STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Dale Scheffler Plaintiff, vs. Archdiocese of St. Paul and Minneapolis, Defendant.	TRANSCRIPT OF PROCEEDINGS Case No. PI 95-2180 Volume 8

The above-entitled matter came on for trial before the Honorable Gary Larson, one of the judges of the above-named court, and a jury, commencing on the 19th day of January, 1996, in the Hennepin County Government Center, City of Minneapolis, County of Hennepin and State of Minnesota.

APPEARANCES

Jeffrey R. Anderson, Esq., and Mark A. Wendorf, Esq., appeared as counsel for and on behalf of the Plaintiff.

Andrew J. Eisenzimmer, Esq., and John C. Gunderson, Esq., appeared as counsel for and on behalf of Defendant Archdiocese of St. Paul and Minneapolis.

(February 8, 1996)

THE COURT: Make your motions.

MR. EISENZIMMER: Thank you, Your Honor. Your Honor, yesterday in chambers we discussed the special verdict form and punitive damages instruction, and it's my understanding that Your Honor intends to give the jurors the punitive damages instruction prior to the punitive damages phase in this case, so for that reason I wanted to bring to the Court's attention some of the objections that I would have to that as well as the verdict form. I am going to take the verdict form first, Your Honor, if you don't mind.

THE COURT: Counsel, I don't mind. You can take it in any order you want. I have no preference.

MR. EISENZIMMER: I think the difficulty with the verdict form as it's presently constituted, Your Honor, relates to the fact that Your Honor has apparently decided that Mr. Anderson is going to be able to elicit testimony regarding misconduct by other priests involving other victims, and when I say other priests and other victims, I am talking about priests other than Kapoun and victims other than Kapoun's victims.

Question number one on the verdict form talks about whether the Archdiocese acted with willful

indifferent to the rights and safety of others. I think the verdict form needs to specifically refer to the fact that an employee, Reverend Robert Kapoun, did the Archdiocese act with the willful indifference to the rights and safety of others. It's my understanding that the testimony that would be --

THE COURT: Let's just -- do you have a problem with that saying did the Archdiocese of St. Paul and Minneapolis act with willful indifference of others or safety of others in employing Father Kapoun?

MR. ANDERSON: Yes, because --

THE COURT: Never mind. I will let him finish.

MR. EISENZIMMER: My reason for that, Your Honor, it's my understanding that plaintiff's counsel will be permitted by this Court over my objections to introduce evidence of other priests and other victims, and I think then we risk confusing the jury as to what that evidence is coming in or for what purpose that evidence is coming in. It's my understanding that that evidence is only coming in with respect to those factors that the jury is to consider in determining the amount of punitive damages under the statute, and so, therefore, that testimony as I understand it is

not offered for the ultimate purpose of whether the Archdiocese was willfully indifferent to the rights and safety of others with respect to Father Kapoun but rather as to the amount of punitive damages.

The same is true with question number 2, did the Archdiocese of St. Paul and Minneapolis directly employ an unfit agent. I think that question for the exact same reason needs specifically to refer to Reverend Robert Kapoun.

Now, that would conclude -- well, then question 3 as well, Your Honor, and actually I think we agreed yesterday that these questions were going to be numbered 11, 12 and 13.

THE COURT: They are.

MR. EISENZIMMER: Where I say 1, 2 and 3, I mean 11, 12 and 13. The same with question 13 then, what sum of money will punish and deter similar conduct? I think that needs to refer to Reverend Kapoun.

Now, as to the jury instruction I indicated to the Court yesterday and I believe the Court has agreed that where it refers to defendant we are going to have it referred to defendant Archdiocese of St. Paul and Minneapolis so there is no confusion referring to Father Kapoun, so I won't object to that because it's

my understanding that that has been agreed to.

I did object, however, on the second page of the instruction where it indicates that -- to the jury or instructions to the jury that they may award punitive damages against an employee because of an act done by an employee. Only if you find that, and it was originally four factors set forth in there.

The Court indicated yesterday that you intended to instruct on two of them, one being that the employee was unfit and the employer was reckless in employing him, and the second being that the employee was employed in a managerial capacity and was acting within the scope of employment. It's that second one that I object to an instruction to the jury that the employee was employed in a managerial capacity and was acting within the scope of employment. The reason for that as I indicated to the Court yesterday and as I told the Court I would present further information about that.

MR. ANDERSON: Executes me, Your Honor. Mr. Eisenzimmer, excuse me. I can probably save you further argument on that. I went back and looked at whether our motion to amend the complaint and punitive damages asked for an amendment as to item 3 whether he was employed in a managerial capacity. I don't

believe it did, so I think --

THE COURT: We will take that one out.

MR. ANDERSON: Yes.

MR. EISENZIMMER: And counsel is correct, Your Honor.

THE COURT: I appreciate your shortening that up for us, counsel.

MR. EISENZIMMER: Now, Your Honor, I would like to turn once again to the question and make a record because yesterday in part we -- I think the most part we weren't on the record and some other things have happened since we were on the record yesterday that I need to bring to the Court's attention, so it's my intention here to take a few moments and make a full record about matters pertaining to testimony of Archbishop Roach and what area of inquiry would be permitted in that regard.

I wish to note first that Your Honor originally issued a scheduling order on this matter on March 7, 1995 which indicated that dispositive and nondispositive motion deadline of October 1, 1995 with a discovery deadline of September 1, 1995. In a pretrial conference on November 1, 1995, there was an order setting trial issued by Your Honor and part of that order setting trial also indicated that exhibits

needed to be identified and exchanged prior to the start of trial.

Counsel despite the untimeliness pursuant to the schedule order was permitted to make a motion for punitive damages dated November 27, 1995 with a hearing on that motion of December 7, 1995. Your Honor granted that motion to amend to add punitive damages by an order dated January 2, 1996.

At the time of the hearing on December 7, 1995 I indicated to the Court that the discovery deadline had expired and that the lateness of motion didn't permit me to conduct the discovery I would otherwise conduct with respect to punitive damages, and I indicated to the Court that if the Court were inclined to grant the motion it would be necessary to continue the trial. The Court made it quite clear there was no intent on the part of the Court to continue the trial based upon that.

We then proceeded with the trial date as scheduled of January 29 which was a week ago Monday. Archbishop Roach was called to testify on January 31, 1996 which was last Wednesday, a week ago Wednesday. Mr. Anderson was informed that Archbishop Roach would be arriving Tuesday evening and that he had a flight back to Florida at approximately 1:30 p.m. on

Wednesday, January 31 and that it was necessary to complete his testimony by 12 noon on Wednesday, the 31st.

Mr. Anderson agreed to that at the time -- excuse me, Mr. Anderson agreed to that, and at no time prior to February 5, 1996 did he indicate any intention to obtain any additional or other testimony from Archbishop Roach. In fact within a day or two of Archbishop Roach's testimony, Mr. Anderson acknowledged that Roach had returned to Florida.

On Monday, February 5, 1996 at approximately 9:04 a.m., and I made a note of that in my trial notes, Mr. Anderson informed me for the first time that he intended to call Archbishop Roach to testify as to punitive damages. This was the first time I had been informed of that.

I informed Your Honor immediately of Mr. Anderson's indication. While that was not on the record, the Court did indicate at the time that Mr. Anderson would be permitted to call Archbishop Roach. At no time has Archbishop Roach been under subpoena and at no time had he been informed Mr. Anderson wished to have him testify further. Archbishop Roach has made other commitments and I will discuss that in a moment.

Archbishop Roach's testimony here was completed by 12 noon on Wednesday, January 31, 1996, and as I indicated, he then returned to Florida that afternoon. Yesterday there were discussions both on and off the record about what factors Mr. Anderson intended to obtain testimony from Archbishop Roach about. I was informed for the first time yesterday morning that this included matters relating to four other priests and alleged misconduct from the period of approximately 1969 which was prior to Archbishop Roach being a bishop or archbishop and through the late 1980s.

Objections on behalf of my client were made to this basis for Archbishop Roach's testimony. The Court indicated that Mr. Anderson would be permitted to pursue these matters despite the fact that they had not been pled or made part of the discovery in this case.

Yesterday at approximately 10:30 a.m. immediately after leaving Your Honor's chambers Mr. Anderson for the first time provided me with 47 pages of documents authored by seven different individuals, most of them hearsay I might say, involving these four priests. These documents had not been previously listed as exhibits, identified or produced by

plaintiff's counsel in any manner whatsoever.

I also have informed the Court from the beginning of this case -- trial, that the Archdiocese is entitled to have considered other settlements and judgments in other cases as recognized by the Mrozka decision that we discussed yesterday. Mr. Anderson has objected to that in part citing the confidentiality provisions in each of those settlement agreements.

Yesterday, as I understand it, Your Honor rule that my client would be permitted to introduce some of that evidence. Yesterday afternoon following the jury's return of verdict on liability and damages, during a telephone conversation with Mr. Anderson he indicated that the confidentiality provisions in the settlement agreements included liquidated damages for violation of the confidentiality provisions, and Mr. Anderson threatened to pursue liquidated damages against the Archdiocese if my client might offer this evidence at this punitive damages phase of the trial.

Following the discussion with Your Honor Monday, February 5, about Mr. Anderson's intention to again call Archbishop Roach, I sought to contact Archbishop Roach. I talked with him at approximately noon yesterday and informed him of the status of the

matter and that the jury was still out deliberating. Archbishop Roach reminded me that no prior agreement, commitment or arrangements had been previously made for his return to testify and that he had made a number of commitments in the absence of any such notice.

