what -- what
10 the restrictions were to then give an informed answer.

11 BY MR. HALE:

12 Q. Do you recall there being any discussions
13 regarding whether there should be any warnings issued
14 to the parishioners at the San Miguel Parish regarding
15 the rumors against Father Cimmarrusti?

16 MR. MATIASIC: Same objections.

17 THE WITNESS: At this time -- answer -- at
18 this time rumors are not facts and just as there is an
19 obligation to protect victims, there's also an
20 obligation to protect friars as individuals. At this
21 time there was no awareness that based on rumors a
22 community of people would be informed.

23 BY MR. HALE:

24 Q. Well, what was it about the rumors that
25 motivated you to transfer him from Delano to San

1 Miguel?

2 MR. MATIASIC: I think it misstates the
3 evidence that there was a cause and effect there,
4 but --

5 BY MR. HALE:

6 Q. Well, was there? Were the rumors what
7 motivated you to transfer Father Cimmarrusti from
8 Delano to San Miguel?

9 A. What motivated me was my concern for the
10 integrity of the fraternity and the ministry.

11 Q. Okay.

12 A. As to the truth or falsity of the rumors, I
13 didn't make a judgment. The -- the issue is the --
14 not simply the -- the activity whether there is
15 activity, but if there's perceived dissatisfaction or
16 discomfort among people in this kind, it's important
17 for the church to act fairly decisively.

18 Q. But if -- if -- what if you had thought the
19 rumors were false, would you still have gone forward
20 with trying -- with transferring Father Cimmarrusti?

21 MR. MATIASIC: Misstates the evidence, lacks
22 foundation, it's an incomplete hypothetical.

23 THE WITNESS: I don't -- I don't know that
24 that was my consideration at the time.

25 BY MR. HALE:

1 Q. What about as you sit here today, do you have
2 any recollection of what the behavior was that -- that
3 was at the heart of these rumors?

4 MR. MATIASIC: And, Counsel, so we can be
5 clear as to time, we're talking about in '92 or --

6 MR. HALE: Well, '90 and '92.

7 THE WITNESS: The behavior, whatever there
8 was, is described in the memos and, you know, I think
9 I've talked -- it refers there to some kind of
10 showers.

11 BY MR. HALE:

12 Q. I'm just asking.

13 A. Showers.

14 Q. I'm asking for your recollection right now. I
15 know it's been a while.

16 A. Yeah.

17 Q. So whatever you can recall. As we sit here
18 today, what's your recollection of -- of the conduct
19 that was at the heart of those rumors?

20 A. The memos, to me, seem to ring true as to the
21 rumors that I'd heard.

22 Q. Okay.

23 And before the decision to -- strike that.

24 Did -- did you have a meeting with the
25 therapist or a telephone conversation with the

1 therapist who recommended the restrictions on Father
2 Cimmarrusti's ministry?

3 A. I don't recall whether I met with them or it
4 was a written report or a phone conversation or all of
5 the above or two of them or -- you know.

6 Q. Do you recall what that therapist communicated
7 to you regarding his evaluation -- his or her
8 evaluation of Father Cimmarrusti?

9 A. I -- I do not recall explicitly.

10 Q. Okay.

11 A. I think it implied some restrictions.

12 Q. Okay.

13 Did you ever discuss with the therapist the --
14 the history of the rumors involving '92 and '90 and
15 Father Cimmarrusti with the therapist?

16 MR. MATIASIC: Well, Counsel, I'm going to
17 object here that communications between Father
18 [REDACTED] as the provincial minister and the
19 pyschotherapist may --

20 MR. HALE: No, no, no.

21 MR. MATIASIC: -- fall under the umbrella of
22 the psychotherapist/patient privilege.

23 MR. HALE: No. No. Absolutely -- you're way
24 off. Go to West Law right now and --

25 MR. MATIASIC: I'm saying --

1 THE REPORTER: I'm sorry, you're talking at
2 the same time.

3 MR. HALE: Let me finish.

4 Go to West Law, this issue been litigated. This
5 issue was litigated by Manly and Freeburg in the
6 deMaria case, where a report was prepared involving
7 Michael Harris, it was sent to the bishop of Orange,
8 and defense counsel took the same position you're
9 trying to take right now and they lost. And it went
10 up on appeal and you're off, you're way off.

11 MR. MATIASIC: Counsel, let me just represent
12 to you that this very issue has actually come up in
13 Clergy III, so I would advise you to take a look at
14 the -- the Clergy III orders --

15 MR. HALE: Okay.

16 MR. MATIASIC: -- that are in effect. And
17 it's very clear that communication between the head of
18 a religious institution and a psychotherapist is
19 privileged, to the extent that the communication was
20 in furtherance of evaluating an alleged perpetrator in
21 terms of his placement in the future.

22 So -- and Sabra -- Judge Sabra has already ruled
23 on this exact very issue, and that is a privileged
24 communication.

25 MR. HALE: In terms of his placement in the

1 future?

2 MR. MATIASIC: Sure.

3 MR. HALE: Is that the sole --

4 MR. MATIASIC: The psychotherapist-patient
5 privilege would also apply to communications between
6 the therapist and the provincial minister, if the
7 provincial minister sent the person to the therapist
8 for the purposes of assessing a future placement.

9 And Sabra has conclusively ruled on that issue.

10 And if you want to stop the deposition, call the
11 court, we can do that.

12 MR. HALE: We haven't done that yet so
13 obviously it's not going to happen today.

14 MR. MATIASIC: Well --

15 MR. HALE: But the point I'm trying to
16 understand is you're saying that the privilege only
17 applies where the consultation was made regarding the
18 placement of the friar?

19 MR. MATIASIC: If -- if -- if the
20 communication with the therapist was in furtherance of
21 an evaluation for that purpose, which is clearly
22 indicated here, based upon the correspondence that
23 you've produced.

24 MR. HALE: When was that order issued?

25 MR. MATIASIC: I don't have the date right

1 here, but I think if you were to go back in terms of
2 the whole production of documents and -- and the
3 evaluation by the discovery referee, Judge Hodge, this
4 very issue came up and -- and I think the court's
5 ruling is pretty clear on it.

6 MR. HALE: Okay.

7 MR. NYE: Is that posted on the case law page?

8 MR. HALE: Somewhere.

9 MR. MATIASIC: You know, I don't know if every
10 single thing has been posted but I would assume it is.

11 MR. BROSNAHAN: When you get to a convenient
12 point I'd like to take a break.

13 MR. HALE: Yeah, let's do that.

14 VIDEOTAPE OPERATOR: Videotape deposition, off
15 record at 4:10 p.m.

16 (Recess.)

17 VIDEOTAPE OPERATOR: Videotape deposition,
18 back on record at 4:24 p.m.

19 MR. HALE: Back on the record.

20 The next Exhibit, No. 8, is Bates stamp FF-CIMM
21 305, and it's a memo to Father [REDACTED] dated July
22 18th, 1992.

23 (Plaintiffs' Exhibit No. 8 was marked for
24 identification.)

25 BY MR. HALE:

1 Q. You guys let me know whenever you're ready.

2 A. Yes.

3 Q. Ready?

4 A. Okay.

5 Q. Okay. In the second paragraph it says "On
6 July 29th at 7:00 a.m..."?

7 A. Uh-hmm.

8 Q. "...we plan to be in LA for Mario's evaluation
9 with Dr. Frank Clayman-Cook..."

10 A. Right.

11 Q. Do you know if Father [REDACTED] attended the
12 evaluation with Father Cimmarrusti?

13 A. I do not.

14 Q. Okay.

15 Do you recognize this document?

16 A. Yes, I do.

17 Q. How do you recognize it?

18 A. I think in the previous document I referred to
19 an evaluation that would be made and the removal of
20 Mario from Delano. And I would be acting on the
21 recommendations that came from the evaluation.

22 But I do remember this memo.

23 Q. Okay. And Dr. Clayman-Cook is the person who
24 obviously conducted the evaluation, correct?

25 A. Yes.

1 Q. Okay.

2 All right, if you could just pass that over to
3 the court reporter.

4 A. Okay.

5 MR. HALE: I'll -- this one is for you, this
6 one.

7 (Witness reviews document.)

8 BY MR. HALE:

9 Q. Ready?

10 A. Uh-hmm.

11 Q. Okay.

12 The first -- last sentence of the first
13 paragraph says -- first of all, do you recognize this
14 correspondence?

15 A. I do.

16 Q. Something you wrote to Father Cimmarrusti?

17 A. Yes.

18 Q. Okay.

19 The last sentence of the first paragraph says
20 "I have tried my best to expedite matters."

21 What matters were you trying to expedite?

22 A. I don't recall exactly. I think that refers
23 specifically to the final report from the therapist.

24 Q. Okay.

25 So you were -- you think you were trying to

1 get the therapist to hurry up and produce the report?

2 A. Correct. Mario -- I had removed Mario from
3 Delano and sent him to San Miguel in the memos,
4 previous memos, and said that he could not function
5 until I received a report from the therapist.

6 Q. Okay.

7 And then the next paragraph talks about the
8 Diocese of Monterey wanting a memorandum of
9 understanding?

10 A. Correct.

11 Q. Do you know why the diocese wanted that
12 memorandum of understanding?

13 A. My recollection is that I certainly informed
14 them of the rumors that had been circulating with
15 respect to Mario and that we wanted to see whether
16 some restricted ministry was possible.

17 Q. Okay.

18 A. And then they asked for indemnification.

19 Q. Okay.

20 And in the second sentence "We have sent the
21 memorandum of understanding to the diocese granting
22 them indemnification should any reoccurrence leading
23 to litigation occur."

24 Now, at that point you had not confirmed in
25 your mind that the misconduct had actually taken

1 place, correct, the rumor of misconduct had taken
2 place, correct?

3 MR. MATIASIC: I'm just going to object to the
4 term "misconduct."

5 THE WITNESS: No, I'd not completely
6 determined, you know, the factuality of the rumors at
7 that point.

8 BY MR. HALE:

9 Q. In light of that, why did you refer to a
10 reoccurrence?

11 A. Well, I presume if any -- there were any
12 rumors of Mario doing that, and as I mentioned before,
13 in his conversation, at least I think he mentioned it
14 with me, Mario confirmed or implied that the issue of
15 the showers was -- he was aware that he had violated
16 the agreement.

