

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

No. [REDACTED] (Hillsborough County, Northern District)
[REDACTED] v. Gordon MacRae, et al.

No. [REDACTED] (Hillsborough County, Northern District)
[REDACTED] v. Gordon MacRae, et al.

[REDACTED] (Cheshire County)
John Doe v. Gordon MacRae, et al.

[REDACTED] (Cheshire County)
[REDACTED] v. Roman Catholic Bishop, et al.

[REDACTED] (Rockingham County)
[REDACTED] v. Gordon MacRae, et al.

ORDER ON STATUTE OF LIMITATIONS DEFENSE

Pursuant to the Court's May 22, 1996 Order on Defendant's Motions to Dismiss, the Court conducted an evidentiary hearing on the statute of limitations defense raised in all of the above-captioned cases except [REDACTED] (Cheshire County) (See Order of March 5, 1992, in which the Court (Sullivan, J.) found that none of the plaintiff's claims are time-barred because the plaintiff was a minor at the time suit was instituted.) The hearing occurred over six days, commencing July 11, 1996 and concluding July 23, 1996. All parties were represented, except Gordon MacRae, who did not appear, notwithstanding a pro se appearance. The Court received testimony from twelve witnesses, including each of the plaintiffs, their therapists, the mother of the three [REDACTED] plaintiffs, and two additional experts--one appearing on behalf of the plaintiffs, and one on behalf of the defendants The Roman Catholic Bishop of Manchester, Inc. and Father Gerard Boucher (hereafter referred to collectively as "the Church.")

The defendants have alleged that all four cases are barred by the statute of limitations. Each of the plaintiffs alleges that because the discovery rule applies, his action is not time-barred.

For the reasons stated herein, the Court finds that the statute of limitations does not bar [redacted] [redacted], and [redacted] claims. Therefore, the Court denies the defendants' motions to dismiss those actions. As to [redacted], the Court finds that his claims are time-barred and accordingly grants the defendants' motion to dismiss his action.

THE LAW

Standard of Review

The statute of limitations constitutes an affirmative defense, and the defendant bears the burden of proving that it applies in a given case. Glines v. Bruk, 140 N.H. 180, 181 (1995). The defendant's burden is met by a showing that the action was not brought within the time-limit established by the applicable statute of limitations. Id. "Once the defendant has established that the statute of limitations would bar the action, the burden shifts to the plaintiff who has the burden of raising and proving that the discovery rule is applicable to an action otherwise barred" Id. (citations omitted).

In ruling on the defendants' motion to dismiss [redacted] [redacted] and [redacted] actions (construing the facts in the light most favorable to the plaintiffs), the Court found that while the defendants had met their initial burden of proof, "the plaintiffs' alleged facts sufficient to permit application of the discovery rule so as to preclude dismissal." (May 22, 1996 Order at 10-11, 17.) Accordingly, the Court scheduled an evidentiary hearing to make the requisite factual findings regarding the applicability of the discovery rule to the statute of limitations defense. See Black Bear Lodge v. Trillium Corp., 136 N.H. 635, 638 (1993). Subsequently, the parties agreed to expand the scope of the evidentiary hearing to include [redacted] [redacted] and [redacted] actions.

Applicable Statute of Limitations

RSA § 508:4, I is the statute of limitations applicable to these actions. Under this statute, tort actions which "arose" before July 1, 1986 are subject to a six-year limitations period; tort actions which "arise" after that date are subject to a three-year limitations period. RSA §508:4 I; Conrad v. Hazen, 140 N.H. 249, 252 (1995); see Dennis T. Ducharme, The Statute of Limitations and The Discovery Rule Under RSA 508:4, 28:3 N.H.B.J. 239, 239-43 (1987). A cause of action "arises"

once all the necessary elements are present. . . . A plaintiff who alleges an injury based on a defendant's conduct that occurred prior to July 1, 1986, but where either the injury or its cause was not discovered until sometime after that date, would have the benefit of the six-year statute of limitations and the common law discovery rule.

Conrad v. Hazen, 140 N.H. 249, 252 (1995).