I spoke again last evening with Archbishop Roach following the jury's return of verdict and informed him that trial was to resume at 9 o'clock a.m. this morning and that Mr. Anderson still intended to call Archbishop Roach to testify. I have been informed that Archbishop Roach has made a number of commitments, both today and next week. He is not under subpoena, plaintiff's counsel knew full well Archbishop Roach was returning to Florida, and that Archbishop Roach did return to Florida. No request was made for him to remain available for further testimony. He was not advised at the conclusion of his testimony on January 31 that further testimony would be necessary.

He is not an officer of the defendant corporation at the present time and he is retired. Since he is not under subpoena. My understanding is that Archbishop Roach will not appear to testify as requested by Mr. Anderson. Nothing further, Your

Honor.

THE COURT: How do we resolve this? Seems to me we either go without Archbishop Roach or we set the matter for trial next fall on the punitive damage stage of the trial, or I actually have a week this spring left.

MR. ANDERSON: Your Honor, let me address this. We showed up for trial January 29 intending to try punitive damages with compensatory damages. There was no motion for bifurcation here. They made their motion to the Court over my objections. The Court granted it. We then went into the compensatory damages phase. We showed up for trial intending to try punitive damages. Mr. Eisenzimmer has agreed to produce Archbishop Roach without subpoena. He is the principal and was the principal officer of this corporation against the Archdiocese.

No subpoena was required to compel his attendance given that at that time. We began the trial of the compensatory damage phase of this case and in the middle of that on Monday morning I asked Andy -- and discussed with Mr. Eisenzimmer the necessity he better get Roach back here because he knows I need to cross examine him for purposes of punitive damages and he is the principal witness for

purposes of punitive damages, and then we had a discussion with the Court at 9 a.m. Monday morning about that and the Court told Mr. Eisenzimmer you have to produce Archbishop Roach.

He is now telling the Court that he didn't make any attempt to contact Archbishop Roach in this connection and in this trial until noon yesterday, and he is now telling the Court that he cannot produce or will not produce Archbishop Roach because he has some other matters. I am -- well, this jury has already heard almost all the evidence going to punitive damages. This jury is the one that has to decide that question. There is no other jury that can, and the Court has to compel Mr. Eisenzimmer to compel Archbishop Roach's attendance in this trial.

THE COURT: That's not very likely to occur, Mr. Anderson.

MR. EISENZIMMER: Your Honor, if I may respond for the record, the issue of bifurcation of the punitive damages phase was heard by Your Honor on January 29 which is the first day of trial. That was two days before Archbishop Roach's testimony. There was never any discussion at any time between the time Your Honor said they were going -- you were going to bifurcate that, and I indicated to the Court that one

of the reasons I thought it should be bifurcated is because the present statute for punitive damages requires bifurcation.

I know Your Honor probably has since regretted bifurcation, but it's clear, Your Honor, there was a substantial period of time between then and the time that Archbishop Roach testified, and I constantly informed counsel that Archbishop Roach intended to return to Florida 1:30 that day on Wednesday, the 31st, and that he needed to be off the stand by noon. There was no discussion of having him appear again in this case.

I would also indicate to the Court that as I have said we have not had any opportunity to prepare Archbishop Roach, and counsel yesterday for the first time informed me what matters he intended to inquire into, provided me with 47 pages of documents, so I think it would be patently unfair and as I indicated to the Court yesterday I believe this has been trial by ambush on those issues.

THE COURT: I don't find any bad faith on anybody's part here, and I am not going to hold this jury until I can get Archbishop Roach back here, Mr. Anderson. I am not going to impose upon those people that way, so we have to figure out how to solve the

problem.

MR. ANDERSON: Well, I would like to comment about two things.

THE COURT: Make any part of the record anyway you want, counsel.

MR. ANDERSON: Mr. Eisenzimmer cannot represent to this Court that he did not know that the principal witness in the punitive damages phase in this case was Archbishop Roach, because he is, he was and he always has been.

Second, the suggestion that there has been trial by ambush is not the case. On November 1 I advised Mr. Eisenzimmer that we were bringing this motion, and it was at the pretrial conference of this case, and we scheduled it with this Court's clerk at that time. We had a hearing on the motion, and it was subsequently granted about a month later on or about December or sometime.

In that connection after it was granted or even after it was noticed there has been no discovery conducted by defendant Archdiocese of St. Paul and Minneapolis and there has been no attempt to conduct discovery. Furthermore, Mr. Eisenzimmer knows that the inquiry that would be made in the punitive damage phase of this case would rest largely with that

witness, Archbishop Roach, the chief executive officer of the Archdiocese and still a priest of the Archdiocese.

Mr. Eisenzimmer at all times agreed to produce Archbishop Roach, and this Court is aware and Mr. Eisenzimmer is aware is that in that instance I have no obligation to subpoena him nor should I him being the principal party in this case. When the Archdiocese -- when we appeared for trial in this case, we intended to cross examine Archbishop Roach on the punitive damages aspects of this case.

Mr. Eisenzimmer brought a motion at that time to bifurcate which the Court granted. Before that motion I had no idea that you intended to bifurcate. It was granted over my objection and we proceeded into phase one. We have been in trial for this being the tenth day, eight days of which we offered testimony and called all the witnesses and a large number of them. I think there were 15 witnesses easily going to the questions in the compensatory damage phase of this case, that is the negligence questions and the damage questions and the abuse questions.

About 95 percent of the evidence that we intend to offer in the punitive damages phase has already been offered into evidence and is before this

jury, these six people. Therefore, this jury now is the only jury or finder of fact that can properly hear this case and this issue. I appreciate that the Court has made a finding of no bad faith, but I also believe that given everything that has gone on to this moment, the representation that somehow they can't produce this principal and critical witness at this stage is to me shocking, and it compels us to find a way to get this witness here.

He is -- well. In response to the suggestion that there has been trial by ambush, that is not the case. In discussing Archbishop Roach's testimony after the Court's -- after the hearing yesterday we had in connection with the offer of proof I made to this Court about what evidence we would be offering in this phase and through Archbishop Roach, the Court instructed us to sit down and talk about how we wanted to handle that -- those evidentiary matters, and I gave -- Mr. Eisenzimmer was asking me some questions about these various events, and I said well, look, Mr. Eisenzimmer, instead of making you go back to those files I will give you copies of my documents that I am going to use to ask him some questions about.

I didn't offer them as exhibits and I am not offering them as exhibits, and to ask Archbishop Roach

about those things, they don't need to be offered as exhibits and I never intend to offer them as exhibits so I as really just -- I thought at the time doing him a favor. In any case, I am not going to offer any exhibits and I am simply going to ask Archbishop Roach the very same things that I have told the Court in an offer of proof made yesterday morning.

Okay. That's all I have to say about that.

MR. EISENZIMMER: Well, Your Honor, to just address very briefly three points. The documents Mr. Anderson provided me with yesterday I fail to see how he can ask Archbishop Roach about those documents without having them at least marked as exhibits.

THE COURT: That's not what he said, counsel. He didn't say he was going to ask him about the documents. He said those documents contained information that might be helpful to you that he is going to ask Archbishop Roach about. He thinks Archbishop Roach has the information in his memory concerning those matters, and it was a courtesy to you to give you those documents to say these contain sorts of things I am going to ask Roach about.

MR. EISENZIMMER: That's not how they were described to me yesterday.

THE COURT: That's the way he described it

just now, counsel.

MR. ANDERSON: I will represent to the Court that everything I am going to ask Archbishop Roach about in that connection, Archbishop Roach has already been deposed in connection with or there has been litigation where discovery has been done in that connection.

THE COURT: All right. You have had your turn, counsel.

MR. EISENZIMMER: Well, Your Honor, again to make a record in that record.

THE COURT: Again belies what you are saying so me, Mr. Eisenzimmer. Is again saying something that you have already said this morning.

MR. EISENZIMMER: I don't believe so, Your Honor.

THE COURT: When you start a sentence again --

MR. EISENZIMMER: Well, I am sorry. The issue being many of these documents that counsel has provided to me aren't documents that relate to anything that Archbishop Roach -- they are hearsay conversations between other people.

So the other two points I wanted to make, Your Honor, counsel says that I cannot represent to the Court that I didn't know that he needed Archbishop

Roach for punitive damages. I will represent to the Court that at no time did I understand that he would be asked to testify as to any of these matters or did I agree to produce them other than when I did produce him on the 31st, and also counsel says that on November 1 at the pretrial he did inform me of the punitive damage motion. Indeed he did. Indeed I was aware he did get a motion hearing date for that, but as I informed counsel at that time, his motion was untimely. It wasn't actually until he served the motion that he indeed did intend to pursue that motion. Nothing further.

THE COURT: All right. I have already decided and made a finding and let the record reflect that I don't think either counsel here did anything improper. I don't think there is any bad faith. I think there was maybe some sloppiness in communication between the two of you during this period of time of trial.

We need to resolve the problem. I have a note here that my clerk just gave me, foreperson on the jury would like to make a request. Her request is that she get off this jury. I cannot hold this jury while I get Archbishop Roach back here from Florida. There is no practical way I can do that or will I do

that to them. I need to figure out how to resolve this problem.

MR. ANDERSON: Your Honor, I would suggest and then request that the jury be discharged temporarily until next week or at a time that each of these jurors can reappear with the instructions to not read anything or anything pertaining to this case or anything like that and then make inquiry of this jury when they can next appear and with the Court's schedule.

THE COURT: Mr. Eisenzimmer.

MR. EISENZIMMER: Your Honor, I haven't had any opportunity to discuss what counsel has suggested with my client to express an opinion. We can take a short recess. I can talk to Mr. Fallon.

THE COURT: The problem is if we lose this jury, then we have a new two-week trial. He gets to redo everything that he did the first time.