17 Q. Okay.

18 You lost me on the agreement.

19 What agreement?

20 A. Well, the -- one of the -- I think the letter
21 said -- the first memorandum from [REDACTED], remember?

22 Q. Right.

23 A. I said there was to be no reoccurrence of the
24 issue.

25 Q. You're referring --

1 A. When he did, I removed him from Delano.

2 Q. You're referring to Exhibit 1?

3 A. Correct.

4 Q. Okay.

5 And going down to numbered paragraph 1 where
6 it says, "He must engage in the counseling sessions on
7 a weekly basis," did you receive reports from
8 Dr. Frank Clayman-Cook regarding the weekly counseling
9 sessions?

10 A. To the best of my recollection, I did not.

11 Q. Okay.

12 And then paragraph 3 says "You must refrain
13 from counseling..."?

14 A. Uh-hmm.

15 Q. Could you define counseling for me? What
16 would be included in that?

17 A. It would be any one-on-one meeting with the
18 parishioner or people.

19 Q. Okay.

20 And then paragraph 4 says "You may not engage
21 in sacramental ministry outside of the mission church
22 at San Miguel." Does that mean he can only perform
23 mass at San Miguel?

24 MR. BROSNAHAN: Objection, overbroad, vague
25 and ambiguous.

1 MR. HALE: I'm sorry, I didn't hear.

2 Q. Is that a correct --

3 A. It means he may not engage in sacramentals
4 outside of the mission church of San Miguel, the
5 mission church is there.

6 Q. So what did that mean he could do at San
7 Miguel, though, in other words?

8 A. Oh, then he could say mass.

9 Q. Okay. Anything else?

10 A. Well, sacramental ministry, I don't know what
11 that would involve at San Miguel. Mostly it would be
12 saying mass, it would involve hearing confessions,
13 baptizing.

14 Q. Okay. And why was it okay for him to
15 perform -- to engage in sacramental ministry at San
16 Miguel but not at these other locations, at San Ardo
17 and Bradley or the other missions?

18 MR. MATIASIC: Argumentative.

19 THE WITNESS: Well, the -- the reason is, when
20 he was removed to San Miguel, the San Miguel is a
21 rather large enclosed mission, okay?

22 Q. Okay.

23 A. And the church is attached to one end of it.
24 So to go to these other missions, San Ardo is, let's
25 say, 15 miles north and so is Bradley, he would have

1 to leave the premises of the enclosure, and that he
2 cannot do, to do ministry.

3 Q. It was the concern if he left the enclosure
4 that he would not be supervised by other Franciscans?

5 MR. MATIASIC: Vague and ambiguous.

6 THE WITNESS: I think --

7 MR. MATIASIC: Sorry, Father.

8 Vague and ambiguous.

9 THE WITNESS: I think the concern was that he
10 remain in the enclosure and not perform any ministry
11 outside of a very restricted public space.

12 BY MR. HALE:

13 Q. What was the benefit of him remaining within
14 the enclosure or why did you want him to remain inside
15 the enclosure?

16 A. Clearly, I wanted to make sure there was no
17 reoccurrence or anything else of that matter.

18 Q. And how would keeping him in the enclosure
19 ensure that there would be no reoccurrence?

20 A. Well, generally people are not allowed inside
21 the enclosure at San Miguel, the structure as such.

22 Q. In other words, lay people?

23 A. It's not allowed.

24 Q. Lay people are not allowed inside the
25 enclosure?

1 A. Yeah. They have cooks and maintenance people
2 and other things like that, but it's a very -- not a
3 public enclosure.

4 Q. The last sentence says "Father [REDACTED] has
5 agreed to monitor the program"?

6 A. Right.

7 Q. What did that entail?

8 A. It would have entailed [REDACTED] making sure
9 that Mario does not do ministry outside mission church
10 of San Miguel, and the attendance, obviously the
11 spiritual direction, and the other -- the -- the
12 requirements as they're laid out here.

13 Q. Was -- was Father Cimmarrusti essentially
14 under house arrest here or could he come and go as he
15 wanted? For instance, if he wanted to go to the
16 grocery store could he simply get in the car and drive
17 off the grounds?

18 MR. MATIASIC: Vague and ambiguous, lacks
19 foundation.

20 THE WITNESS: Well, I don't know how you would
21 describe it. It was very clear he was not functioning
22 as a priest, except in an extremely restricted
23 fashion.

24 MR. HALE: Okay.

25 Q. But aside from when he was performing his

1 ministry, could he simply get up and leave the grounds
2 if he wanted to? Would there be anyone to stop him?

3 MR. MATIASIC: Incomplete hypothetical.

4 THE WITNESS: I -- I don't know how to answer
5 that in the sense that -- I mean, you know, he's a
6 free agent in that sense. I mean, he could leave. We
7 did not want him to leave, and he would have to check
8 with the guardian to leave, in our understanding of
9 the term.

10 MR. HALE: Okay.

11 Q. Did you have an understanding as to what
12 Father -- Father [REDACTED], [REDACTED]'s, duties were with
13 regard to restricting, if any duties, with regards to
14 restricting Father Cimmarrusti's ministry?

15 MR. MATIASIC: Lacks foundation.

16 THE WITNESS: I don't recall exactly. Father
17 [REDACTED] may have been pastor, so he would know that
18 Mario could not do any ministry outside the mission
19 church.

20 MR. HALE: Okay.

21 THE WITNESS: And I think probably Father
22 [REDACTED] took a more active role in the monitoring.

23 BY MR. HALE:

24 Q. Okay.

25 Father, if you could just pass that over to

1 the --

2 A. Okay.

3 (Plaintiffs' Exhibit No. 9 was marked for
4 identification.)

5 MR. HALE: This is Exhibit 9. This is --

6 MR. BROSNAHAN: No, isn't it --

7 MR. MATIASIC: This is 10.

8 MR. HALE: Okay.

9 This is Exhibit 10, Bates stamp number FF-CIMM
10 269, it's correspondence dated October 5th, 1992 from
11 Father [REDACTED] to Bishop Ryan.

12 Q. Just let me know when you're ready, Father.

13 (Plaintiffs' Exhibit No. 10 was marked for
14 identification.)

15 BY MR. HALE:

16 Q. Before I ask you any questions about that,
17 will you -- I think we had previously talked about
18 your concern or the fact that Mario had acknowledged
19 at Delano engaging in conduct that led to that first
20 list of restrictions on him, that first exhibit, that
21 Exhibit 1, is that a fair statement?

22 MR. BROSNAHAN: Objection, vague and
23 ambiguous, misstates the witness's testimony.

24 THE WITNESS: I'm not sure I acknowledged
25 that. I was referring -- no, I don't -- I don't know

1 that he did that. That's in the memorandum, whatever
2 it says.

3 MR. HALE: Okay.

4 Q. But do you recall him acknowledging engaging
5 in some kind of conduct in the shower with these men?

6 MR. MATIASIC: Misstates the evidence.

7 THE WITNESS: I -- I guess I don't know what
8 time frame. I mean, as the -- as the evidence became
9 available to me then I acted on it.

10 MR. HALE: Right.

11 THE WITNESS: I don't know what time frame
12 you're referring to.

13 BY MR. HALE:

14 Q. Well, we've -- we've seen repeated references
15 or at least one reference in correspondence to making
16 sure there wasn't a reoccurrence.

17 A. Right.

18 Q. And so you testified earlier and I don't want
19 to misstates your testimony --

20 A. Right.

21 Q. -- about what you were concerned about
22 reoccurring, and you said that --

23 A. Right.

24 Q. -- Mario had acknowledged something happening?

25 A. Yes, I think it was July when I returned from

1 Rome and the duties there.

2 Q. Okay.

3 A. And I called him in to see him.

4 Q. July of '92?

5 A. Yes, I guess that's -- and then that's
6 reflected. Then he was sent for evaluation.

7 Q. And what he had acknowledged was that
8 something related to the showers?

9 A. Yes.

10 Q. Do you recall what exactly in the showers that
11 was?

12 A. I don't recall exactly. It was obvious enough
13 to confirm any suspicion of rumors.

14 Q. Okay.

15 With regard to this correspondence, do you
16 recognize this correspondence as something you wrote?

17 A. Yes, I do.

18 Q. I've only got one question. In the last
19 paragraph it says "We do not expect any difficulty and
20 the possibility of any litigation is very remote..."

21 A. Uh-hmm.

22 Q. What led you to believe that the possibility
23 of any litigation is very remote?

24 A. To the best of my knowledge, no men -- and
25 we're talking about men at this point -- came forward

1 to allege that Mario did anything. So I had no reason
2 to suspect there would be people coming forward. And
3 the restrictions that we placed upon Mario would have
4 made the opportunities or the possibility of any
5 future misconduct, inappropriate behavior remote.

6 Q. Given that the -- the past conduct that Mario
7 acknowledged in July of 1992 took place in a shower,
8 did you -- did you reach an opinion as to whether that
9 conduct involved sexual misconduct?

10 MR. MATIASIC: Counsel, I'm going to object to
11 the extent it misstates his testimony. I think
12 previously Father [REDACTED] testified that there were
13 rumors and he wasn't sure what the nature of it was,
14 whether it was Cimmarrusti in the showers or allowing
15 them to shower on the property. I don't think he's
16 ever indicated that Cimmarrusti said that something
17 inappropriate happened in the shower itself.

18 MR. HALE: Okay, well, let's clear that up.

19 Q. Was it your understanding, based on what
20 Father Cimmarrusti admitted to you in July of 1992,
21 that he was in the shower with these men or that they
22 were -- or that something else was going on?

23 A. As I recall it, okay, I don't know that he was
24 in the shower with the men. He may have been giving
25 them a shower. And I do not recall any admission at

1 that time, nor did I think, you know, move that over
2 into sexual misconduct or activity with them.

3 Q. Okay.

4 If he was giving them a shower, would that --
5 would you consider that sexual misconduct?

6 A. I consider that --

7 MR. MATIASIC: Incomplete hypothetical and
8 vague and ambiguous.

9 THE WITNESS: I consider that very
10 inappropriate behavior and unacceptable.

11 MR. HALE: Okay.

12 Q. Would you consider that deviant misconduct or
13 deviant misconduct?

14 MR. MATIASIC: Object that it calls for an
15 expert opinion and it's vague and ambiguous, and it's
16 an incomplete hypothetical, lacks foundation.

17 THE WITNESS: I don't think I would use that
18 kind of term at that time.

19 MR. HALE: Okay.

20 THE WITNESS: I identified it certainly as
21 inappropriate and --

22 BY MR. HALE:

23 Q. What about as you sit here now?

24 A. Strongly inappropriate.

25 Q. What about as you sit here now, would you call

1 that conduct deviant?