The parties agree that the six-year limitations period applies to the [REDACTED] and [REDACTED] cases. At the conclusion of the evidentiary hearing, the Church asserted that plaintiffs [REDACTED] are subject to a three-year limitations period. See Def. Proposed Rulings of Law in Action No. 94-C-737 at 4; Def. Proposed Rulings of Law in Action No. 93-C-1243 at 3. The Church bases its argument on the theory that MacRae's conduct toward [REDACTED] and [REDACTED] constituted a "continuing wrong" which began before July 1, 1986 and continued after July 1, 1986. It asserts that because some of the conduct occurred after July 1, 1986, all of the conduct is subject to the three-year limitations period. To support its position, the Church relies on the following case language: "Under the continuing wrong tolling doctrine, the cause of action accrues at the time of the final act in a series of events or course of conduct." Fletcher v. State of Florida, 858 F. Supp. 169, 171 (M.D. Fla. 1994).

The "continuing wrong" doctrine is one of several judicial doctrines initially adopted to avoid harsh application of the statute of limitations to malpractice cases in which a statute may have run before the patient or client discovers he has suffered injury. See Shillady v. Elliot Community Hosp., 114 N.H. 321, 323-324 (1974); Prosser and Keeton On Torts, ch. 5, § 30 at 165-167, 167 n. 17. (5th ed. 1984) 167 n.17 (Supp. 1988) (hereinafter Prosser). The doctrine is intended to expand, for a plaintiff's benefit, the date the cause of action accrues. To apply the doctrine to narrow a plaintiff's opportunity for recovery turns the doctrine on its head. This the Court declines to do. See Fletcher, 858 F. Supp. at 171; Prosser, ch. 5, § 30 at 165-17. Both [REDACTED] and [REDACTED] were subjected to abusive conduct well before July 1, 1986. The fact that the conduct continued after July 1, 1986 does not vitiate the applicability of the six-year limitations period, pursuant to the holding in Conrad. 140 N.H. at 252. I find that the claims of [REDACTED] and [REDACTED] are subject to the six-year limitations period.

I find that the defendants have met their initial burden of proof on the statute of limitations issue regarding all four cases. Therefore, with respect to each, unless the plaintiff

meets his burden of proof under the discovery rule, his claim is barred.

The Discovery Rule and its Application

Under the common law discovery rule:
 [a] cause of action will not accrue . . . until the plaintiff discovers or in the exercise of reasonable diligence should have discovered not only that he has been injured but also that his injury may have been caused by the defendant's wrongful conduct.

Brown v. Mary Hitchcock Memorial Hosp., 117 N.H. 739, 742-43 (1977) (emphasis added) (rule applies when plaintiff should have discovered, not when she could have discovered, her injury); see Rowe v. John Deere, 130 N.H. 18, 21 (1987). The common law discovery rule may be applied in civil sexual assault cases. McCollum v. D'Arcy, 138 N.H. 285, 286-88 (1994). The plaintiffs urge the Court to adopt a standard whereby "no existing statute of limitations applies to bar the action of an adult survivor of child sexual abuse when it is shown by clear and convincing evidence that the plaintiff has in fact been sexually abused during minority by the named defendant." Petersen v. Bruen, 792 P.2d 18, 25 (Nev. 1990). On the opposite end of the spectrum, the defendant Church urges the Court to adopt a standard whereby "as a matter of law one is 'injured' [so as to preclude application of the discovery rule] if one is sexually abused." Blackowiak v. Kemp, 546 N.W. 2d 1, 3 (Minn. 1996). Neither of these positions is tenable, because the New Hampshire Supreme Court has held that the discovery rule is applicable in civil sexual assault cases. McCollum, 138 N.H. at 288. The sweeping policy changes which each party proposes must be left to the legislature, if they are to be implemented at all.

Whether a plaintiff exercised "reasonable diligence" in the discovery of his cause of action must be determined based upon when a reasonable person--who was subject to the plaintiff's experience--should have discovered his cause of action. Conrad v. Hazen, No. 93-C-01210 (Rockingham County Super. Ct., June 25, 1996) at 8 (McHugh, J.) (applying modified objective standard); Jacobi v. Rechberger, No. 94-C-482 (Merrimack County Super., Ct. April 12, 1996) (McGuire, J.) at 13-14 (applying modified objective standard); see Flanagan v. Grant, No. 95-1962, slip. op. at 3 n.3 (1st Cir. April 1, 1996); Riley v. Presnell, 565 N.E.2d 780, 785-86 (1991); Phinney v. Morgan, 654 N.E.2d 77, 81 (Mass. App. 1995), review denied, 656 N.E.2d 1258 (1995).