MR. EISENZIMMER: Again, Your Honor, I don't know what to tell the Court.

THE COURT: You can chat with your client, counsel.

MR. EISENZIMMER: Thank you.

(Recess taken.)

THE COURT: Where are we?

MR. EISENZIMMER: Your Honor, I talked with Mr. Fallon who is the Chancellor of the Archdiocese and one of the corporate officers, and we have decided that the Archdiocese is prepared to proceed at the present time.

THE COURT: Then you should have Archbishop Roach here, counsel, and if that's your position, I am going to order you to have him here within four hours if that's your position. Then I intend to sanction you for not having him here. I am trying to work out a problem, and your approach does not meet a good faith effort to do that, counsel. I intend to sanction you a thousand dollars a day for his nonappearance. That would be my intention if you intend to proceed on that basis.

MR. EISENZIMMER: Then, Your Honor, if I might inquire, what other basis do we want to proceed on? What is being suggested?

THE COURT: I suggested and Mr. Anderson suggested that we somehow try to insulate this jury, give them some instructions and reschedule this for trial at a time that would be convenient for the archbishop to be here. That's what I thought we were talking about.

MR. EISENZIMMER: Mr. Fallon has informed me

that we have no objection to that. I can tell Your Honor based upon my discussion with Archbishop Roach last evening I am not certain when he would be available, but I can be in immediate contact with him.

THE COURT: I was suggesting -- and next week is not going to work, Mr. Anderson. These jurors are so hostile out there. They just about ate my staff alive. They are so hostile that I am suggesting the first week in April. Is that what I am suggesting?

MR. ANDERSON: Could we consider something sooner?

THE COURT: I have other cases, counsel.

MR. EISENZIMMER: Your Honor, may I make a suggestion in that regard. I would be more than happy to try to reach Archbishop Roach today. I know I have to leave a message down there and he has to call me back, but I will try my best to reach him today. When I reach him, I will discuss his schedule and talk to Mr. Anderson about his schedule, and I would agree to initiate a telephone conference late this afternoon at whatever time Your Honor is available to see if we can agree upon a date.

THE COURT: I also have next week by finessing some things. I have next week, but then we have to deal with the hostility of that jury.

MR. ANDERSON: Perhaps we could do this, Your Honor. Maybe you could call the jury in, tell them that under the circumstances, and this would be deferential to the request that the foreperson has already made to get off the jury, that under the circumstances we are prepared to recess until a future date, and then the Court could make inquiry into the jury as to when it would be within the confines of the Court's schedule that would be able to, and then if they are able to next week as opposed to the first week in April, we could do it next week.

MR. EISENZIMMER: My understanding is that Archbishop Roach has made commitments next week in terms of -- he is serving in a parish down there doing some things assisting out the diocese where he is located in Florida, and I am not certain where that is, and my understanding is he has committed to that period of time next week. I don't know the exact parameters of that, but as clear as I can understanding from my conversation with him last night, he had made commitments today and --

THE COURT: Okay. Come up for just a second.

(Discussion off the record.)

THE COURT: What does somebody want to put on the record?

MR. EISENZIMMER: Your Honor, its my understanding based upon previous discussion we had on the record is that the decision is to select another date to have this portion of the trial heard when everybody can be available, and my client has agreed to that and it's a matter of scheduling, and it's my understanding that a recommendation is made that we use the March 18 trial date which is already scheduled for the S. M. Case, that's the Mark Schutz case, and then push the Mark Schutz case to some different date.

I have advised the Court I am available then, I am presuming Mr. Anderson is available. I do know that Daniel Haws is counsel for the Archdiocese with respect to S. M., so I don't know if he is available April 1, but as to this case the Archdiocese would be prepared to proceed on March 18 with this jury. Again assuming the jury, and I understand the Court would inquire of the jury, that they would be available beginning on March 18 for two or three days of testimony and deliberations and a verdict.

THE COURT: Mr. Anderson?

MR. ANDERSON: Your Honor, I oppose any continuation of this to that date. I think that Archbishop Roach can and should be made to appear. I

think that the offers or suggestions because he has made other commitments as a priest in Florida is not an excuse for not appearing or refusing to appear, and he can be flown up from Florida you know any time.

I would ask the Court to let the jury essentially decide about when it would be next best for them to hear the next portion of this case, and I would suggest that the Court inquire of them and tell them that we have in light of the circumstances, and they won't know that the real reason we are doing this is because they are refusing to produce a witness, but they will think it's because the foreperson has made an inquiry.

THE COURT: I am not going to blame it on the foreperson. I am going to say that there are some logistical problems that have developed.

MR. ANDERSON: Then ask them, say we have two choices here. We can come back next week on Monday and do this and tell them it will take a couple of days, or we can come back on March the 18th and let the jury decide, and then I would ask the Court to allow them to go into the jury room and for them to deliberate that decision so they could talk among themselves given that choice.

THE COURT: I am going to keep the alternates

and ask them all to come back for the time being.

MR. ANDERSON: Yes, and I would ask the Court to keep the alternates.

THE COURT: Mr. Brown?

MR. BROWN: If the Court is going to be in a position to have something next week --

THE COURT: The date I am going to suggest to them is the week of March 18.

MR. BROWN: Thank you, Your Honor.

MR. EISENZIMMER: That's fine, Your Honor. Nothing further.

THE COURT: What I am going to say to them when they come in is there has been some logistical problems that have developed and I know that you people are all antsy, that has been conveyed to me, and that we need to finish this trial with all of you, and because of the logistical problems and you are antsyness, one of the solutions that has come up is that we continue this trial until March 18 and that it would take probably no more than three days on that week of March 18 to finish this case, and can they all be available at that time.

MR. ANDERSON: Why not give them the choice, Your Honor, next week or March 18.

THE COURT: Because I have decided it's not

worth it to give them that choice and then find that the archbishop is out of the country or something.

MR. ANDERSON: Well, he isn't out of the country.

THE COURT: He isn't this moment. Counsel, I have made myself clear in that area and I know that you are not happy with me and that's fine that you are not happy with me, but it doesn't do you any good to push me on that point. That's why I get paid all of these big dollars for is to do this. Are we tentatively agreed that that's what I say understanding that that's the direction we are going. I know that you are not happy.

MR. ANDERSON: Yes, I understand.

MR. EISENZIMMER: Yeah, I just think it would be my recommendation that the Court be rather firm with the jury, so unless it's absolutely critical that they can't be available that they be here.

THE COURT: Yes. I am going to do that.

(Jury brought into the courtroom.)

THE COURT: Good morning, ladies and gentlemen. I understand from at least one note I have that you all are not happy with me and I can understand that and I accept that. I have some problems with this case. We need to finish a second

part of the case and I need all of you to be part of that.

We have ourselves developed some logistical problems with continuing this case today. What I, after extensive discussions here, am suggesting is that we continue the second part of the case to March 18, the week of March 18. That it will take us about three days -- two days actually, and I gave myself an extra day, to finish this case, and if that would work for all of your schedules to come back for three days on March 18. I need all of you and I need all of you in this case. I thought that would give you all an opportunity to get back to your work and employment and whatever and then to miss three days then rather than trying to finish this case today, tomorrow and with the logistical problems we have running into next week.

Now, if you need to talk with each other about that or if you need to talk with me about that, you need to let me know how we can move forward here. I do need you all in this case.

A JUROR: I think it would be perhaps be a good idea if we could discuss it.

THE COURT: That's fine. You can use the privacy of that jury room if you would like to do

that.

A JUROR: Okay. Thank you very much.

THE COURT: Does anybody have any questions before you go in for your private discussion? Okay. All right.

(Jury goes to jury room. Following discussion is out of the hearing of the jury.)

MR. ANDERSON: I might suggest--

THE COURT: The question for the record and everybody else in the courtroom, does he know that the alternates have no idea what the verdict was.

MR. ANDERSON: What I might suggest that the Court might think about if they come back in and there is one of the jurors that can't reappear on March 18 and it would be a hardship, the Court could consider the alternate and the alternates.

THE COURT: I am going to be open to lots of things when they come back, counsel. What I will really be open to is I will push this case ahead of something else someplace if I have to do that and bump somebody down the list which I don't want to do but enough said.

MR. EISENZIMMER: Your Honor, in terms of Mr. Anderson's comment about one or more might have a conflict, I think certainly since we do have

alternates, it would be possible to just simply ask them to work on that conflict. Even though they might have a conflict today, something could be worked out between now and then. I don't know that we need to move an alternate at this time. We can wait to see what happens when we get close to the 18th.

THE COURT: She does raise a good point. How are we going to tell the alternates what the decision was? Just give them a copy of the verdict form. They are entitled to know what the verdict is. They all apparently followed my instructions and not listened to the news.

MR. EISENZIMMER: I would have no objection to them seeing a copy of the verdict form. It's the verdict.

MR. ANDERSON: That would be fine. And I know in that instance the Court would instruct them in no uncertain terms to read and watch nothing that would be --

THE COURT: If we are going to seal it, then we will do that.

(Jury returns to the courtroom.)

A JUROR: Your Honor, if I could speak?

THE COURT: Yes.

A JUROR: We met. We have -- first of all we

have some concerns and some questions. Trying to understand your logistical problems, one of the main problems is that people feel holding this until March 18 emotionally it has been very trying for them. Some people are going to be seeking counseling after this to deal with the issues, and March 18 is an extremely long time for them because they don't feel they can go out and do this.

The other -- one of our concerns, it's not that we don't want to work something out here, but is March 18 the soonest date would be another question. And we do have some people on the jury that are leaving town, and we would want -- the plans are to be gone for a month so one of them is leaving Wednesday. That would be another concern, and then the media avoidance issue, does that mean if it still remains that March 18 that they are not allowed to watch TV, the news and the newspaper, and so we had a hard time coming to a decision.