2 MR. MATIASIC: Same objections.

3 THE WITNESS: Deviant for me implies a
4 judgment made after a psychotherapeutic examination.
5 And that's a technical -- I interpret that as a
6 technical term.

7 MR. HALE: Okay. Pass that over to the
8 reporter. Here's the next document.

9 (Plaintiffs' Exhibit No. 11 was marked for
10 identification.)

11 MR. HALE: It's correspondence dated November
12 9th, 1992, three-page document, and it's Bates 276, 77
13 and 278, from the confidential file.

14 MR. BROSNAHAN: This is supposedly page 3, do
15 you have page 1 and 2? It says page 2.

16 MR. HALE: There should be two other -- oh,
17 sorry, guys.

18 MR. MATIASIC: I have 1 and 2.

19 BY MR. HALE:

20 Q. Father, do you have all three?

21 A. I do.

22 Q. Okay.

23 MR. NYE: Let me see that.

24 MR. HALE: Just let me know when you're ready,
25 Father.

1 (Witness reviews document.)

2 MR. NYE: Did it get mixed up with yours,
3 because I did pull all three.

4 MR. HALE: Unless it's here, I don't know.
5 It's probably --

6 MR. BROSNAHAN: Go ahead.

7 MR. HALE: Are you guys ready?

8 MR. BROSNAHAN: Go ahead.

9 MR. MATIASIC: One minute, let me finish
10 reading this.

11 MR. HALE: Okay.

12 MR. MATIASIC: You all set, Father?

13 THE WITNESS: Yes.

14 BY MR. HALE:

15 Q. Do you recognize this correspondence, Father?

16 A. Yes, I do.

17 Q. Do you recall receiving this correspondence?

18 A. Yes, I do.

19 Q. Okay.

20 Was this the first time you'd ever heard
21 Father Cimmarrusti was accused of child sexual abuse?

22 A. It was.

23 Q. Okay.

24 Regarding paragraph No. 1 where it says
25 "...handle my genitalia..." was this the first time

1 you'd heard such allegations against Father
2 Cimmarrusti as in paragraph 1?

3 MR. MATIASIC: Vague and ambiguous.

4 BY MR. HALE:

5 Q. Where it says, "Handle my genitalia upon many
6 occasions for the purpose of 'medical examinations'?"

7 MR. MATIASIC: Same objections.

8 THE WITNESS: This is the first time I was
9 aware of any kind of activity at St. Anthony's
10 Seminary.

11 MR. HALE: Okay.

12 Q. But it wasn't the first time you'd heard of
13 any allegations against Mario, like this?

14 A. With the minor, yes.

15 Q. Okay.

16 Were these allegations similar to any prior
17 allegations against adults you'd heard by Mario?

18 MR. MATIASIC: Misstates his -- his testimony.

19 THE WITNESS: No, I don't think so.

20 MR. HALE: Okay.

21 THE WITNESS: This is much more severe.

22 BY MR. HALE:

23 Q. Okay. When you say much more severe, is it
24 somewhat similar to the Delano allegations?

25 A. I don't recall.

1 MR. MATIASIC: Again, I'm going to object to
2 the term "allegations," the correspondence is clear
3 that it's rumors.

4 MR. HALE: Delano rumors.

5 MR. BROSNAHAN: Vague and ambiguous.

6 So can we have the question read back, please?

7 (The reporter read back as follows:

8 "Question: When you say much more severe, is it
9 somewhat similar to the Delano allegations?")

10 MR. MATIASIC: Same objections.

11 THE WITNESS: I noted before, that I did not
12 pick up in the Delano allegations sexual abuse. This
13 appears to me both by myself and in terms of the
14 recipient, sexual abuse.

15 MR. HALE: Okay.

16 Q. But is there -- was there any kind of
17 similarity between what you see described here and
18 what you learned of regarding Delano after you talked
19 to Father Cimmarrusti in July of '92?

20 MR. MATIASIC: Same.

21 MR. BROSNAHAN: Objection, asked and answered,
22 vague and ambiguous.

23 MR. MATIASIC: Same objections as before.

24 THE WITNESS: Yeah. No, I think I've said,
25 you know, they're different in kind.

1 MR. HALE: Okay.

2 Q. Have you ever heard of any other Franciscans
3 accused of conduct like that as described in paragraph
4 1?

5 MR. MATIASIC: Vague and ambiguous. And this
6 is -- this is at any time, including at the Board of
7 Inquiry?

8 MR. HALE: Yeah.

9 MR. MATIASIC: All right, overbroad.

10 THE WITNESS: Yeah. Clearly the information I
11 got from the Board of Inquiry, but I don't --

12 MR. HALE: I'm sorry, you're right. Yeah,
13 that's a good limitation. That was a good limitation
14 by Counsel.

15 Q. Before the Board of Inquiry?

16 A. Before the Board of Inquiry -- well, before
17 this date I had dealt with the situation of Philip
18 Wolfe, and by this time the situation with respect to
19 Robert Van Handel would have become clear to me.

20 Q. Right.

21 Okay, paragraph 2 states "Order my entire
22 class to strip down to underwear and proceed to the
23 English classroom to take a Sacred Doctrine
24 examination dealing with sex education."

25 A. Uh-hmm.

1 Q. Had you ever heard of that allegation prior to
2 it being raised here?

3 A. I never had.

4 Q. Had you ever heard of similar conduct by any
5 other -- any other Franciscan prior to the Board of
6 Inquiry?

7 MR. MATIASIC: Vague and ambiguous.

8 THE WITNESS: I do not recall.

9 MR. HALE: Okay.

10 Q. Would you expect a Franciscan faculty member
11 or staff member who learned of this conduct to have
12 reported it to anyone?

13 MR. MATIASIC: Lacks foundation, it's vague,
14 ambiguous, incomplete hypothetical.

15 BY MR. HALE:

16 Q. In other words, if Father Cimmarrusti walked
17 into the recreation room at St. Anthony's and
18 announced that this is what he had done to a room full
19 of Franciscans would you have expected any of those to
20 have reported that to anyone?

21 MR. MATIASIC: Vague and ambiguous, lacks
22 foundation, incomplete hypothetical and it calls for
23 speculation.

24 THE WITNESS: I never came across any friar
25 that knew that this activity occurred.

1 MR. HALE: Okay.

2 Q. But if there was one that knew that it
3 occurred, would it be your opinion that they should
4 have reported that to someone?

5 MR. MATIASIC: Same objections, and asked and
6 answered, Counsel.

7 THE WITNESS: Yes, I think I've answered it.

8 BY MR. HALE:

9 Q. But -- but -- my question is do you think it
10 should have been reported to anyone?

11 MR. MATIASIC: Counsel, again, same
12 objections, asked and answered.

13 MR. HALE: It's not -- it's not answered. It
14 certainly asked but hasn't been answered. That
15 question has not been responded to. The record will
16 reflect that, the video will reflect that.

17 THE WITNESS: It's clearly inappropriate
18 activity --

19 MR. HALE: Okay.

20 THE WITNESS: -- you know, and in that sense
21 should be dealt with.

22 MR. HALE: Okay.

23 Q. And when you say dealt with, do you mean
24 reported to the rector or reported to the provincial
25 or the guardian or --

1 A. Whatever --

2 MR. MATIASIC: Compound.

3 THE WITNESS: Whatever appropriate actions
4 should have been taken to see that the behavior does
5 not reoccur.

6 BY MR. HALE:

7 Q. In your opinion, and just your opinion as you
8 sit here today, what would have been the appropriate
9 steps to have taken in response to receiving a report
10 of this happening, if -- by a -- if you were a
11 Franciscan in that room?

12 A. Okay --

13 MR. MATIASIC: Lacks foundation, it's an
14 incomplete hypothetical and it calls for the witness
15 to speculate.

16 THE WITNESS: It does call for me to speculate
17 a lot, because he's referring to the period 1966 to
18 1968, and given what I know now, which was not
19 available to anyone at that time, that's a very --
20 almost impossible to answer of a historic nature.

21 BY MR. HALE:

22 Q. Okay, but let's -- let's look at it as a
23 historic context, would this ever have been
24 appropriate conduct by a faculty member directed
25 towards students at the seminary?

1 MR. BROSNAHAN: Objection, overbroad.

2 MR. MATIASIC: Vague and ambiguous.

3 MR. BROSNAHAN: And compound.

4 MR. MATIASIC: And lacks foundation as an
5 incomplete hypothetical, calls for speculation.

6 THE WITNESS: I trust that a friar finding out
7 that this activity was occurring would take the
8 appropriate steps to see that it did not reoccur.

9 MR. HALE: Okay.

10 Q. And what would those appropriate steps
11 include, in your opinion?

12 MR. MATIASIC: Same objections.

13 THE WITNESS: Again, at that time, '66 to '68,
14 you know, I -- I just wasn't involved in that kind of
15 system at the seminary so I don't know what the
16 internal structures were.

17 MR. HALE: Okay.

18 Q. What if it happened today, would you report it
19 to the rector or the guardian or the provincial? What
20 would you do?

21 MR. MATIASIC: Same objections.

22 THE WITNESS: If it was happening today I'd
23 call up the police department or the Child Protective
24 Services.

25 MR. HALE: Okay.

1 Q. Paragraph 3 says "Handle the genitalia of at
2 least one other member of my class for 'medical
3 purposes'".

4 Again, this was the first time you heard of
5 such allegations regarding someone other than the
6 author of this letter?

7 MR. MATIASIC: Vague, ambiguous.

8 THE WITNESS: Well, I'd heard --

9 MR. HALE: In other words --

10 THE WITNESS: I'd already dealt with Phil
11 Wolfe, you know, with --

12 MR. MATIASIC: So are you asking about
13 Cimmarrusti?

14 MR. HALE: Yeah, yeah.

15 THE WITNESS: Yes, it is the first time I
16 heard of these kind of allegations against Mario.

17 BY MR. HALE:

18 Q. And then paragraph 4 says "Apply corporal
19 punishment to the buttocks of at least one member of
20 my class until the entire five-finger impression of
21 Father Mario's hand could be seen in the black and
22 blue internal bleeding on his buttocks."

23 Was this the first time you'd heard such
24 allegations involving Father Cimmarrusti prior to the
25 Board of Inquiry?