The issues in each of the four cases are as follows:

- 1. Was plaintiff's original injury sufficiently serious to apprise him that a possible violation of his rights had taken place? If so, the statute of limitations bars his suit.

Jacobi, supra, at 1; see Conrad, supra, at 21-23; Rowe, 130 N.H. at 22.

- 2. If the answer to question #1 is "no," when did the plaintiff discover, or in the exercise of reasonable diligence, should he have discovered, both the fact of his injury and the causal relationship between the injury and defendant MacRae's acts? If the relevant date is prior to six years before institution of suit, the statute of limitations bars his suit.

Jacobi, supra at 1; see Conrad, supra, at 22-24; McCollum, 138 N.H. at 286-88.

THE FACTS

[REDACTED]

[REDACTED] was born on [REDACTED]. His lawsuit was instituted on September 10, 1993, when he was age 28. He alleges sexual abuse at the hands of Gordon MacRae (initially when MacRae was a seminarian and later when MacRae was a Roman Catholic priest) during the period of approximately 1979/1980 through 1983, with the last sexual contact occurring no later than December 31, 1983 (when [REDACTED] was age 18), nearly 10 years prior to institution of suit.

[REDACTED]

[REDACTED]

██████████ she said he had almost ██████████ in ██████████

██████████ was a strict Roman Catholic and created a home where religion was a dominant factor in her family's life. She taught her children to treat priests with the utmost respect. As ██████████ testified, she taught the children that a priest "is someone who is the next thing to God, a messenger from God." There was no higher authority than a priest. The priest made the moral judgments -- decided what was right and what was wrong. She taught the children to do whatever they were told to do by priests. ██████████ as well as the other children, went to church regularly on Sunday mornings, and frequently during the week. He attended catechism classes, served as an altar boy, and was confirmed. Until his contact with Gordon MacRae, ██████████ had only positive experiences with priests. The ██████████ family pastor, Father Horan, of Sacred Heart Church in Marlborough, New Hampshire, was very close to the family. He would frequently come to their home, and became "almost a member of the family." The family was also close to Father Mark, a young priest assigned to St. Bernard's Church.

As a young child, ██████████ was very withdrawn. ██████████

██████████ He testified that he "didn't know what he was" and that he was "mentally abused by his teachers." By the time he was in the fifth grade, he was seeing a psychiatrist for the problems he was experiencing.

Prior to his contact with MacRae, ██████████ had virtually no sexual experience. He testified that once, when he was very young his brother "tried something on him." Other than that, he had no sexual experience or education, and knew nothing about sex.

██████████ met MacRae in 1979 (when ██████████ was 14). He was introduced to MacRae by Father Horan. At the time, MacRae was a seminarian, but ██████████ did not know the difference between a seminarian and an ordained priest. MacRae wore priestly garb, and ██████████ regarded him as a priest. Following their introduction, MacRae developed a close relationship with ██████████, as well as with ██████████ and the ██████████ children.

MacRae spent much time at the ██████████ home -- sometimes as much as five times a week. He would often bring food and gifts; on one occasion, he gave the family a large color television set. As ██████████ testified, MacRae made his mother happy. ██████████ testified that MacRae frequently offered her advice, and eventually made himself a confidante. The entire family grew close to MacRae. MacRae's relationship with the family was highlighted when he saved the life of ██████████, the youngest ██████████ boy, during a pool accident.

MacRae developed a special one-on-one relationship with [REDACTED]. He would take [REDACTED] alone, out to eat and on trips. He would give him money. [REDACTED] felt "great" as a result of all this attention -- attention which he did not receive as one of eight children in a home where financial resources were modest. [REDACTED] felt "chosen" by MacRae. He regarded MacRae as his big brother. MacRae was "there all the time" for him. MacRae told him, "I'm your best friend." He told [REDACTED] to call him "Dad." MacRae also told [REDACTED] that he had been a police officer, and showed him a badge and a gun. MacRae told [REDACTED] that he, MacRae, could do anything he wanted to. Both [REDACTED] and [REDACTED] testified that [REDACTED] loved MacRae.

The first physical contact between MacRae and [REDACTED] occurred on a car trip to Lynn, Massachusetts. MacRae had invited [REDACTED] to accompany him on a visit to MacRae's parents. On the way, MacRae asked [REDACTED] why he was sitting so far away from him. He told [REDACTED] to sit closer, and pulled him over to him. He told [REDACTED] "Just call me 'Dad.' I'm your best friend. This is how we bond. This is a normal thing." MacRae placed his hand on [REDACTED] leg and rubbed it. [REDACTED] testified that he didn't think there was anything "abnormal" about this.