THE COURT: Sure. The last question is the easiest. I would assume after today there won't be anything more in the media about this case. It's not going to go on for ever and ever. That will die and it will stop and that won't be a problem. Who is going out of town on Wednesday?

A JUROR: I don't have to leave Wednesday. Wednesday, Thursday.

THE COURT: That's just important for me to know whether you are an alternate or whether you are one of those.

A JUROR: Mine is I had a tentative plan to leave in March but that can be on hold.

THE COURT: All right. Could counsel come up for a second.

(Discussion at the bench out of the hearing of the jury.)

THE COURT: Go back in the hall. This is going to take me a few minutes. This is something that has never happened to me before.

(Jury leaves the courtroom.)

(The following discussion was held out of the hearing of the jury.)

MR. EISENZIMMER: Your Honor, I did talk with Archbishop Roach as we discussed and he is leaving the country, and what I discussed with him was when he was returning and when he could then get up here, and he suggested if we don't want to do it March 18, then the earliest as possible he is suggesting February 26. That he could be here and available and ready to go.

THE COURT: Okay. Why can't he fly up today

and go back tomorrow?

MR. EISENZIMMER: He has commitments through today and beyond and then again on next week is when he is going out of the country.

THE COURT: What day is he going out of the country?

MR. EISENZIMMER: I don't know if it's Monday or Tuesday, one or the other.

THE COURT: What are his commitments tomorrow that he couldn't fly up tomorrow and go back tomorrow?

MR. EISENZIMMER: Your Honor, I don't know. I do know he has commitments today and this evening.

MR. ANDERSON: Your Honor, if there is a question about getting him up here and availability of flights, I will charter a plane to get him up here.

THE COURT: Can he come up tomorrow and go back tomorrow on a chartered plane?

MR. EISENZIMMER: I have no idea, Your Honor, and I don't know how.

THE COURT: Go call him and ask him. Or Monday, come up and go back on Monday. I am trying to accommodate.

MR. EISENZIMMER: I understand, Your Honor.

THE COURT: But I need some accommodation from

him too.

(Recess taken.)

MR. EISENZIMMER: Your Honor, I have again spoken with him and the suggestion we have is to have him come here Sunday and testify first thing Monday morning so that he could get on that same flight that he went back last time which apparently leaves 1:30 Monday afternoon, so if we can agree we could do his testimony Monday morning, he is willing to push whatever space he needs in terms of going out of town to do that.

THE COURT: All right. When do we want to start the testimony then? Friday afternoon?

MR. ANDERSON: I would be willing to start right now you know and just do a brief thing and I could call --

MR. EISENZIMMER: Start tomorrow afternoon as the judge said.

MR. ANDERSON: I would suggest we just start right now. I will call Father Kapoun as the first witness. I will examine him for I estimate a short period of time and then I can call a financial person to testify, and then I would be done, and then we could recess and we could do that this morning before noon.

THE COURT: Okay. And they recess until?

MR. ANDERSON: Monday at 9 a.m.

THE COURT: Monday at 9 a.m. Do Roach and then you would be done and how long is it going to take you to do Roach?

MR. ANDERSON: Not very long.

THE COURT: An hour, half hour, 45 minutes.

MR. ANDERSON: I would say an hour.

THE COURT: An hour. So we could finish your complete case and probably get to the jury Monday?

MR. EISENZIMMER: I think that's probably pushing it.

THE COURT: You could do your complete case, get to the jury Tuesday morning, make your closings Tuesday morning, and they could start deliberating Tuesday before noon probably.

MR. EISENZIMMER: Sure.

THE COURT: What I would suggest to the jury now going to go with a few witnesses right now, and we would probably be done by noon. That we would then recess until Monday morning. We would take all Monday with some testimony and we would close Tuesday morning. Mr. Brown?

MR. BROWN: Perfect, Your Honor.

THE COURT: All right. Get copies of the

verdict form. I am going to bring them in and tell them what we are going to do and have them go back in the hall for a few minutes.

I have one thing that I want to -- we agreed on the change on the JIG instruction, and I want to discuss the special verdict form, but I don't need to do that now because they are not going to see that, and I am willing to make some changes in that I think, but I need to discuss that with you more, so bring them in, make sure that they are okay with what we are going to do. Send back out and tell them we are going to start in 10 minutes, and then when they come in I will read them that stuff that we have agreed upon.

(Jury brought into the courtroom.)

THE COURT: This is what we are proposing and I hope and I think that this will work. We have a couple of witnesses right here now today. We will take those two witnesses and we think we will be done by noon today. We would recess for this afternoon, all day Friday. Bring you back on Monday. Take testimony that we would take most of the day Monday. You would have the case Tuesday morning, we would argue it, and you would start deliberating Tuesday morning, and I am hopeful that that will meet everybody's needs and schedules as well as ours.

Does that sound like something that's going to work for everybody? Thank you very much. I am going to have you step out in the hall for ten minutes so that we can organize ourselves and get going here, and we are going to start in ten minutes, and I will give you a little bit of instruction of what we are actually going to do at that point. Thank you. I appreciate your effort. The lawyers and parties worked very hard to reach this accommodation.

(Recess taken.)

(Jury returned to the courtroom.)

THE COURT: I think the alternates have now had an opportunity to review the verdict form so you are aware of what the verdict was that was reached by this jury.

Good morning the umpteenth time this morning. This is phase two of the trial concerning only the defendant Archdiocese of St. Paul and Minneapolis. Mr. Brown, therefore, will not be sitting at counsel table. There will be additional testimony and argument concerning punitive damages, and you will be asked three additional special verdict questions. I am going to read to you now before we start the jury instruction that you will get in regard to the punitive damages so you will have that keep to mind

throughout this phase of the trial.

If you find by clear and convincing evidence that the acts of the defendant Archdiocese of St. Paul and Minneapolis shows a willful indifference to the rights or safety of others, then you may in addition to other damages to which you find the plaintiff is entitled award the plaintiff an amount which will serve to punish defendant Archdiocese of St. Paul and Minneapolis and deter others from commission of like acts.

When I say clear and convincing evidence, I mean that the evidence must lead you to conclude that it is highly probable that the defendant Archdiocese of St. Paul and Minneapolis acted with willful indifference to the rights or safety of others. Put another way the evidence must produce in your minds a firm belief or conviction that the defendant Archdiocese of St. Paul and Minneapolis acted with willful indifference to the rights or safety of others. When I say that the defendant Archdiocese of St. Paul and Minneapolis must have acted with willful indifference to the rights or safety of others, I mean that the defendant Archdiocese of St. Paul and Minneapolis must have acted with a deliberate lack of concern for the rights or safety of others.

If you determine that punitive damages should be awarded, you should consider factors relating to the purpose of punitive damages in determining the amount including but not limited to the following factors.

One, the seriousness of the hazard to the public arising from the defendant Archdiocese of St. Paul and Minneapolis' misconduct.

Two, the profitability of the misconduct to the defendant Archdiocese of St. Paul and Minneapolis.

Three, the duration of the hazard and its excessiveness.

Four, the attitude and conduct of the defendant Archdiocese of St. Paul and Minneapolis upon discovery of the misconduct.

Five, the number and level of employees involved in causing or concealing this misconduct.

Six, the financial condition of the defendant Archdiocese of St. Paul and Minneapolis. Seven, the total effect of other punishment likely to be imposed upon the defendant Archdiocese of St. Paul and Minneapolis as a result of misconduct including compensatory and punitive damages awards to the plaintiff and other similarly situated persons.

You may award punitive damages against an employer because of an act done by an employee only if you find that the employee was unfit and the employer was reckless in employing him.

Mr. Anderson has indicated that he is going to open at this time and it will take him approximately 15 minutes to do that. Mr. Eisenzimmer has indicated that he will reserve his opening until he presents his case in chief.

You may proceed, counsel.

MR. ANDERSON: Thank you, Your Honor. May it please the Court, counsel, you have done something meaningful. You are now being asked to do something even more meaningful.

Let me tell you what I am going to be doing here and then what you are going to be asked to do. I am going to call as the first witness Father Robert Kapoun back to the witness stand and I am going to ask him some questions about some things that you have not heard or been told about, and I will restrict my questions to just that which you don't already know.

I will then call an accountant to the witness stand to tell you what the financial condition of the Archdiocese of St. Paul and Minneapolis is.

I will then call and that will be Monday

morning Archbishop John Roach back to the witness stand and I will ask him some questions about what they have been doing and they haven't been doing with their priests in this Archdiocese for about 27 years. I will be asking him about Father Kapoun, and when I do, I will ask him things about Father Kapoun that you have not heard. I will not nor do I intend to repeat myself. I will have and show respect for your time and commitment in every question that I ask and every word that I deliver from this point to the conclusion of this case.

I will ask him some questions about Father Jerome Kern, a priest of the Archdiocese, about Father Joseph Wadja, a priest of the Archdiocese, about Father Robert Thurner, a priest of the Archdiocese, and about Father Thomas Adamson, a priest ordained in the Diocese of Winona but transferred and placed in the Archdiocese of St. Paul and Minneapolis in 1975 and served in it after that.

I will ask some questions about what these priests did to boys, and I will then ask him some questions about what they did about it. And then I will be done asking questions, and then I will appear and stand before you again I expect Tuesday morning and will address you, and at that time I will be

seeking a morale and a legal imperative, and I will be asking you to deliver a verdict that will never allow the Archdiocese of St. Paul and Minneapolis to do what they have done here and what they have been doing.

THE COURT: You may proceed, counsel.