1 MR. MATIASIC: Vague, ambiguous.

2 THE WITNESS: Yes, in terms of activity at
3 St. Anthony's Seminary, which this refers to.

4 BY MR. HALE:

5 Q. Had you ever heard?

6 A. I'd not heard of any other activity.

7 Q. Okay.

8 Let's look at page 2, second paragraph, first
9 sentence says "My wife and I visited Father [REDACTED]
10 [REDACTED] when he was at the provincial -- when he was
11 the provincial to discuss these matters. He told us
12 that Father Cimmarrusti had committed similar acts
13 against people in Guaymas, Sonora, Mexico while he was
14 in charge of a medical dispensary. Only action by the
15 Province prevented Father Mario's prosecution by
16 Mexican authorities."

17 Had Father Mario ever mentioned these
18 allegations to you?

19 A. This is the first time I'm aware of this.

20 Q. Okay.

21 A. If it indeed occurred.

22 Q. Okay. Did you ever ask Father [REDACTED] about
23 the allegations in this paragraph?

24 A. No.

25 Q. Did you ever go to Father [REDACTED] with a copy

1 of this letter and say, did this occur?

2 A. No, I did not.

3 Q. Why not?

4 MR. MATIASIC: Argumentative.

5 THE WITNESS: The -- when I met with

6 Mr. [REDACTED] and his mother, the -- clearly the issue
7 in their mind was how is Mario being dealt with? And
8 the issue for me was the removal of Mario from
9 ministry, entirely, and the appropriate restrictions,
10 disciplinary activities taken against him that would
11 prevent any future possibility of child abuse.

12 That was the issue for -- as I understood it with
13 Mr. [REDACTED] and his mother, and I concurred with them.

14 BY MR. HALE:

15 Q. Okay.

16 But were you worried at all that there might
17 have been past victims in Guaymas who had never
18 been -- never been offered help as a result of abuse
19 by Father Cimmarrusti?

20 MR. MATIASIC: Misstates the evidence.

21 THE WITNESS: That was not my consideration at
22 the time.

23 BY MR. HALE:

24 Q. Did you -- did you suggest to anyone that that
25 should be looked into?

1 MR. MATIASIC: Vague and ambiguous.

2 THE WITNESS: I don't recall.

3 BY MR. HALE:

4 Q. Did you have any doubt -- was there any doubt
5 in your mind about the veracity of what -- what --
6 what Mr. [REDACTED] wrote about in this paragraph?

7 MR. MATIASIC: At what time?

8 BY MR. HALE:

9 Q. When you read this letter?

10 A. I found Mr. [REDACTED] to be a very open and
11 credible person with respect to his concern for, you
12 know, preventing future abuse. He certainly spoke
13 with conviction about what had happened as he saw it.
14 The details of what he said to Father [REDACTED] were not
15 my concern.

16 Q. Were you -- were -- was there any frustration
17 on your part with Father [REDACTED] that if these
18 allegations were true, he might have put additional --
19 he might have put parishioners at risk in Delano, for
20 instance, by reassigning Mario to Delano?

21 MR. MATIASIC: Lacks foundation.

22 THE WITNESS: I had never heard of anything
23 like that with respect to Mario at Delano.

24 MR. HALE: Okay.

25 Q. Did you think it was important, though, to

1 confirm whether -- whether perhaps Father [REDACTED] had
2 taken any actions to put restrictions on Father
3 Cimmarrusti's ministry after these allegations raised
4 by -- by Mr. [REDACTED]?

5 MR. MATIASIC: I think you've already asked
6 and answered that.

7 THE WITNESS: My concern ultimately -- my
8 concern was to remove Mario entirely from ministry and
9 see that there was no possibility in the future, as
10 much as we could.

11 BY MR. HALE:

12 Q. Did you ever ask any other member of the
13 Province to discuss with Father [REDACTED] whether these
14 allegations by Mr. [REDACTED] were true?

15 A. No, I did not.

16 Q. Did you ever share this letter with any other
17 members of the -- of the Province?

18 A. I do not recall.

19 Q. Did you ever -- well, with regards to the last
20 sentence in that paragraph, "The only action by the
21 Province prevented -- only action by the Province
22 prevented Father Mario's prosecution by Mexican
23 authorities."

24 Did you ever ask anyone what action was taken
25 by the Province to prevent Father Cimmarrusti's

1 prosecution?

2 MR. MATIASIC: Lacks foundation.

3 THE WITNESS: No, I did not.

4 BY MR. HALE:

5 Q. Did you ever ask Mario about what had gone on
6 in Guaymas?

7 A. As alleged here by Mr. [REDACTED].

8 MR. MATIASIC: Lacks foundation, and it's
9 vague and ambiguous.

10 THE WITNESS: No, I did not.

11 MR. HALE: Okay.

12 Q. Did you ever ask any member of the Province if
13 they had any knowledge of action taken by the Province
14 to prevent Father Cimmarrusti's prosecution by Mexican
15 authorities?

16 MR. MATIASIC: Same objections.

17 THE WITNESS: My concern, as I've mentioned
18 many times, was the removal of him from ministry and
19 the assurance that this would not have the possibility
20 of happening again.

21 BY MR. HALE:

22 Q. Did you ever ask Father Cimmarrusti about the
23 allegations on page 1 in paragraph No. 1 about
24 handling Mr. [REDACTED]'s genitalia?

25 A. I had a confrontation with Father Mario

1 Cimmarrusti in which I communicated to him orally the
2 contents of this letter.

3 Q. Okay. And did you communicate all four of the
4 allegations set forth in those four numbered
5 paragraphs on page 1?

6 A. I don't recall exactly if I went down in
7 order, but --

8 Q. Did he admit or deny any of the allegations in
9 these four paragraphs on page 1?

10 A. He did not confirm.

11 Q. Did he admit any of them?

12 MR. MATIASIC: And, again, you're talking
13 about the four allegations set forth in page 1?

14 MR. HALE: Right.

15 THE WITNESS: To the best of my recollection,
16 he did not.

17 BY MR. HALE:

18 Q. Did he deny, expressly deny that these
19 allegations in these four paragraphs occurred?

20 A. Well, I just don't recall his exact words,
21 whether he denied it or ignored it or responded to me,
22 you know. So he certainly did not admit it.

23 Q. Do you recall if he equivocated?

24 A. I don't.

25 MR. MATIASIC: Vague and ambiguous.

1 BY MR. HALE:

2 Q. Do you recall if he tried to explain it
3 somehow as not being inappropriate conduct?

4 MR. MATIASIC: You're talking about all four
5 of the allegations again?

6 MR. HALE: Right.

7 THE WITNESS: I don't recall if he -- if he
8 made any differentiation. I don't recall him
9 admitting it. And I don't -- if -- if he equivocated,
10 I don't remember.

11 MR. HALE: Okay.

12 Q. With regards to that page 2 in that last
13 sentence about preventing action by the Mexican
14 authorities, was there any concern on your part that
15 Father Cimmarrusti might be some sort of fugitive
16 from -- from justice in Mexico?

17 MR. MATIASIC: Lacks foundation.

18 THE WITNESS: That was not a consideration for
19 me.

20 MR. HALE: Okay.

21 Q. Had you ever heard of the Province intervening
22 on behalf of a Franciscan to prevent prosecution by
23 authorities for child and sexual abuse?

24 MR. MATIASIC: Vague.

25 MR. BROSNAHAN: Objection, lacks foundation

1 that this incident in Guaymas involved childhood
2 sexual abuse.

3 MR. MATIASIC: It's vague and ambiguous.

4 THE WITNESS: No, I have never heard of that.

5 MR. HALE: Okay.

6 Q. And did you speak with [REDACTED] in person
7 about the allegations in this -- in this particular
8 paragraph here, about -- about what happened in
9 Mexico?

10 A. Well, obviously Mr. [REDACTED] and his mother
11 came to see me and communicated to me in response to
12 this letter, went down and said everything.

13 Q. And did you -- was -- was -- was it your
14 impression that the allegations in Mexico involved
15 childhood sexual abuse, according to Mr. [REDACTED]?

16 A. Mr. [REDACTED] reported to me the conversation he
17 had in Stockton with Father [REDACTED].

18 Q. Okay.

19 A. I -- that conversation was part of the much
20 larger communication and probably more central, which
21 was, where is Mario, what is he doing, and is he
22 removed from ministry. And that became the focus of
23 the discussion and then my implementation.

24 Q. Okay. During this period did you form an
25 opinion as to whether the allegations in Mexico

1 involved childhood sexual abuse by Father Cimmarrusti?

2 A. No, I did not.

3 Q. Okay.

4 And so as you sit here today, you have never
5 spoken with anyone in the Province regarding whether
6 or not the allegations in this second paragraph on
7 page 2 are accurate, is that -- is that a fair
8 statement?

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

10 Q. Okay.

11 So after -- after you read this letter, I know
12 you -- sounds like you confronted Father Cimmarrusti.
13 Did you take any other action?

14 A. Yeah. I removed him entirely, to the best of
15 my knowledge, from sacramental ministry.

16 Q. Okay.

17 A. And I'm not sure what the sequence of events
18 was after that.

19 Q. Okay. Did you report this letter to anyone in
20 the Province?

21 MR. MATIASIC: Vague and ambiguous.

22 BY MR. HALE:

23 Q. I guess you were at the top of the food chain
24 at that point.

25 Did you report the allegations in this letter

1 to the law enforcement?

2 A. No.

3 Q. Did you give any consideration to doing that?

4 A. No, I did not.

5 Q. Why not?

6 MR. MATIASIC: Argumentative.

7 THE WITNESS: Well, throughout my
8 understanding of the law and its application was
9 referring to current and present child abuse. And so
10 in this instance I did not consider myself a mandated
11 reporter in that sense.

12 BY MR. HALE:

13 Q. Because of the time that had elapsed since the
14 abuse took place?

15 A. Correct.

16 Q. Was he still at San Miguel at the time you
17 received this correspondence?

18 A. The confrontation occurred at San Miguel.

19 Q. Okay.

20 A. So --

21 Q. After you received this correspondence, did
22 you -- did you warn any parishioners at San Miguel
23 about these allegations involving Father Cimmarrusti?

24 A. To the best of my knowledge, I did not. I
25 removed him from ministry.

1 Q. Okay, but he was still in residence at San
2 Miguel, correct?

3 A. I'd have to look at the -- you know, the
4 record and see what was the -- as I said, the steps
5 and procedures that were taken immediately after that.

6 Q. Okay.

7 A. I -- I -- on the top of my head, I don't know.

8 Q. Okay.

9 Do you recall if you considered warning the --
10 the San Miguel parishioners about these allegations
11 that were raised by Mr. [REDACTED]?