The physical contact escalated. MacRae arranged to have even more time together with [REDACTED]. There were lunches and dinners together. MacRae gave him clothes and money. MacRae told [REDACTED] they had a special relationship.

MacRae started taking [REDACTED] to the rectory of St. Bernard's Church in Keene, where MacRae resided. At that time, [REDACTED] understood that a rectory was a sacred place, "sort of like a church." MacRae would take [REDACTED] to his private quarters on the third floor. They would sit and talk. MacRae served [REDACTED] his first drink of alcohol. [REDACTED] testified that he had no previous experience with alcohol other than perhaps an occasional stolen sip of his father's beer.) Drinking became a routine part of their visits. [REDACTED] said the alcoholic drinks tasted good and made him feel good. However, they also made him feel "fuzzy," "blurry," and "strange." At times he could not stand up. [REDACTED] continued to trust and respect MacRae.

On occasion, while they were at the rectory, MacRae would tell [REDACTED] that he was staying overnight. MacRae would then call [REDACTED] to let her know. When the drinking caused [REDACTED] to be unable to walk, MacRae would carry him to MacRae's bedroom. MacRae would give [REDACTED] messages on his back, legs, and buttocks. He would then have [REDACTED] turn over and he would message [REDACTED] chest and genital area in what MacRae termed the "spider game." [REDACTED] testified that he did not question this conduct. MacRae told him that these things were "normal," and were part of their "bonding." MacRae told [REDACTED] that [REDACTED] did not need women in

his life -- that all women did was lie, cheat and steal. MacRae told him that all [redacted] needed was MacRae.

[redacted] testified that on several occasions, he actually passed out. He would awake with a massive headache and feeling strange. On several occasions, when showering at the rectory, [redacted] experienced a burning sensation in his anus. Although he felt discomfort, he stated that he had no idea what happened.

During the period of approximately 1981/1982 MacRae also took [redacted] to a rectory in Hudson, New Hampshire. [redacted] described one visit as follows. MacRae picked [redacted] up at his home and drove him to the Hudson rectory. No one else seemed to be there. MacRae brought him into the living room and then disappeared. [redacted] helped himself to some alcohol, which he "guzzled." When MacRae returned, he took [redacted] into a bedroom and told him to take off his clothes. MacRae was "edgy" and told him to "do it." MacRae stated to [redacted] "If you don't do what I say, I'll never be your friend again." [redacted] took his clothes off and MacRae left. Another man, whom [redacted] believed to be a priest, came into the room and "raped" him anally. That man reassured [redacted] that everything was "fine" and "normal." That man left, and a second man entered. [redacted] also believed this man to be a priest. Again, [redacted] was anally raped. Again, he was reassured by the man that "everything's fine -- this is normal." [redacted] testified that during the course of these assaults, he was "sniffling," and confused. After the second man got dressed and left, MacRae returned and told [redacted] to get dressed. MacRae then took him to dinner and a movie. The two never talked about the incident. [redacted] believes this incident happened before MacRae's ordination in 1982.

In January of 1982, [redacted] separated. (They were divorced in August of 1983.) At the time of the separation, [redacted] overheard a conversation between his parents in which [redacted] told his wife that he "didn't give a **** about the kids." MacRae continued to be an important figure in [redacted] life. MacRae continued to be a frequent visitor at the [redacted] household, and on occasion spent the night. [redacted] testified that he was happy to have Father MacRae there. The entire [redacted] family attended MacRae's ordination in May, 1982, and felt privileged to be assigned to the VIP section in the church.

[redacted] graduated from high school in 1983. He worked at construction for a brief period until he was laid off. MacRae then got him a job at the Keene church doing maintenance work. [redacted] then enlisted in the U.S. Army and spent time in [redacted]. He testified that he had a difficult time in the military. He felt he didn't fit in; he described himself as experiencing an "identity crisis." He developed significant problems with drug and alcohol abuse. During his time in the Army, [redacted] maintained

contact with MacRae. [redacted] was discharged in February, 1987, and lived for a time in [redacted].