MR. ANDERSON: Thank you. I am going to call Father Robert Kapoun.

THE COURT: Father Kapoun is still under oath from the last time he appeared in front of you. This is the same trial and you may take the witness chair, Father Kapoun. And you don't need identification, right. You may proceed, counsel.

CROSS EXAMINATION

BY MR. ANDERSON:

Q. Father Kapoun, when you were at St. Patricks Church as the pastor, there was another boy by the name of Howard Braith who was a youth in that parish, correct?

A. Yes.

Q. And his parents were members of that church and you were their priest and pastor?

A. That's correct.

Q. And you came to know Howard by reason of that?

A. That's right.

Q. And you came to gain the trust of the Braiths and their son and took him various places?

A. I did.
Q. And father, you molested him and sexually abused him on at least two occasions?
A. Yes.
Q. And you took him to places to swim?
A. Yes.
Q. And you took him on a trip to Ohio?
A. We went to a youth conference with several members of the parish.
Q. And you also -- and when you did, he was 13 or 14?
A. He was older than that. I would think he was probably 15, 16.
Q. In any case, when you molested him, he was in his early teens?
A. Middle teens.
Q. And when you did that, you didn't know that that was molestation?
A. I didn't.
Q. And father, in 1983, after you had molested this boy, did you become aware that Carol Braith wrote a letter and made a report to the Archdiocese in the name of Bishop Bullock about their son and what you may have done to him?
A. I wasn't aware of that.
Q. Okay. When, father, did you learn or did anybody from

the Archdiocese first ask you about your relationship to and with Howard Braith?

A. It was in April of 1984.

Q. What happened?

A. I received a telephone call from Bishop Bullock and he said we need to make an appointment and that's what we did.

Q. And how soon after that call did you meet with him?

A. Approximately two weeks.

Q. And where did you meet?

A. We met at the chancery.

Q. And what did Bishop Bullock -- was he then an auxiliary bishop?

A. Yes.

Q. What did Bishop Bullock say to you?

A. I don't recall him asking the questions.

Q. Who also was present?

A. Bishop Robert Carlson.

Q. Okay. He was another auxiliary bishop then or was he the chancellor, do you remember?

A. I don't know what his titles were.

Q. Well, you are aware that Bishop Robert Carlson became an auxiliary bishop at some point in time?

A. Yes.

Q. And you are also aware that he was a chancellor of the

Archdiocese before that?

A. I never paid much attention to those titles.

Q. I will represent to you that he was?

A. Okay.

Q. In any case, was anybody else present?

A. No.

Q. Okay. And would you tell the ladies and gentlemen of the jury what was said by either Bishop Bullock or Carlson in that meeting with you?

A. Bishop Carlson had received a letter from Carol Braith, and when I came in it was presented to me outlining some accusations.

Q. And did you read the letter or did they show you the letter or both?

A. They showed me the letter. I did not read the letter.

Q. And did they tell you that the letter called your relationship with young Howard Braith into question?

A. Yes.

Q. Did they tell you that the letter suggested or called into question that you either were or may have molested their son?

A. Yes.

Q. And when they told you that, what did you say, father?

A. I did admit to inappropriate behavior.

Q. You admitted to inappropriate behavior with the youth?

A. Yes.

Q. And in that admission you admitted that you had in fact -- while not using the words sexually molest or abuse -- you had in fact touched him in a sexual way?

A. Yes.

Q. On more than one occasion?

A. Two.

Q. So you admitted what you had done?

A. Yes.

Q. Okay. Did either of these -- either Bishop Bullock or -- I am not sure if Carlson was bishop then or not but I will use the term bishop because he is now a bishop. Did either Bishop Carlson or Bullock ask you if you had done this before?

A. Not that I can recall.

Q. And you had, correct?

A. Yes.

Q. And if they had at that time asked you what you had done before, what would you have told them then you had done?

MR. EISENZIMMER: Objection, speculation.

THE COURT: Sustained.

BY MR. ANDERSON:

Q. What happened then, father?

A. They asked me to resign my parishes.

Q. And in fact you did not resign your pastor at St. Patricks that day, did you?
A. I believe I signed the form.
Q. They also -- did they tell you that the reason they wanted you to resign was that if you didn't the Braiths were going to the police?
A. Yes.
Q. And so you did?
A. Yes.
Q. And the Braiths didn't go to the police because you did resign?
A. That's right.
Q. Father, you were assigned after that by the then archbishop to St. Scholastica?
A. Yes, I was.
Q. And you have served their as the pastor and priest of that and two other neighboring parishes continuously since then and to the present, correct?
A. I served St. Thomas parish since November of 1991.
Q. And St. Scholastica and St. Joseph since 1984?
A. That's correct.
Q. Father Kapoun, after this meeting in 19 -- did you say it was '83 or '84? I am sorry. I didn't --
A. It was April of 1984.
Q. Okay. After this meeting with Carlson and Bullock in

April of 1984, when is the next time any priest or official from the Archdiocese asked you about your sexual abuse of boys?

A. It was 1987.

Q. Tell the ladies and gentlemen of the jury what happened in 1987?

A. Bishop Carlson called me and he said we need to talk.

Q. And when he made the call, did he tell you why?

A. No.

Q. Did you go to the chancery and talk with Bishop Carlson?

A. Yes, I did.

Q. And when you did, father, where were he and you? Where did he talk to you?

A. In his office I believe.

Q. Anybody else present?

A. No.

Q. What did Bishop Carlson tell you at that time?

A. He said we would like you to go for an evaluation.

Q. And did he tell you why?

A. Yes.

Q. What did he say?

A. I can't remember his words. I just don't recall that. I know he wanted me to go.

Q. Okay. And did you go for an evaluation?

A. Yes, I did.
Q. And was your service in the parish interrupted at all by reason of that meeting with Bishop Carlson or your evaluation?
A. Yes.
Q. For how long?
A. I believe I was gone for about ten days.
Q. And you told the members of the parish, the parishioners, that you were taking vacation?
A. That I don't recall.
Q. Well, you didn't tell them you were going for an evaluation?
A. That's right.
Q. And then when is the next time if at all you ever had any discussion with any official of the Archdiocese about your abuse of boys?
A. 1989.
Q. And how did that come about?
A. It came about through the Dearing case.
Q. And when you say the Dearing case, that's when I on behalf of my client Michael Dearing sued you and the Archdiocese?
A. Yes.
Q. And in -- at that time and after that -- well, who asked you about your sexual abuse of boys at that

time?

A. I believe it was Father Kevin McDonough.

Q. And Father McDonough is currently the vicar-general but at that time he was the chancellor?

A. I believe he was.

Q. Okay. And what did Father McDonough ask you?

A. I can't recall the conversation.

Q. Did he ask you if you had sexually abused Dearing?

A. I believe so.

Q. And you told him you had?

A. Yes.

Q. Did he ask you if you had sexually abused or done similar conduct with any other of the youth in your parishes since you had been serving in parishes since 1964?

A. I had already relayed that back in 1987 to Bishop Carlson.

Q. What did you relay to Bishop Carlson in 1987 about that?

A. I mentioned Michael Dearing at that time.

Q. Anybody else?

A. And I mentioned another youth.

Q. When you say you mentioned Michael Dearing and another youth, did you mention that you had engaged in sexual contact with Michael Dearing and this other youth?

A. Yes.
Q. And both of those youth that you made mention to the bishop of in 1987 were youth in your parishes at the time?
A. They had been in parishes, yes.
Q. And?
A. That I had served in.
Q. Michael Dearing was in when you made mention of this -- excuse me. When you made mention to Bishop Carlson in 1987 and referred to Michael Dearing you referred to inappropriate conduct you had with Michael Dearing when he and you were at St. Raphael's, correct?
A. Yes.
Q. And the other youth you made mention of to Bishop Carlson in 1987 was a youth that was at your parish when you served at what parish?
A. St. Kevin's.
Q. Did you tell Bishop Carlson the names of these youth?
A. Yes.
Q. What did you tell him?
A. Michael Dearing and Jim Drummond.
Q. What did Bishop Carlson say to you, father, when you told him you had done this?
A. He said these occurred quite some time ago.

Q. Anything else?
A. And possibly the statutes of limitations had run out on those.
Q. Statute of limitations for what, father?
MR. EISENZIMMER: Objection, irrelevant.
THE COURT: Sustained.
BY MR. ANDERSON:
Q. Did he mention anything else that you recall?
A. No.
Q. What happened after that? Let me ask you this, father. Did you return to your parish?
A. Yes.
Q. And have you ministered there continuously since that time?
A. You are talking about which parish.
Q. St. Scholastica and the other ones?
A. Yes.
Q. Father, you have told us that you had or have a compulsive sexual interest in boys. Did they ever ask you about that?
A. Not specifically that I can recall.
Q. At some point in time after being -- at some point in time did they restrict you in your ministry and your faculty at your parish?
A. That was in the 1987 meeting with Bishop Carlson.

Q. Okay. What did they tell you to do or not do?
A. He said I should not associate with boys, counsel them.
Q. Did they limit you or restrict you in any other way?
A. No.
Q. Father, you have testified that when the Michael Dearing lawsuit was brought in 1989, you told your parish about that?
A. Yes.
Q. You didn't tell them that it was true though, did you?
A. No.
Q. And they never have been told by you at least that you have a history of sexual molestation of youth in your care, correct?
A. That's correct.
Q. And in fact you told your parish ten days ago that you were taking a leave and going on vacation to Florida, didn't you?
A. No, I--
Q. Let me ask you this father. What did you tell your parish about -- your current parish about where you were going to be in the coming weeks while you were attending this trial?
A. I would be in Florida.

MR. ANDERSON: Nothing further.