12 A. I don't recall that I did.

13 Q. Okay.

14 Do you recall discussing -- did anyone ever
15 say to you, maybe we should warn the parishioners at
16 San Miguel about these allegations raised by
17 Mr. [REDACTED]?

18 A. No, I --

19 MR. MATIASIC: Let me just object.

20 THE WITNESS: I'm a little confused.

21 MR. MATIASIC: I think that misstates his
22 previous testimony regarding communication, whether or
23 not he had communication with anyone else.

24 MR. HALE: Good point.

25 Q. Did you ever discuss these allegations with

1 [REDACTED], [REDACTED]?

2 This is in your correspondence.

3 A. Give me just a minute.

4 This is November '92, so Father [REDACTED]
5 would have still been vicar provincial at the time.

6 Q. Okay.

7 A. But I don't recall discussing it with [REDACTED], one
8 way or the other.

9 MR. HALE: Okay.

10 You could just slide that over to the reporter.

11 She's going to switch the tape anyway.

12 VIDEOTAPE OPERATOR: Videotape deposition off
13 record at 5:08 p.m.

14 This ends Tape 3, Volume 1 in the deposition of
15 [REDACTED].

16 (Recess.)

17 VIDEOTAPE OPERATOR: Videotape deposition,
18 back on record at 5:15 p.m.

19 This marks the beginning of Tape 4, Volume 1 in
20 the deposition of [REDACTED].

21 MR. HALE: Okay. This is -- I think we're on
22 Exhibit 12. This is a document Bates stamped 314,
23 it's correspondence from Father [REDACTED] to Bishop
24 Ryan dated November 20th, 1992.

25 Just let me know when you're ready, Father.

1 (Plaintiffs' Exhibit No. 12 was marked for
2 identification.)

3 BY MR. HALE:

4 Q. Okay. In this first paragraph, Father, the
5 second sentence says "Unfortunately, I must bring to
6 your attention a new allegation."

7 Is that new allegation the correspondence from
8 Mr. [REDACTED]?

9 A. Correct.

10 Q. And then it says, "We are currently
11 investigating the allegations."

12 What was being done to investigate those
13 allegations?

14 A. This is almost coterminous with the actions
15 that were being taken at St. Anthony's Seminary.

16 Q. Okay.

17 A. So I would have been meeting with the local
18 community, taking actions as to investigation of the
19 allegations at St. Anthony's.

20 Q. Okay.

21 And then you say "I had no evidence before
22 this time that Mario's activity had extended to
23 minors, but I have to check this out more thoroughly
24 now with Father [REDACTED], my predecessor as
25 provincial."

1 A. Uh-hmm.

2 Q. Are you saying that because of the allegations
3 by Mr. [REDACTED] of what happened in Mexico?

4 A. I think that's what that refers to.

5 Q. Okay.

6 And did you actually go and talk with Father
7 [REDACTED] after you wrote this correspondence about those
8 allegations?

9 A. I do not recall the explicit conversation with
10 Father [REDACTED], when it occurred or what was indicated.
11 I do not believe that Father [REDACTED] ever indicated to
12 me that sexual abuse of minors had occurred in Mexico.

13 Q. Okay.

14 But you do -- you did have a conversation with
15 him after you wrote this letter about -- that the --
16 Mr. [REDACTED]'s allegations?

17 A. This certainly implies that I did.

18 Q. Okay.

19 Do you recall what he said? And I'm talking
20 about Father [REDACTED], what he said about Mr. [REDACTED]'s
21 statement regarding the Franciscans taking actions to
22 prevent the authorities from prosecuting Father
23 Cimmarrusti?

24 MR. MATIASIC: Lacks foundation, assumes facts
25 not in evidence.

1 THE WITNESS: I guess I don't -- it's a little
2 late for me, just --

3 MR. HALE: Sure, I understand.

4 THE WITNESS: Would you repeat the question,
5 please.

6 MR. HALE: Sure.

7 Q. Do you recall what Father [REDACTED] said about --
8 did you ask Father [REDACTED] about that last sentence in
9 that paragraph that we'd just been discussing, wherein
10 Mr. [REDACTED] indicated that Father [REDACTED] had told him
11 that steps were taken by the Province to prevent
12 Father Cimmarrusti being from prosecuted by the
13 Mexican authorities?

14 A. I have no recollection of quizzing him as to
15 that sentence, one way or the other.

16 Q. Okay.

17 And you haven't spoken with him since about
18 whether there's any truth to those -- those
19 allegations by Mr. [REDACTED]?

20 MR. MATIASIC: Asked and answered.

21 MR. BROSNAHAN: Since when?

22 BY MR. HALE:

23 Q. Since that conversation that they had.

24 A. We had a conversation, I don't recall when it
25 was. We had -- it could -- probably this one that I'm

1 referring to here.

2 Q. Was it around the time of this letter do you
3 think?

4 A. I would -- I didn't want to speculate as to
5 the time.

6 Q. But it wasn't recent, correct? It was back --

7 A. Oh, yeah.

8 Q. -- 15 years?

9 A. It wasn't recent. And wasn't -- you know, did
10 I talk with him after -- obviously talked with him at
11 this time. And this implies that, did I talk with him
12 after being provincial minister, there was no
13 specific -- at that -- after I was out of being
14 provincial minister there would have been no specific
15 details.

16 Q. Did you notify anyone other than Bishop Ryan
17 about these new allegations by [REDACTED] involving
18 Father Cimmarrusti?

19 A. At this time we were considering setting up
20 the Board of Inquiry at St. Anthony's Seminary so I
21 certainly would have mentioned these allegations,
22 because they informed the decision with respect to
23 St. Anthony's Seminary --

24 Q. Okay.

25 A. -- to the provincial council.

1 Q. So you mentioned these allegations to the
2 provincial council.

3 Anyone else?

4 A. Not that I recall.

5 MR. HALE: Okay. Okay.

6 If you could just pass that over to the -- the
7 court reporter.

8 This will be real quick. This will be Exhibit 13.

9 (Plaintiffs' Exhibit No. 13 was marked for
10 identification.)

11 BY MR. HALE:

12 Q. And it's Bated 319 and it's dated December
13 11th, 1992. It appears to be correspondence from
14 Father [REDACTED] to [REDACTED],
15 [REDACTED].

16 Ready?

17 Do you recognize this correspondence, Father?

18 A. Yes.

19 Q. Is that correspondence you wrote
20 Ms. [REDACTED]?

21 A. Appears to be so, yes, I think it is.

22 MR. HALE: Okay, that's all I had. Just pass
23 that over. I told you that would be quick.

24 Okay, got it, got it.

25 Don't blow a gasket on this one. I'm not asking

1 the questions you think I'm going to ask when you
2 first see it. Bear with me.

3 This is a document that was produced in the [REDACTED]
4 litigation, Bates stamps 271 to 272, and it's dated
5 November 21st, 1993, it's from Father [REDACTED] to
6 Father Van Handel.

7 (Plaintiffs' Exhibit No. 14 was marked for
8 identification.)

9 THE WITNESS: I have something attached.

10 MR. HALE: That's the exhibit I was looking
11 for earlier. You don't need to look at that.

12 THE WITNESS: Oh.

13 MR. HALE: I'm not going to ask any questions
14 about that. I knew it was there somewhere.

15 Q. Whenever you're ready, Father.

16 A. Okay, yes.

17 Q. Regarding the Board of Inquiry, was that --
18 was that your creation? Was it your idea in other
19 words?

20 MR. MATIASIC: Vague and ambiguous.

21 THE WITNESS: The Board of Inquiry --
22 formation of the Board of Inquiry took place over a
23 long period of time. Fundamentally, the idea, as I
24 recall, came to me -- I had looked at the abuse
25 policies for the Archdiocese for Chicago, I was

1 familiar with the Newfoundland case which had also
2 exploded at that time, I'd had experience in dealing
3 with families, and I recognized the desire of the
4 families of the victims. And the -- the important
5 perspective they brought to conversations and
6 inquiries.

7 So I recognized the need to get others involved in
8 the process.

9 Simultaneous with this, the community in Santa
10 Barbara was meeting, they were really two very
11 parallel tracks which intersected in the fall of '92.
12 The -- the idea to form the Board of Inquiry, the
13 composition of the Board of Inquiry, the importance
14 of -- of dealing with the thing thoroughly and
15 publicly was fully agreed to by the provincial
16 definitorium.

17 MR. HALE: Okay.

18 Q. Had the provincial ever considered forming a
19 Board of Inquiry prior to this instance in 1992 and
20 '93?

21 MR. MATIASIC: That you know of.

22 Calls for speculation.

23 THE WITNESS: Not to my knowledge.

24 MR. HALE: Okay.

25 Q. Were you involved in drafting the Board of

1 Inquiry report?

2 A. Was I involved in drafting it?

3 Q. Yes.

4 MR. BROSNAHAN: Objection, vague and
5 ambiguous.

6 THE WITNESS: The Board of Inquiry drafted its
7 own report.

8 MR. HALE: Okay.

9 Q. Were you involved in revising the Board of
10 Inquiry report?

11 A. The Board of Inquiry's report in one of its
12 initial penultimate formulations or whatever, was sent
13 to me for review.

14 Q. Okay.

15 A. And we entered into a conversation as to the
16 confidentiality of the identities of victims and
17 friars, and how best to protect that.

18 Q. When you say "we," you mean you and the board?

19 A. Yes.

20 Q. Was anyone else involved from the Province?

21 A. No, I do not believe so.

22 Q. Okay.

23 A. I think the whole report may have been
24 initially reviewed but I don't recall exactly at the
25 moment. At any rate, I was the major --

1 Q. When you say the whole report was reviewed,
2 you mean by someone else in the Province?

3 A. The -- the -- not the final report, you know,
4 which was ultimately two reports, an internal report
5 and then a public report. And my desire was that the
6 public report protected the identity of victims and
7 friars, since the whole process was not adjudicatory
8 and was designed to protect future abuse from ever
9 occurring.

10 Q. Okay.

11 A. So that the -- the presentation of it publicly
12 needed to protect the confidentiality and identities
13 of peoples. And they -- they -- the public report
14 then was devised by the Board of Inquiry itself, and
15 written by the Board of Inquiry.

16 And then an internal report was given to me.

17 Q. Okay.

18 And did you make revisions to the internal
19 report or the public report?

20 MR. MATIASIC: Asked and answered.

21 THE WITNESS: I don't recall the exact
22 sequence of things. You know, the -- the -- I mean,
23 you know, whether there's a word or line or -- they
24 wrote the reports, both reports.