In the spring of 1988, [redacted] decided to return home to New Hampshire. His mother repeatedly asked him to come back to the [redacted] household, stating that she had room for him. MacRae, however, persuaded [redacted] that his mother had enough problems of her own and that [redacted] should live with him. [redacted] continued to regard MacRae as a father figure. Shortly after [redacted] moved in with MacRae, however, their relationship ended. During a conversation related to [redacted]'s need for money, MacRae told him he knew how [redacted] could make a couple of hundred dollars. He told [redacted] all he had to do was "just lay there." [redacted] understood this as a sexual proposition. He moved out shortly thereafter. Subsequently, in 1988, he was contacted by Keene Detective McLaughlin and he reported the solicitation, which he understood to be a solicitation for homosexual activity.

[redacted] testified that during the summer of 1988, he learned that MacRae had sexually abused his brothers. In a conversation with his mother near their pool, she asked [redacted] whether MacRae ever "tried anything on you." [redacted] recalls that his mother told him that something had happened with [redacted], and possibly [redacted] (Mrs. [redacted] however, testified that this poolside discussion never involved [redacted]). He testified that this hit him "like a rock," and made him very upset. [redacted] reacted to the question, but gave his mother no details. [redacted] stated that until 1988, he never spoke with anyone about the sexual contacts by MacRae. Although [redacted] believes that the conversation with his mother occurred in the summer of 1988, [redacted] testified that she believed it occurred in 1989. She stated that in early 1989, when she was working as a social worker for the State of New Hampshire, she heard that there had been a problem between MacRae and a boy at Spofford Hall, and was advised to ask her sons about their contacts with MacRae. Based on this, she spoke with her sons.

In early 1993, [redacted] began counseling with Richard Dufresne, a clinical social worker. The counseling continued until November, 1995. [redacted] testified that before 1988 he had no idea that he suffered any injury at all at the hands of MacRae. He said that it was not until his counseling with Dufresne that he began to understand that what MacRae did was wrong. He stated that to this day he has difficulty understanding what happened to him and that he blames himself. He states that he knew what happened to him physically -- and that he has not forgotten any of it, but did not know what to call it.

Richard Dufresne diagnosed [redacted] as suffering from chronic post traumatic stress disorder, with delayed onset. He testified that when [redacted] started counseling, he was full of guilt and self-blame, and felt responsible for MacRae's abuse of his

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brothers. He testified when he first saw [REDACTED] [REDACTED] did not understand that MacRae's conduct was wrong. The self-blame continues, and [REDACTED] continues to question whether he did anything to cause the abuse he suffered. In Dufresne's opinion, [REDACTED] did not begin to understand that he had been injured by MacRae until 1992, when his brothers "began confronting" MacRae's abuse of them.

[REDACTED] was born on November 18, 1967. His law suit was instituted on June 7, 1994, when he was age 27. He alleges sexual abuse at the hands of MacRae during the period of approximately 1979 through 1987, with the last sexual contact occurring no later than March 31, 1987, when he was age 19, more than seven years prior to the institution of suit.

[REDACTED] He experienced the same strong religious influence in his upbringing as did his brother [REDACTED] (Please refer to the [REDACTED] fact section for additional detail regarding the [REDACTED] family life and relationship with MacRae.) He served as an altar boy, and was confirmed. He was well-grounded in Catholic education, and religion played an important role in his life. Prior to his contacts with MacRae, [REDACTED] had had very positive relationships with priests. He believed that priests were the "middlemen" between God and the parishioners. Priests articulated what was right and wrong. They were to be revered. [REDACTED] described [REDACTED] as the most devout of her children. She also testified that as a young child, [REDACTED] was very out-going and vivacious.

[REDACTED] first met MacRae when he was 11 years old. He explained that his brother [REDACTED] was the first to meet MacRae, and soon after MacRae started coming to the [REDACTED] home frequently. He testified that MacRae spent the majority of his free time at their home, that he brought many gifts, and that MacRae had the full support and trust of his mother. [REDACTED] testified that MacRae began to take him places alone. He would take him to the store, on errands, miniature golfing, and to the batting cages. [REDACTED] felt very good about this individual attention, and would feel extremely jealous when MacRae would take either [REDACTED] or [REDACTED] out alone.

The first physical contact by MacRae occurred when [REDACTED] was 11 years old, in the summer of 1979. He was delivering a newspaper to the rectory, and MacRae invited him in for donuts and orange juice. In the rectory, MacRae "pinned him up against the wall" and fondled his genitals. [REDACTED] felt uncomfortable and very confused.