THE COURT: You may inquire, counsel.

MR. EISENZIMMER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. EISENZIMMER:

Q. Father, did you make some kind of announcement at your parish this past weekend?

A. Yes, I did.

Q. And did the announcement including anything about this case?

A. It did.

Q. And what did you tell your parish about that this past weekend?

A. I told them that I had been in trial all this past week and I will continue -- the trial will continue into this week.

Q. And father, where were you immediately prior to the commencement of this trial on January 29?

A. I was in Florida.

Q. So when you told your parish that you were in Florida, that was true?

A. That's true.

Q. You didn't tell them when the trial was going to start but you have told them this past weekend that you are in trial?

A. I did.

Q. Now, father, there is no question that in April of 1983 you were confronted by the chancery with the allegations being made by Mrs. Braith?

A. Yes.

Q. And you knew at that time who Mrs. Braith was, is that correct?

A. Yes.

Q. In fact she either was or had been an employee of St. Patricks parish where you were at at the time?

A. That's right.

Q. You knew her as one of the employees at that parish?

A. I did.

Q. And at some point in time did you also talk directly with Carol Braith about the allegations her son was making of sexual abusing on your part?

A. No.

Q. You learned from the chancery that she was making these allegations?

A. Yes.

Q. You resigned that parish?

A. Yes.

Q. And other than your resignation, in order to maintain your position where you are currently assigned at St. Scholastica, have you been required to do certain things?

A. Yes, I have.

Q. Can you outline for the members of the jury what you have been required to do in order to continue to serve in St. Scholastica and the other two parishes that you have served?

A. Well, I have been in counseling, in therapy, seeing a spiritual director every month, making a monthly confession, belonging to a support group.

Q. And who has required that you engage in these activities that you have just described?

A. The vicar-general.

Q. Kevin McDonough?

A. Yes.

Q. And I don't want to get into what any of the evaluation or counseling has been, father, except to ask basically is it your understanding that while you have been in counseling and therapy and spiritual direction and these other things that you have described that reports have been made to the Archdiocese about your progress in those activities?

A. Yes.

Q. And to whom do those reports go, do you know?

A. They go to Father Kevin McDonough.

Q. And he is the person at the Archdiocese that you have dealt with regarding these matters?

A. That's right.
Q. Did you agree when you engaged in counseling and therapy that it was necessary for you to do that?
A. Yes.
Q. As part of your counseling and therapy, did you come to understand that you have a compulsive sexual interest in boys?
A. Yes.
Q. Did you understand that, father, before you went through some period of counseling?
A. Not completely.
Q. Despite your counseling, there are some allegations against you, father, that you have continued to deny, is that correct?
A. Yes.
Q. But as you have already described here and I am not going to ask you to repeat that, you have admitted both in your counseling and to the Archdiocese about these other instances of abuse?
A. Yes.
Q. Father, at some point in time were there meetings at your parishes -- when I am talking about your parishes let me make sure that's clear because I think we have talked about that and used different names. You since for some period of time have served three parishes,

correct?

A. That's correct.

Q. St. Scholastica is one?

A. Yes.

Q. St. Joseph is another?

A. That's correct.

Q. And what's the third?

A. St. Thomas.

Q. And they are all in generally the same geographical area?

A. Yes.

Q. And have there been meetings with parishioners and parish leadership in these parishes about the allegations that have been made against you in the past?

A. Yes, there have been.

Q. And when did they have the first of any of those meetings?

A. The first one I believe was somewhere in 1989.

Q. And tell me, father, if you can recall who on behalf of the Archdiocese attended those meetings?

A. The archbishop, archbishop John Roach.

Q. And did archbishop John Roach go out to your parishes?

A. Yes, he did.

Q. And did he meet with parishioners and parish

leadership?

A. Yes.

Q. And has that included the parish trustees?

A. Yes.

Q. But it's also included the members of the parish?

A. Yes, it did.

Q. And did he speak to the parishes about the fact that there were allegations against you of sexual inappropriate conduct?

A. I wasn't in the meeting but that was the topic of the meeting.

Q. Were you present when there was an announcement made that there would be such a meeting?

A. Yes.

Q. So you weren't present so Archbishop Roach would be the best person to describe what occurred during those meetings?

A. Definitely.

Q. Do you know if there was more than the one meeting?

A. There were several others.

Q. Who attended on behalf of the Archdiocese?

A. Father Kevin McDonough came to one I know and another time Father Kevin McDonough and archbishop Flynn.

Q. Archbishop Flynn is the current archbishop?

A. Yes, he is.

Q. And he began serving as coadjutor about a year ago?
A. That's right.
Q. So he too has talked to your parishes about allegations and things that have occurred in your ministry?
A. Definitely.
Q. Father, you have been allowed since when to be in those parishes? When did you first go to those parishes?
A. 1984, June.
Q. And ever since that time you have been required to take the steps that you have described here in order to maintain that position?
A. Yes.
Q. And as part of that, have you promised to the Archdiocese that you would fulfill whatever requirements and obligations they imposed upon you in order to keep that position?
A. Absolutely.
Q. Father, as you sit here today, can you assure the members of this jury that your conduct since the time you were assigned there has been above reproach?
A. It has been above reproach.
Q. You have heard testimony, father, in this case that there are boys that you have abused and you have

continued to deny that, is that correct?

A. Yes.

Q. How can we rely upon you sitting there today, father, in assuring us since you were assigned to those parishes you haven't abused anybody else?

A. I can swear to it. And there has been just constant supervision and checking. I have reported at meetings and I have respected the people of the parish and --

Q. And has the parish leadership to your knowledge been instructed to so to speak keep an eye on you?

A. Yes.

Q. To ensure that those restrictions are being lived up to?

A. Yes.

Q. That includes a restriction of no youth contact?

A. That's right.

Q. And no youth counseling?

A. That's right.

Q. Have you ever violated those restrictions, father?

A. No, I haven't.

Q. Are you satisfied in your own mind that the restrictions that have been imposed upon you by the Archdiocese have been sufficient to ensure the safety of the youth in the parishes where you have served for these last number of years?

A. Absolutely sufficient.
Q. Are you prepared sitting there, father, to represent to this jury that you have not harmed a single individual as a result of these restrictions?
A. Not a single individual have I harmed.
Q. Can we believe you when you say that father?
A. Yes.

MR. EISENZIMMER: No further questions, Your Honor.

THE COURT: You may inquire.

RECROSS EXAMINATION

BY MR. ANDERSON:

Q. Father Kapoun, you are a priest and you just said since you have been in that parish and in those parishes you have not harmed a single individual, correct?
A. That's correct.
Q. When you as a priest deny publicly and in this courtroom and in these papers that you had sexually abused or touched Dale Scheffler, does it occur to you that you are harming him?
A. I deny I had any sexual contact with him.
Q. And when you have denied sexually abusing Mark Schutz as a priest in the Archdiocese, have you thought about the harm that is done by that denial publicly to him?

A. I must deny it.

Q. Are you aware of whether or not Curt Raymond went and talked to the Archdiocese about what you had done to him in the late 1980s?

MR. EISENZIMMER: Objection. Beyond the scope, Your Honor.

THE COURT: It appears to be. The objection is sustained.

BY MR. ANDERSON:

Q. When you deny the sexual abuse of him, are you aware or cognizant of any of the harm that is done to him by that?

MR. EISENZIMMER: The same objection.

THE COURT: I am going to allow this question. He is already in this -- this door has already been open.

THE WITNESS: Where the harm would come from, I don't know.

BY MR. ANDERSON:

Q. When you deny the sexual abuse of Mark Tuma and have so publicly and in papers and throughout, have you intended to cause him harm?

A. No.

Q. And in fact, father, when you abused the boys that you had been abusing, at the time you abused them you

weren't intending them harm, were you?

A. That's correct.

Q. You didn't know you were hurting them at the time?

A. That's right.

Q. Because you were in denial and unaware of what you were doing and why you were doing it?

A. I didn't realize I was harming them.

Q. Have you thought about the harm that is being caused to these boys that you have denied abusing but who have accused you of it?

MR. EISENZIMMER: Objection, asked and answered.

THE COURT: The question is argumentative. The objection is sustained.

MR. ANDERSON: No further questions.

THE COURT: Counsel.

MR. EISENZIMMER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. EISENZIMMER:

Q. Father, you have testified that you didn't intend to harm any of the boys that you have sexually abused. Today as you sits here, you do understand that this sexual abuse that you have perpetrated on them caused them harm, do you not?

A. Oh, definitely.

Q. And you know that you cannot permit yourself to harm people in that fashion?

A. That's correct.

MR. EISENZIMMER: No further questions.

THE COURT: Counsel?

MR. ANDERSON: Nothing further.

THE COURT: You may step down.

(Witness excused.)

THE COURT: You may proceed, counsel.

MR. ANDERSON: Your Honor, we will call Mr. Kevin Bergman.

KEVIN BERGMAN,

being duly sworn, was examined and testified as follows:

THE COURT: State your name for me spelling your first name and your last name.

THE WITNESS: Kevin Bergman, K E V I N, B E R G M A N.

THE COURT: Your business address.

THE WITNESS: 7900 Xerxes Avenue South, Minneapolis, Minnesota, 55431.

THE COURT: You may proceed, counsel.

MR. ANDERSON: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. Mr. Bergman, what is your occupation?

A. I am a certified public accountant.
Q. And as an accountant, did I ask you to do something?
A. Yes, you did.
Q. What did I ask you to do or hire you to do?
A. I was asked to review and read the audited financial statements of the Archdiocese of St. Paul and Minneapolis and to give you my professional opinion about the financial position of the Archdiocese.
Q. Okay. The financial condition of the Archdiocese, is that --
A. Yes.
Q. Okay. And what did you review in that connection?
A. I reviewed the June 30, 1995 audited financial statements.
Q. I am showing you Exhibit 20, is that what that is?
A. Yes, it is.