25 BY MR. HALE:

1 Q. Did the first -- did they initially give you
2 one draft or did they initially give you two drafts --
3 two reports, I should say?

4 A. I remember one draft.

5 Q. Okay.

6 A. And then the issue was, would this be for me
7 or how did we deal with the public.

8 Q. Okay.

9 A. And then the internal report and the public
10 report were separated out somewhat.

11 Q. So is that issue kind --

12 A. And a composite description of the friars, I
13 think you showed that to me already --

14 Q. Right.

15 A. -- was their procedure for dealing with a very
16 delicate personnel situation on all sides.

17 Q. So when the board was first created was it
18 your expectation there would be these two separate
19 reports or initially was it supposed to be one report
20 and then when this issue arose that's when it kind of
21 split into two reports?

22 A. It -- between the time the Board of Inquiry
23 was set up in January '93, I guess, to November of
24 '93, it was a constantly evolving procedure. As I got
25 information and they formed their own rules of

1 procedure, they had their independence, they met
2 independently, they did, you know, all the interviews
3 of people. And I don't think the issue of how that
4 final report would be addressed or anything like that
5 was in fact addressed completely until we were
6 confronted with what do we do now that we know the
7 situation and are bound by both confidentiality and
8 public exposure, the protection of rights, and the
9 need to be pastoral. The availability of information
10 for the community and its reassurance, at the same
11 time that we respect all the commitments that we'd
12 made to individuals.

13 Q. Okay.

14 Looking at this -- this exhibit, and paragraph
15 3 it says "The Board of Inquiry has issued two
16 reports: An internal Administrative Report to me
17 which contains all the pertinent information and
18 details of the allegations; a public report which will
19 be presented to the public (whoever comes) on Monday
20 evening, November 29th, at the Goleta Valley Community
21 Center in Santa Barbara."

22 How many pages, approximately, is the internal
23 administrative report?

24 A. You know, I don't recall much, but I think
25 it's about the same length as the public report.

1 Q. Does it contain all the appendixes that a
2 public report contains?

3 A. I could not testify to it, I think it does.

4 Q. What are the differences between the public
5 report and the internal administrative report?
6 Obviously there's names of the --

7 A. Most -- yeah, substantial difference that I
8 recognized was the composite portrait for the public,
9 where people were not named nor was -- let's say,
10 the -- the revelation of names was more difficult, and
11 the private report which went down, you know, in more
12 detail, as it says here.

13 Q. Okay, and it identifies the -- each one of the
14 twelve Franciscans?

15 A. It -- I believe the board adopted itself a
16 code.

17 Q. Okay.

18 And is there more detail regarding the -- the
19 abuse allegations in the -- in the private report?

20 A. The -- the -- their difference in kind between
21 the composite report, which is a combination of
22 multiple friars and cases and case studies and things
23 like that, and individuals that were alleged to have
24 done something. So is there more detail, yes, there's
25 more specific detail related to friars, obviously, in

1 the internal report.

2 Q. Okay.

3 Any other ways that the internal report
4 differs from the -- the public version or the public
5 report?

6 A. Not that I recall.

7 Q. Just if -- if these -- if those two documents
8 were sitting here on the table in front of us --

9 A. Uh-hmm.

10 Q. -- would the internal report be taller or
11 shorter than the copy of the public report I'm looking
12 at now?

13 A. I think it would be roughly the same.

14 Q. Okay.

15 Were there separate sections in the internal
16 report for each of the twelve Franciscans accused of
17 abuse?

18 A. As I mentioned, the internal report talks
19 about codes A, B, C, D, this sort of thing, and
20 identifies behavior which is known, I mean, through --

21 Q. Okay.

22 A. -- the other things available to you.

23 Q. Okay.

24 If we go down to the last paragraph on that
25 thing, page 1 of that last sentence of that last

1 paragraph says, "Many of us have worked long and hard
2 to get it in this shape and to protect as much as
3 possible the good name of the fraternity and identity
4 and dignity of the friars involved."

5 A. Uh-hmm.

6 Q. Who were the many who worked long and hard on
7 the document?

8 MR. MATIASIC: Overbroad.

9 THE WITNESS: I don't -- the -- I think the
10 "we" refers mostly to me.

11 BY MR. HALE:

12 Q. Okay.

13 A. Working with the Board of Inquiry.

14 Q. Okay.

15 Was there anyone else from the Province
16 involved in assisting you in -- in creating the public
17 version of the report or revising the -- the internal
18 administrative report?

19 MR. BROSNAHAN: Objection, mischaracterizes
20 the witness's testimony. I believe he said that the
21 board wrote the final report.

22 THE WITNESS: I did not create the public
23 report.

24 BY MR. HALE:

25 Q. Okay, what about --

1 A. Nor did I create the private report.

2 Q. Okay.

3 Was the -- were there any Franciscans involved
4 in the creation of any -- other than you or -- strike
5 that.

6 Were there any Franciscans involved in the
7 creation of either of these reports or the revision --
8 strike that.

9 Were there any Franciscans involved in the
10 revision of either of these reports?

11 A. The Board of Inquiry itself had one friar
12 member who obviously would have been present at the
13 meetings.

14 Q. Okay.

15 A. So in that sense there was.

16 Q. Defer Bonner, B-o-n-n-e-r?

17 A. Desmon Bonner.

18 Q. Okay. But he was not a member of the Province
19 of Saint Barbara, correct?

20 A. Correct.

21 Q. Was there any Province members who were
22 involved in the drafting or the revision of either of
23 these documents?

24 A. The internal report, to the best of my
25 knowledge, didn't go through a lot of revisions

1 because it came from the Board of Inquiry to me.

2 Q. Okay.

3 A. The public report, I met with them myself, and
4 the composite portrait was designed. They also
5 designed the statistical analysis at the beginning of
6 this report.

7 Q. Okay.

8 A. And wrote the entire text.

9 Q. Okay.

10 A. My concern throughout was simply the
11 protection of the confidentiality of victims who had
12 come forward and the confidentiality and personal
13 dignity of friars, since it was a non-adjudicatory
14 procedure.

15 Q. Other than the board and other than you, did
16 anyone else review or help revise either of these
17 documents?

18 MR. MATIASIC: Asked and answered.

19 THE WITNESS: I think among the friars, I was
20 pretty much the sole agent.

21 BY MR. HALE:

22 Q. Okay.

23 You say "pretty much" though, it makes it
24 sound like there were a few others. So were there any
25 others, other than you, even if they did just an iota

1 of work?

2 A. Not that I recall, no friars. We did not --

3 Q. Okay.

4 A. -- we do not -- that was their business how
5 they wanted to do it.

6 Q. Okay.

7 So your testimony is the only people involved
8 in the -- in seeing this report -- these reports and
9 in revising these reports were the board, primarily?

10 A. Correct.

11 Q. And then you, with whatever follow up needed
12 to be done, is that a fair statement?

13 A. The only friar present at the meeting in Santa
14 Barbara when this was decided upon, they had come up
15 with the -- how to deal with this problem because they
16 also recognized it as a problem.

17 Q. Okay.

18 A. And they came up with this methodology. The
19 only friar, to the best of my recollection, at that
20 meeting, was me.

21 Q. Did you ever see a version of either report
22 that contained the names of the twelve Franciscans?

23 A. I don't recall.

24 I would know who they were anyway, because I'd
25 received periodic reports from the Board of Inquiry

1 so --

2 Q. Right.

3 A. I just don't recall.

4 Q. Okay.

5 Did you ever see a version of the report that
6 contained references to alleged victims reporting to
7 Franciscans about being abused?

8 A. I don't recall --

9 Q. Okay.

10 A. -- I did.

11 Q. Was there ever any discussion about whether
12 there should be included in -- in either version of
13 the report reports by seminarians or other minors to
14 Franciscans about being abused?

15 MR. MATIASIC: Lacks foundation that there was
16 such a indication in the Board of Inquiry process.

17 THE WITNESS: This was not in my presence. I
18 mean, they wrote the report.

19 BY MR. HALE:

20 Q. Did you ever receive a -- an individual report
21 regarding a victim named [REDACTED], where he
22 described reporting to Father Harris --

23 A. Right.

24 Q. -- being abused by Father Cimmarrusti?

25 A. I don't recall that I did.

1 Q. Okay.

2 Did you ever hear any discussion prior to the
3 Board of Inquiry -- well, during the Board of Inquiry
4 process?

5 A. Process?

6 Q. About [REDACTED] reporting to Father
7 Harris him being abused by Father Cimmarrusti?

8 A. I don't recall. And simply because the Board
9 of Inquiry itself kept the names of the victims
10 confidential from me.

11 Q. Even in the reports they sent to you?

12 A. Correct.

13 Q. And -- and --

14 A. The victims said that was their arrangement,
15 to allow the victims the freedom to express their
16 opinions.

17 Q. And it's my understanding that when the board
18 interviewed a witness, they would send you a report
19 about that witness?

20 A. Correct.

21 Q. But they never identified a witness by name in
22 one of those reports?

23 A. I do not think so.

24 Q. Okay.

25 Do you still have a copy of the internal

1 administrative report?

2 A. I do not have a personal copy.

3 Q. Do you know where it's stored?

4 A. It would be stored in the provincial office.

5 Q. Okay.

6 Have you ever shared that document or
7 disseminated that document to anyone? And I'm talking
8 about the internal administrative report.

9 A. That's been unavailable -- no, I haven't.
10 Yeah.

11 Q. Okay.

12 A. That was for me.

13 Q. Have you ever -- have you ever discussed its
14 contents with any members of the Province?

15 A. Certainly discussed the -- the contents of the
16 report and the public report was available to people,
17 so we discussed the contents of all of them.

18 Q. Do you know of anyone other than yourself who
19 has seen the internal administrative report?

20 A. I'm really trying to think here.

21 I don't know of any friars that saw it. I
22 considered it confidential to me and the material in
23 it confidential.

24 Q. Okay. What about in -- other than friars, do
25 you know of any other members of the Roman Catholic

1 church -- and I shouldn't say members -- any priests
2 in the Roman Catholic church who have seen this
3 internal administrative report?