MR. ANDERSON: We will offer 20.

MR. EISENZIMMER: Your Honor, may we approach?

THE COURT: Sure. Yes.

(Discussion at the bench out of the hearing of the jury.)

THE COURT: Do you guys want to run out in the hall one second or in the back room for a second. He wants it's to put it on the record. Scoot out in the

hall for a second.

(The following discussion was held on the record out of the hearing of the jury.)

THE COURT: Okay.

MR. EISENZIMMER: Your Honor, I would object to admission into evidence of the exhibit and I am not certain, Your Honor, of the exhibit number here.

THE COURT: 20.

MR. EISENZIMMER: 20?

THE COURT: Yes.

MR. EISENZIMMER: I would object, Your Honor, that the --

THE COURT: Go ahead.

MR. EISENZIMMER: That the exhibit is the entire audited financial statements for the Archdiocese and contains --

THE COURT: Wait just a second. Tammy would you go out and stand by the door until we get this done. Okay.

MR. EISENZIMMER: My objection to the admission of the exhibit into evidence, Your Honor, is is that the exhibit includes far more details about the financial condition of the Archdiocese than would be appropriately admitted in court relative to the Archdiocese's financial condition. It contains

information that far exceeds the scope of Mr. Bergman's testimony at least according to the expert witness report that has been provided to me.

I understand he is only going to deal with fund balances and certain adjustments to those fund balances. On the other hand the financial statements deal with an incredible amount of information far beyond that scope including I might add notes to financial statements that deal with a number of issues, not the least of which is other litigation against the Archdiocese including other misconduct cases and reference to insurance and other matters pertaining to those things.

The Mrozka decision that we have repeatedly referred to here, in that case the Court of Appeals affirmed Judge Jones' determination that only the liquid assets of the Archdiocese be considered relative to the financial condition. In that case the financial statements were not admitted into evidence at the trial court level and I think the more appropriate approach here is to have the witness testify. Certainly I have no objection to him utilizing the exhibit as he has done in this expert witness report, but as I have indicated to the Court the financial statements are just loaded with a lot of

other information that is not going to be helpful to the jury, in fact will prejudice the jury, so its prejudicial value far outweighs the probative value, because discussion of financial statements of millions of dollars of assets that are somehow encumbered and restricted and would not be available to determine the financial condition of the Archdiocese.

In large measure these assets have been restricted by the donor in some fashion and thus are not financial matters that are available to the Archdiocese except for the purposes expressed in the donor's documents where they donated that money. It's my understanding that Mr. Bergman will not testify as to all of those matters but simply as to what he has described as unrestricted and institutional property and a couple of adjustments to that, and I certainly think that his report pertains only to that very small fraction of these financial statements, and thus as I say it would be prejudicial to introduce this exhibit into evidence.

THE COURT: Mr. Anderson.

MR. ANDERSON: Your Honor, we have been supplied this exhibit by the defendants in response to our request for production of documents going to the financial condition of the Archdiocese. This is the

document they have produced that says this is our financial condition, and the question that this jury is to be asked is what is their financial condition. Because it is a document, a financial document, we are calling Mr. Bergman simply to explain what this all is about, because it is a financial statement, and I am not sure what he is objecting to, if it's irrelevancy or if it contains prejudicial material. I don't know how to address that, but I would say only that there is nothing in here that doesn't pertain to the financial condition of the Archdiocese.

THE COURT: Counsel.

MR. EISENZIMMER: Your Honor, it is my position that most of the material here is irrelevant to the determination of the financial condition and that much of the information that's relevant is also prejudicial in assisting this jury in determining the financial condition of the defendant, and I take issue with the representation that I presented this as the financial condition of the Archdiocese. It is the financial statement and plaintiffs demanded a copy of the most recent audited financial statement of the Archdiocese so we produced it pursuant to their demand, not because we misrepresented this to be the financial statement.

I too intend to call a witness similar to Mr. Bergman who will testify only as to a very limited purpose as to what might be relevant here, and it's going to be similar of the testimony of Mr. Bergman. It's just those assets that are considered available because they are not restricted through some donative intent to represent the financial condition of the Archdiocese.

THE COURT: All right. The objection is overruled. I am going to allow it. If there are some specific references to insurance or other matters I will consider any request of redaction.

MR. EISENZIMMER: I will request that.

THE COURT: I will do that before it actually goes back to the jury, counsel. We don't need to do that now. Bring the jury in.

(Jury returns to the courtroom.)

THE COURT: The objection is overruled. The exhibit will be received. You may proceed, counsel.

BY MR. ANDERSON:

Q. Mr. Bergman, before I ask you about that and the financial condition of the Archdiocese of St. Paul and Minneapolis, let me just show you what we have marked Exhibit 40. Is that your resume?

A. Yes, it is.

Q. It talks about your background as an accountant and that kind of stuff?

A. Correct.

MR. ANDERSON: I will offer that, Exhibit 40.

MR. EISENZIMMER: No objection, Your Honor.

THE COURT: It will be received.

BY MR. ANDERSON:

Q. Mr. Bergman, will you tell the ladies and gentlemen of the jury about the financial condition of the Archdiocese?

MR. EISENZIMMER: I will object to the question. Calls for a narrative, Your Honor.

THE COURT: Sustained. Ask questions, counsel.

BY MR. ANDERSON:

Q. Well, what did you do and what opinions did you reach in connection with the -- what the financial condition of the Archdiocese is and maybe you can address it for us in nontechnical terms?

A. As an accountant, you are often called upon to review financial statements of business entities or nonprofit entities, and in accounting there is an equation that talks about what a financial position looks like. Basically that equation is that your total assets minus your liabilities equals your net worth, and it's

on that basis that I reviewed the financial report that was submitted to me including reading the financial footnotes which elaborates some of the details inherent in the financial statements that I have read.

The term that's used for nonprofit organization instead of net worth is called fund balance, so we need to consider what a fund balance means and that means total assets minus liabilities associated with a particular fund. This financial statement is quite complex and includes not only funds which are unrestricted for the use of the Archdiocese but in fact includes restricted funds, and that for example would include moneys that donors give to the Archdiocese with restriction upon that which means that they are not available for other than their designated purpose.

So in my evaluation of the financial statements, I have made a determination of what the unrestricted fund balances of the Archdiocese were which is something smaller than what the total fund balances are because that includes restricted funds. I then proceeded to make adjustments to the fund balance for some of the information that was contained in the financial report, and I limited my adjustments

to two items that in my professional opinion should be made to state the financial position of the Archdiocese.

Q. Okay. Well then why don't you tell us what -- first it sounds like first you reached some conclusions about unrestricted funds and then some conclusions about restricted fund and then you made some adjustments to the fund balances, is that correct?

A. That's correct.

Q. Okay. Why don't you tell us what your conclusions or opinions are in connection with the unrestricted funds?

A. On the balance sheet that I reviewed dated June 30, 1995, the unrestricted fund balance was $5,129,455.

Q. And what are unrestricted funds?

A. Those funds by definition are moneys that are at the discretion of the managers and the Board of Directors of the nonprofit organization.

Q. And what conclusions or opinions did you reach in connection with the restricted funds?

A. I have excluded for this purpose any restricted fund balances in my evaluation.

Q. And why is that, Mr. Bergman?

A. It's my opinion that those moneys have been earmarked by the donors for very specific reasons and can only

be used for those reasons by the management of the Archdiocese.

Q. Now, you said you made adjustments to the fund balances pertaining to the unrestricted funds, is that correct?

A. I made two adjustments.

Q. Tell us what you did -- why you did that and what you did?

A. The first adjustment I made was to reduce the fund balance for an item that the auditors for the Archdiocese reported on. What I mean by that is there is a liability that exists for unsecured retirement benefits to bishops which has not been recorded as a liability on the balance sheet of the Archdiocese as of June 30. The auditors are required to state that that's an exception from generally accepted accounting principles, and therefore, identified the $203,000 of liability existed as of June 30, 1995. I deemed it appropriate to reduce the fund balance by that amount because that is a liability that was identified, however, not recorded on the books.

Q. Any other adjustments that you did?

A. I made one other accounting adjustment. In the definition of net fund balance is total assets minus liability. On the balance sheet that I read, there

was a liability identified for moneys that had been received by the Archdiocese for campaigns relating to the future. The money has come into the Archdiocese before the end of their fiscal year which is June 30, so they accounted for the amount of assets they have received, but instead of showing that as unrestricted funds, they have recorded it as a liability for the future recognition of income. In my professional opinion those moneys are property of the Archdiocese and that this liability is only an accounting treatment of how to account for it as revenue in a future period, so in my professional opinion I have added that to my fund balance and that amount is $4,353,000.

Q. So with the adjustments, what is your opinion as to the amount of the unrestricted funds?

A. Included in my report I have included the institutional property which is the plant property and equipment owned by the Archdiocese. That is not a restricted fund balance as I have interpreted the financial statement. I have included that fund balance also in my report. That amount is 4 million -- excuse me $8,497,233. I give that information at this point because as I understand the last question, what is my total amount of undesignated

moneys which includes the institutional fund, approximately $17,776,688.

Q. Now, Mr. Bergman, is there reflected in the financial statements that you have reviewed reference -- a reference to the creation of a Catholic Community Foundation?

MR. EISENZIMMER: Objection. Irrelevant, Your Honor.

THE COURT: Approach.

(Discussion at the bench out of the hearing of the jury.)

THE COURT: The objection is overruled. You may proceed.

BY MR. ANDERSON:

Q. Mr. Bergman, I was asking you about the data that you reviewed that reflects a creation of a Catholic Community Foundation?

A. Yes.

Q. What can you tell the ladies and gentlemen of the jury about that from your review of these financial records?

A. The information is found in note number 2 of the audited financial statement, and it says that in December 1993 the Archdiocese commenced the operation of a new and separate nonprofit corporation, and they

have transferred significant assets from the Archdiocese into the community foundation. I was not able to determine from the information I have reviewed whether unrestricted fund balances were in fact transferred to that corporation. However, the footnote continues and says that the Archdiocese continues to provide services to the foundation of approximately $48,000 a year, and in fact funded the community foundation with fund raising dollars or fund raising expenses totaling approximately $790,000 over the last two years. I could not determine from my review of the financial statements what control the Archdiocese might have on the community foundation and simply noted it as an item that perhaps should be explored.

Q. Were you able to tell the ladies and gentlemen of the jury about -- give an opinion as to the value of the assets transferred by the Archdiocese to this foundation?

MR. EISENZIMMER: Objection. Irrelevant, Your Honor.

THE COURT: Overruled. You may answer.

THE WITNESS: Thank you. In fiscal '94 and '95, approximately $13,000,000 in assets have been transferred to the community foundation.

MR. ANDERSON: Thank you. Nothing further.

THE COURT: You may inquire, counsel.

MR. EISENZIMMER: Thank you.

CROSS EXAMINATION

BY MR. EISENZIMMER:

Q. Mr. Bergman, you would agree would you not that the assets that may have been transferred by the Archdiocese to the Catholic Community Foundation that you have just finished describing would appropriately not be considered as part of your analysis that you undertook at Mr. Anderson's request if those funds that were transferred to the Catholic Community Foundation are restricted funds?

A. Yes, I would agree with that.

Q. So that we are clear on that, Mr. Bergman, you have expressed an opinion as to the adjusted fund balance of the Archdiocese as it existed on June 30, 1995, correct?

A. Correct.

Q. And in making -- in expressing that opinion, you are telling the members of this jury that with respect to any assets that were transferred to the Catholic Community Foundation you don't know if they were restricted or not?

A. Correct.

Q. But if they were restricted funds, then they clearly would not be part of your determination that they should be included as part of your adjusted fund balance, correct?

A. From my reading of the financial report, restricted funds are made up of three types of moneys. One type of money is true restricted moneys coming to the Archdiocese from donors that specifically limit their use. The other type of restricted fund is moneys earned, however not yet spent on those restricted dollars from donors, and the third type of restricted funds or endowment fund represents board-designated funds that are designated as such by the action of the board, and it's my professional opinion that the board could undesignate those moneys at any future time. It's that third element of the definition of restricted funds for this purpose that I would not agree with your question, because restricted funds is broader, is a much broader term than what I have tried to explain a component of it to be which in my professional opinion would be moneys that the board could redesignate.

Q. Mr. Bergman, let's again try to follow that and see if we can understand that for our benefit. You are suggesting that there is three kinds of funds that the

Archdiocese holds, is that what you just got done saying?

A. There are three categories of funds that are called endowment funds or restricted funds.

Q. Okay. And the first category of those are let's for a moment refer to them as true endowments, is that a fair statement?

A. Yes.

Q. Okay. And a true endowment is a money that has been given to the Archdiocese or a nonprofit corporation where the donor has said I want this money used and you can only use it for a specific purpose, correct?

A. That's correct.

Q. So I might give money to the Archdiocese and say I want this money only used for Cretin High School, for example?

A. Correct.

Q. And thus that money would not be then included in your calculation of the financial worth of the Archdiocese as measured by the adjusted fund balance?

A. That's correct.

Q. And then there is also another category, the second category, is it fair to call those restricted funds functioning as endowment?

A. I believe if you are looking at page 12, footnote

number 1.

Q. I am not but I will.

A. Okay. There is the definition of what we are talking about.

Q. Okay.

A. And the restricted funds functioning as endowment is the label I would put on your example of donor-restricted funds for Cretin High School. Okay.

Q. Is that how the Archdiocese itself is treating it?

A. I believe so.

Q. Well, if you look at page 34, isn't that the money that's restricted for Cretin High School listed under endowment funds?

A. Yes, there is an amount there also.

Q. And anyway the second category I want to talk about at the moment.

A. Okay.

Q. Regardless of what purpose has been defined to use those funds, the restricted funds functioning as endowment are funds restricted by the donor, the granter or other outside party for particular purposes, correct?

A. Correct.

Q. So this second category too you have not included in your calculation of net worth for financial condition

purposes as shown by the adjusted fund balance that you have computed, correct?

A. Correct.

Q. It's the third category that you believe should be included?

A. Yes.

Q. And the reason for that is these are although they are unrestricted the Archdiocese has said we will use these for a particular purpose?

A. Correct.

Q. And it's your belief and it's your opinion that they can change their mind and can unendow them? They can decide we are not going to use it for that purpose, we are going to use that for some other purpose?

A. I say that and the auditors likewise say that.

Q. Okay. And you haven't I presume examined any corporate records to determine whether the Board of Directors of the Archdiocese has the power to do that or not, have you?

A. No, I haven't.

Q. So in determining though your adjusted fund balance, you have only included the first two categories -- excuse me -- only included the last category of those funds?

A. Yes.

Q. And you have basically arrived at a conclusion that those unrestricted funds together with institutional property minus these two adjustments you talked about total something in excess of $17,000,000?

A. That's correct.

MR. EISENZIMMER: Your Honor, may I approach the witness to use the board up there?

THE COURT: Yes.

MR. EISENZIMMER: Thank you, Your Honor.

BY MR. EISENZIMMER:

Q. Mr. Bergman, I want to try to follow through your analysis of the adjusted fund balance as determined by you, and I want to put some figures on here in order to do that, so hopefully the Court and the jury and yourself can see those. Now, if I understand what you did -- determined adjusted fund balances, you first took those unrestricted funds, and I believe you said that was $5,129,455, is that correct?

A. Yes.

Q. Now, of that amount, $3,470,078 has been put in a category of funds functioning as an endowment, is that correct?

A. That's correct.

Q. So of this $5,000,000 or excess five million, almost three-and-a-half million dollar has been put in this

third category that you have described where the Archdiocese has said we are going to restrict the use of that money to a particular purpose, correct?

A. Yes.

Q. Okay. But you are saying that they could undo that if they decided to?

A. Yes.

Q. And I take it that in making that, you are -- you don't know whether or not they might have made certain commitments to the Catholic community to restrict that in some fashion that although they might be able to do it legally, because of certain commitments they have made they couldn't do it from a practical standpoint. You don't know that?

A. I believe what I in my professional opinion legally they do reserve the right to reserve, to change that designation.

Q. Okay. But you don't know whether they have made commitments to the Catholics, 700,000 Catholics in this community to use that for certain purposes?

A. Correct, I don't know that.

Q. And those funds, the three million, almost three-and-a-half million dollars, they have described those as funds functioning as an endowment, correct?

A. Yes.

Q. And then of this five million dollars, also there is $274,201 that has been earmarked for replacement and renewal, is that correct?

A. That is a part of the property reserve, yes.

Q. Okay. And so of this five million dollars, two hundred seventy-four thousand and some odd dollars is placed in a category called replacement and renewal, correct?

A. Yes.

Q. And is it correct if you know and perhaps you can tell us if you know or not, isn't this money that in essence, money that's being set aside to replace a roof on a piece of property or replace broken concrete or whatever, is that typically what renewal and replacement talks about?

A. Yes.

Q. And you would agree that it's appropriate as part of generally accepted accounting principles that a corporation such as the Archdiocese set up a fund to reserve money to do that? It's a bad-weather fund. If we have a storm tomorrow and a roof gets blown off, we want to have the money to do that, correct?

A. Normally that would be covered by insurance. I think your previous example which is to replace a roof that's aged is a better example.

Q. Certainly. If we decide the roof now needs replacing, we want some money set aside to be able to do that?
A. Sure.
Q. And then there is also something called an expansion fund, is there not?
A. Yes.
Q. And that's $823,234, correct?
A. Correct.
Q. And that too is part of this five million dollars?
A. Correct.
Q. Okay. And the expansion fund you understand from the financial statements is money that the Archdiocese has in essence earmarked for expansion of parishes, churches, schools, whatever it might be in the Archdiocese?
A. Yes.
Q. And again that's appropriate in light of generally accepted accounting principles?
A. Yes.
Q. And then there is finally a sum of $561,942 that's called undesignated, is that correct?
A. Yes.
Q. Okay. And if I add all of these figures up, it's going to equal this $5,129,455, correct?
A. Correct.

Q. Okay. Now, I want to talk a bit more about this money here. So let's draw a line here and I want to take the same figure, $3,470,078. Now, I want to talk a bit about what those are for. And perhaps you can if you can follow along with me we are talking about page 34 of Exhibit 20. Now, of this amount, and again this amount comes out of that five million dollars, correct? This 3.4 million dollars comes out of the five million dollars?

A. That's correct.

Q. Now, of that amount the Archdiocese has said that $1,419,542 is for the Cathedral, is that correct? That's what they have restricted that money to use. Are you saying they can unrestrict it, but for the moment they have said they want to use that for the Cathedral, is that correct?

A. That's correct.

Q. And then another $66,269 of this amount has been restricted for something described as charitable benefits in the financial statement, correct?

A. Right.

Q. And the next figure is $114,870. Can you tell me what that is designated for?

A. Christ Child.

Q. Okay. And then we have got $343,332. What's that