4 MR. MATIASIC: Vague and ambiguous.

5 THE WITNESS: No, I don't recall any.

6 BY MR. HALE:

7 Q. That last paragraph says "Many of us have
8 worked long and hard to get it in this shape..."

9 A. Uh-hmm.

10 Q. Can you describe the process with regards to
11 working long and hard to get the document in shape.

12 MR. MATIASIC: Calls for a narrative,
13 overbroad.

14 BY MR. HALE:

15 Q. What -- what did it involve?

16 A. Well, I mentioned in the fall of '93, before
17 the public meeting was held, there was a series of,
18 clearly, exchanges as to what would be in a public
19 report, what would be in a private report and was it
20 necessary to separate them out in order to protect the
21 confidentiality.

22 I remember going to Santa Barbara, having an
23 exchange. We -- in fact, I think the -- the Board of
24 Inquiry had announced initially that it was going to
25 make the report available in October, and this -- if I

1 remember the dates correctly, and this was not
2 possible because of the feelings of confidentiality
3 which I had, and which I found out later, some of the
4 members of the board shared.

5 And so I met in Santa Barbara with them and
6 they came up with this suggestion that there be
7 composites and statistical analysis of this abuse.
8 And in the first part of the report and in its central
9 part.

10 And that seemed to be acceptable, morally and
11 legally, in a public forum, given the pastoral nature
12 of the board.

13 And at the presentation the report was
14 delivered by Jeffrey Sterns, who was chairman of the
15 Board of Inquiry, and public statement in response was
16 made to that, because I had received the report
17 internally and publicly.

18 Q. Okay.

19 A. So the report was owned in that sense, in
20 terms of authorship, by the board itself.

21 MR. HALE: Okay, all right. Can you pass that
22 over to the court reporter.

23 Take a look at this document, I want to see if I
24 can refresh your recollection as to whether the report
25 had ever been disseminated to anyone.

1 (Plaintiffs' Exhibit No. 15 was marked for
2 identification.)

3 MR. HALE: This is going to be Exhibit 15,
4 correspondence dated August 21 -- 24th 1995.

5 THE WITNESS: Correct.

6 BY MR. HALE:

7 Q. I'm getting tired. From Father [REDACTED] to
8 Most Reverend Norman McFarland at the Diocese of
9 Orange.

10 A. Uh-hmm.

11 Q. And the Bates numbers are OFM KRUM, K-R-U-M,
12 159 and 160?

13 A. Right.

14 Q. Whenever you're ready.

15 Do you recognize this -- I'm sorry, let me
16 know when you're done, Father.

17 A. I recognize this is my letter.

18 Q. Okay.

19 With regards to the second paragraph, it says
20 "Enclosed please find the confidential report which I
21 received from the Board of Inquiry for St. Anthony
22 Seminary in November 1993. These materials were given
23 only to me." Does that refresh your recollection as
24 to whether anyone else has been provided a copy of
25 the -- the internal report we've been discussing?

1 MR. BROSNAHAN: Vague and ambiguous.

2 THE WITNESS: Well, it does. I mean, the next
3 paragraph after it says "These two pages contain all
4 the information..."

5 MR. HALE: Okay.

6 THE WITNESS: So what it indicates is that
7 Bishop McFarland received the information in the
8 internal report with respect to Gus Krumm only.

9 MR. HALE: Okay.

10 THE WITNESS: He did not receive the internal
11 report.

12 BY MR. HALE:

13 Q. So two pages of the report were provided to
14 Bishop McFarland?

15 A. The -- the -- the allegations against Father
16 Gus Krumm were provided.

17 Q. Okay, but -- and -- but it was two pages from
18 the internal report, correct?

19 A. The reason I hesitate is I don't know whether
20 I retyped it and gave it to him.

21 Q. Okay.

22 A. Or simply made a copy of it.

23 Q. Okay.

24 It says on the enclosure -- second page,
25 enclosure IRT report pages.

1 A. Enclosure.

2 Q. Do you know what that's referring to? Is that
3 the internal report?

4 A. It's not the internal report, it would be the
5 excerpt with respect to Gus Krumm.

6 Q. Okay.

7 A. So that's -- this letter went with that
8 excerpt, so the enclosure refers to that.

9 MR. HALE: Okay.

10 If you could just pass that over.

11 Here's the next.

12 (Plaintiffs' Exhibit No. 16 was marked for
13 identification.)

14 MR. HALE: And, Father, just so you know, I'm
15 only going to ask questions regarding the first three
16 pages.

17 THE WITNESS: Okay. Can I get some more
18 water?

19 MR. HALE: Yeah, yeah, sure.

20 This is correspondence dated December 22nd, 1992,
21 it's going to be Exhibit 16. It is a one, two, three,
22 four, five, six page correspondence from [REDACTED],
23 [REDACTED], to Father [REDACTED].

24 MR. BROSNAHAN: Is this exhibit supposed to
25 have a letter to Van Handel?

1 MR. HALE: No, that's the one we just talked
2 about probably, so you can just toss that.

3 (Witness reviews document.)

4 MR. HALE: Whenever you guys are ready, just
5 say the word.

6 MR. MATIASIC: Ready, Father?

7 THE WITNESS: Yes.

8 MR. HALE: Okay.

9 THE WITNESS: I guess, yeah.

10 BY MR. HALE:

11 Q. Father, do you recognize this correspondence?

12 A. Yes, I recall receiving the letter from [REDACTED].

13 Q. Okay.

14 Have you ever met with [REDACTED]?

15 A. I may have, I couldn't say one way or the
16 other.

17 Q. Okay.

18 Rather than reading through each one of these
19 allegations -- he lists six allegations of abuse in
20 paragraphs numbered 1 through 6 on pages 1 and 2?

21 A. Right.

22 Q. Did you -- did you talk to Mario about these
23 allegations?

24 MR. MATIASIC: Let me just clarify, Counsel.
25 Specifically about [REDACTED]'s allegations?

1 MR. HALE: Yeah.

2 MR. MATIASIC: He's already testified about
3 the [REDACTED] allegation.

4 MR. HALE: I'm talk allegations page 1 and 2.

5 THE WITNESS: No, I don't think I talked with
6 him specifically about [REDACTED]'s allegations.
7 They'd already been addressed in the conversation with
8 him regarding [REDACTED].

9 MR. HALE: Okay.

10 Q. So I take it you did not show him a copy of
11 this letter?

12 A. I don't recall.

13 Q. Okay.

14 Did you -- did you show this letter to anyone
15 in the Province?

16 A. Not to my knowledge.

17 Q. Did you turn it over to the Board of Inquiry?

18 A. I don't -- I do not recall. And the Board of
19 Inquiry was set up the following month. He may have
20 gone to the Board of Inquiry.

21 Q. Okay.

22 Prior to the Board of Inquiry being set up,
23 did you take any steps to investigate Mr. [REDACTED]'s
24 allegations in this correspondence?

25 A. I don't think at that point I felt the need

1 to, because Mario had been removed entirely from
2 ministry.

3 Q. Okay.

4 A. And the material would be -- the -- the
5 activities of the Board of Inquiry in January -- would
6 start in January or February, you know, which would
7 allow people to come forward.

8 Q. Okay.

9 After you received this letter, did you ever
10 notify anyone outside of the Province, in other words,
11 who was not a member of the Province, about the
12 allegations contained in paragraph -- in these six
13 paragraphs in Mr. [REDACTED]'s letter?

14 A. Well, I don't -- I guess I don't understand
15 the question.

16 Q. Did you ever warn anyone about these
17 allegations by -- by Father -- by Mr. [REDACTED]
18 regarding Father Cimmarrusti?

19 A. I -- I did not warn them. The public
20 revelation of Mario's activities would be revealed by
21 the Board of Inquiry.

22 Q. Okay.

23 Did you have any concern between the time that
24 you received this letter and the time that the board
25 published its -- its report that abuse might take

1 place involving Father Cimmarrusti?

2 A. I did not have that concern, because I had
3 removed him from ministry.

4 Q. Okay.

5 Did you have any concern that after the board
6 issued its report, there might be abuse by Father
7 Cimmarrusti without warnings to any community in which
8 he was in residence, given that the board was not
9 going to identify him by name in its report?

10 MR. MATIASIC: Lacks foundation, assumes facts
11 not in evidence.

12 THE WITNESS: The Board of Inquiry was
13 succeeded fairly rapidly by the independent response
14 team, and the materials, as much as they could, were
15 shared with them as to dispositions of friars. Mario
16 was -- has not been in public ministry and removed
17 from ministry, so the possibility of sexual abuse, I
18 think we had taken all steps possible to see that that
19 would never occur again.

20 BY MR. HALE:

21 Q. Are you opposed to notifying communities
22 regarding the presence of Franciscans accused of
23 childhood sexual abuse who are in residence in those
24 communities?

25 MR. MATIASIC: Lacks foundation that there are

1 any friars in residence in communities that need to be
2 warned and it's argumentative.

3 BY MR. HALE:

4 Q. As we sit here today, what's your -- what is
5 your position on that, in that regard?

6 MR. MATIASIC: Same objections.

7 THE WITNESS: Yes. You know, the -- if you're
8 asking for my position today, you know, I -- you'd
9 have -- you'd look at the community, you look at the
10 situation, you'd take the actions which are
11 appropriate. If -- if the situation demands that the
12 community be informed, you inform them.

13 BY MR. HALE:

14 Q. What kind of situation, in your mind, would
15 demand that the community be informed?

16 MR. MATIASIC: Incomplete hypothetical,
17 incorporate the same objections as before.

18 MR. BROSNAHAN: Objection, lacks foundation,
19 calls for speculation.

20 THE WITNESS: Yeah, I think the situations
21 vary. I guess one thing I've learned over the years,
22 when you have the administrative responsibilities to
23 make decisions, you have more information available to
24 you, and that impacts and informs many of the
25 decisions you make. So not having them, not looking

1 at the situation, the people, the allegations,
2 et cetera, it's hard for me to make a determination
3 blanketly.

4 MR. HALE: Okay.

5 Q. To date, have you ever been aware of any
6 circumstances where a Franciscan accused of child
7 sexual abuse was in residence in a community where you
8 believe there should have been a warning provided to
9 that community?

10 A. I think --

11 MR. BROSNAHAN: Objection, calls for
12 speculation.

13 THE WITNESS: Yeah.

14 MR. MATIASIC: Lacks foundation.

15 THE WITNESS: I think the Province
16 administration has acted very appropriately and
17 effectively in the situations.

18 BY MR. HALE:

19 Q. Going to page 3. The fourth full paragraph
20 says "His methods have the approval of the rector
21 Father Xavier J. Harris OFM," and a little bit farther
22 down it says, "We learned abuse is the accepted
23 community norm."

24 Did you ever ask Father Harris about this
25 allegation by Mr. [REDACTED]?

1 A. I do not recall that I did ask him about it.

2 Q. Have you ever discussed with any Franciscan
3 who was a faculty member between '64 and '87 whether
4 they believed there was any truth to this allegation
5 by Mr. [REDACTED]?

6 MR. MATIASIC: And, again, I'm just going to
7 object that the document speaks for itself and it's
8 vague and ambiguous as to what the allegation is of
9 Mr. [REDACTED] with respect to Father Harris.

10 BY MR. HALE:

11 Q. Let me ask you this: Did you understand
12 Mr. [REDACTED] was suggesting that Father Cimmarrusti's
13 conduct in those six numbered paragraphs were approved
14 of by -- by Father Harris?

15 MR. MATIASIC: Calls for speculation.

16 THE WITNESS: To the best of my knowledge, I
17 have no awareness that anyone, ever, from the seminary
18 identified, approved or knew about the inappropriate
19 activities as they're alleged in this letter.

20 MR. HALE: Okay.

21 Q. And so you never -- did you ever speak with
22 any faculty about the allegations in this paragraph on
23 page 3?

24 MR. MATIASIC: Asked and answered.

25 MR. HALE: From the seminary.

1 MR. MATIASIC: Asked and answered, incorporate
2 the same objections as before.

3 MR. BROSNAHAN: Could I have the question read
4 back, please.

5 THE WITNESS: Yeah.

6 (The Reporter read back as follows:

7 "Question: Did you ever speak with any faculty
8 about the allegations in this paragraph on page 3?")

9 MR. MATIASIC: Same objections.

10 THE WITNESS: I do not recall.

11 BY MR. HALE:

12 Q. Did you ever instruct any Franciscans, like --
13 to conduct an investigation regarding the allegations
14 in this -- this paragraph on page 3 of Mr. [REDACTED]'s
15 letter?

16 MR. MATIASIC: Same objections.

17 THE WITNESS: As I said, my concern was to
18 insure that it would never happen again.

19 MR. HALE: Okay.

20 THE WITNESS: Not to investigate historic
21 instances of -- I never experienced nor did I hear
22 anyone ever saying that they knew of it or would have
23 condoned it.

24 MR. HALE: Okay. Do you want to just pass
25 that over to the reporter.

1 MR. MATIASIC: Counsel, what's our time
2 estimate? We have to be at around six hours at this
3 point.

4 MR. HALE: I think we're close. Let me --

5 MR. MATIASIC: Or over.

6 MR. HALE: Let me do this letter and we'll
7 call it quits. This is just his response to
8 Mr. [REDACTED]'s letter.

9 THE WITNESS: My response.

10 (Plaintiffs' Exhibit No. 17 was marked for
11 identification.)

12 THE WITNESS: Okay.

13 BY MR. HALE:

14 Q. Do you recognize that correspondence? And
15 this -- 17 -- oh, Jesus -- this is going to be
16 correspondence dated January 20th, 1993 from Father
17 [REDACTED] to [REDACTED], it's a two-page document.

18 Father, just let me know when you're ready.

19 A. Okay, Tim.

20 Q. Do you recognize that document?

21 A. Yes.

22 Q. Is that correspondence that you wrote to
23 Mr. [REDACTED] in response to that letter that we just
24 discussed?

25 A. As far as I know, yes, it is.

1 Q. Okay.

2 During the Board of Inquiry, were there any
3 discussions regarding whether any of the twelve
4 Franciscans in the report should be criminally
5 prosecuted other than Wolfe and Van Handel?

6 MR. MATIASIC: And then you're talking about
7 discussions that he was aware of?

8 MR. HALE: Yes.

9 MR. MATIASIC: He's already testified that was
10 their own domain.

11 MR. HALE: Right, right.

12 THE WITNESS: Okay. It's just late so --

13 MR. HALE: No, I understand, believe me, all
14 to well.

15 THE WITNESS: The --

16 BY MR. HALE:

17 Q. During the -- when the -- when -- before or
18 after -- shortly before or after the Board of Inquiry
19 issued its final findings, was there any discussion --

20 A. Right.

21 Q. -- that you were aware of within the Province
22 as to whether the twelve Franciscans in the report
23 should be criminally prosecuted, aside from Father Van
24 Handel, Father Wolfe, who obviously were?

25 A. No. The issue of criminal prosecution because

1 of the statutory limit had expired.

2 Q. Okay.

3 A. That was one of the issues, how do we address
4 the situation to prevent it in the future.

5 Q. Okay.

6 And did anyone from the board advocate
7 publicizing the names of the twelve Franciscans?

8 MR. MATIASIC: If you know.

9 Calls for speculation.

10 BY MR. HALE:

11 Q. To you, in other words, did anyone argue to
12 you that that should happen?

13 A. I think that was the discussion in Santa
14 Barbara that I agreed to previously, the revelation of
15 the names of all the friars of various and different
16 allegations against them should be made public.

17 Q. What was -- was -- was the entire board in
18 agreement with you that the names of the twelve
19 Franciscans should not be publicized in that public
20 report?

21 A. I --

22 MR. MATIASIC: Calls for speculation.

23 THE WITNESS: I was not privy to the
24 discussions of the board.

25 BY MR. HALE:

1 Q. Did anyone --

2 A. So I don't know.

3 Q. Did anyone ever say to you, Father, I think we
4 need to publicize these names to make families aware
5 of who the perpetrators are?

6 A. When I met with the board, I -- I did not
7 experience unanimity among the board members. Those
8 with a professional background, it seemed to me, my
9 impression, was leaned to not revealing
10 confidentiality or getting even close to that area,
11 because that was one of the key things that enabled
12 the victims to come forward.

13 And that certainly was my position.

14 What the -- how they divided or what their
15 personal opinions were, I had no knowledge of that.

16 Q. Okay. One last question.

17 Have you ever been aware of any member of the
18 Province warning any member or members of a parish or
19 a community that a Franciscan who's been accused of
20 sexual abuse of a minor was assigned during residence
21 in that location.

22 MR. MATIASIC: Vague and ambiguous, lacks
23 foundation. I believe that's asked and answered.

24 MR. HALE: Not that specific question. I
25 think for some specific perpetrators, yeah, I agree.

1 MR. MATIASIC: Same objections.

2 THE WITNESS: You lost me so --

3 MR. HALE: Sure.

4 Q. Have you ever been aware of any member of the
5 Province warning a member or members of a parish or a
6 community that a Franciscan who has been accused of
7 child and sexual abuse was assigned during residence
8 at that location?

9 MR. MATIASIC: Same objections.

10 THE WITNESS: I only know what I did and I did
11 not do that.

12 MR. HALE: Okay.

13 THE WITNESS: I was concerned with
14 St. Anthony's Seminary and that community there.

15 BY MR. HALE:

16 Q. Okay.

17 And you've never heard of any Franciscan doing
18 what I just described, correct?

19 MR. MATIASIC: Same objections.

20 THE WITNESS: I'm not aware of the details of
21 what the friars did and the sanctions they've taken,
22 and I wasn't involved in.

23 MR. HALE: Okay.

24 All right. I think we're done.

25 So let's relieve the reporter of her duties under

1 the Code, send the original over to Mr. Matiasic's
2 office, and he can -- he can maintain custody of the
3 original. If he can then forward that over to Father
4 [REDACTED].

5 And is 15 days enough time for you to review the
6 document and make any changes you think are necessary?

7 MR. MATIASIC: Is that enough time? Is that
8 enough time for you?

9 THE WITNESS: I guess it's enough time for me.

10 MR. BROSNAHAN: Yeah, I think probably so.

11 MR. MATIASIC: Okay.

12 THE WITNESS: Okay.

13 MR. HALE: Once you do that if you can sign it
14 under the penalty of perjury, make those changes,
15 that's me, not you, make those changes known to your
16 counsel and he could then notify us of those changes
17 as well.

18 And if a signed original is not available at the
19 time of trial, an unsigned certified copy can be used
20 for all purposes.

21 MR. MATIASIC: So stipulated.

22 MR. HALE: Great.

23 Thank you, Father.

24 THE WITNESS: Thank you.

25 VIDEOTAPE OPERATOR: The videotape deposition

1 of [REDACTED] is now being concluded at 6:08 p.m.

2 This ends Tape 4, Volume 1.

3 All original videos will be held by Dan Mottaz

4 Videos, phone number 415-624-1300.

5 Thank you.

6 (At 6:09 p.m. the deposition

7 proceedings concluded.)

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FATHER [REDACTED]

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1 CERTIFIED SHORTHAND REPORTER'S CERTIFICATE

2 I hereby certify that the witness in the
3 foregoing deposition, FATHER [REDACTED], was
4 by me duly sworn to testify to the truth, the whole
5 truth, and nothing but the truth, in the
6 within-entitled cause; that said deposition was taken
7 at the time and place herein named; that the
8 deposition is a true record of the witness' testimony
9 as reported by me, a duly certified shorthand reporter
10 and a disinterested person, and was thereafter
11 transcribed into typewriting by computer.

12 I further certify that I am not interested in
13 the outcome of the said action, nor connected with,
14 nor related to any of the parties in said action, nor
15 to their respective counsel.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand this day of , 2006.

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21 LUCY CARRILLO-GRUBBS RPR

22 CSR No. 6766

23 STATE OF CALIFORNIA
24
25

HOLLY MOOSE & ASSOCIATES
236 Spencer Avenue
Sausalito, California 94965
Tel: (415) 332-4959
Fax: (415) 332-4943

Date: 3/6/06

TO: [REDACTED]
C/o Paul A. Matiasic, Attorney At Law
HELLER EHRMAN
333 Bush Street
San Francisco, CA 94104-2878
RE: CLERGY CASE III
Deposition taken Friday, February 10, 2006

Dear Father [REDACTED]:

The original transcript of your deposition taken in the above-entitled action has been prepared and is available at this office for your reading, correcting, and signing. In the alternative, you may wish to review your counsel's copy. Please notify this office and all counsel in writing of any changes you wish to make to your deposition transcript.

Your rights regarding signature of this deposition are contained in the California Code of Civil Procedure Section 2025 (q)(1). Unless otherwise directed, your original deposition transcript will be sealed after 30 days from today's date.

If you wish to make arrangements to review the original transcript of your deposition, please contact this office during office hours, 9:00 to 5:00 Monday through Friday, to make an appointment.

Sincerely,

Lucy Carrillo-Grubbs
CSR No. 6766

cc: All Counsel