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Between 1979 and 1982, there were at least two other sexual contacts by MacRae. On one occasion, when [redacted] was traveling alone with MacRae to Keene in MacRae's car, MacRae reached over and fondled him. On another occasion, MacRae drove [redacted] older brother [redacted] to Logan Airport and took [redacted] along. After [redacted] was delivered to the airport, MacRae took [redacted] to MacRae's sister's home. On the way home, in the car, [redacted] fell asleep. When he awoke, MacRae was fondling him on the outside of his pants.

[redacted] separated in January, 1982. [redacted] blamed himself for the break-up. [redacted] related an incident when [redacted] found a receipt in the driveway, which had apparently dropped out of [redacted] car. [redacted] brought to his mother. The receipt evidenced a borrowing from [redacted] mother's annuity fund. The money was apparently used in connection with an affair [redacted] was having with another woman. [redacted] separation followed this incident. Particularly after the separation, [redacted] regarded MacRae as a surrogate father.

During the early 1980's [redacted] began developing severe problems with alcohol and drugs, which resulted in a deterioration of his relationship with his mother. MacRae conferred with [redacted] and offered to counsel [redacted] for these problems. [redacted] testified that during the counseling sessions, MacRae would pick him apart, belittle him, break him down. [redacted] would finally become hysterical, and MacRae would perform fellatio on him. [redacted] explained that when this happened, he felt disconnected from his body. He felt like an onlooker, not a participant. Such abuse during "counseling" sessions occurred numerous times over a period of years. [redacted] later blamed himself. He felt that if he hadn't "broken down" during these sessions, the conduct by MacRae would not have happened.)

During this time, [redacted] testified that MacRae told her she needed to get tougher with [redacted], that she should not "enable" him, and that she should not give him any money. MacRae convinced her to distance herself from [redacted]. [redacted] related one occasion when [redacted] had been out of the house for several days. She knew he had been sleeping in someone's barn. He came to the house on a rainy summer day to fix his brother's bicycle. She stated that she knew he did not want to leave, but on the advice of MacRae, she turned him away. [redacted] stood at the door with the rain and wind at his back, and she closed the door in his face. She described this as one of the most painful experiences of her life.

[redacted] testified that he did not have anyone to turn to, that MacRae played "middle man" between him and his mother. MacRae told him that if he [redacted] would "go along," MacRae would work on patching things up with his mother. [redacted] described MacRae as a "third parent." MacRae continually reassured [redacted] that things

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were all right. █████ testified that MacRae convinced him that the sexual contact was not wrong, that his supplying █████ with alcohol was not wrong, and that MacRae's taking money from the church collection was not wrong. MacRae convinced █████ that he loved and cared for him, and that if █████ trusted him, everything would be all right. █████ felt trapped and confused. The abuse continued. █████ drinking and drugging continued. MacRae would provide █████ with alcohol and money, which MacRae knew █████ was spending on drugs. █████ relationship with his mother continued to deteriorate.

In the summer of 1986, when he was age 19, █████ was heavily involved with alcohol and drugs. His relationship with his parents was all but severed, and MacRae was the main figure in his life. He begged MacRae for help with his drinking problem. MacRae arranged for █████ to go to Derby Lodge in Berlin, New Hampshire, for treatment. The night before MacRae was to take him to Derby Lodge, █████ stayed at the rectory. MacRae again performed fellatio on him.

At Derby Lodge, █████ met with Debra Collette, designated as his personal counselor. He told her about MacRae's physical contact with him because he wanted to know whether such conduct was right or wrong. █████ testified that he was blaming himself, that he felt dirty and no good, and that he had no future. Collette refused to believe him; and she would not discuss the matter further. █████ was confused and hurt.

After the conversation with Collette at Derby Lodge, █████ continued his relationship with MacRae. The abuse (fellatio) continued. Approximately six to nine months after the Collette conversation, MacRae confronted █████. He told █████ he knew of the conversation and that if █████ "tried it again" he'd kill him.

The abuse, and █████ relationship with MacRae, finally ended in 1987. █████ testified that at that time he was living in an apartment in Manchester. █████ could no longer afford the apartment. █████ returned to Keene, and moved in with MacRae (who was on a leave of absence from the Church). One day when MacRae was out, █████ found some videotapes. One depicted a young man lying nude on a bed. █████ thought he recognized the young man. He also heard a male voice on the tape, which he thought was MacRae's. He became scared. He went into MacRae's room and found camera equipment on a table. He grabbed the equipment and tapes and put them in a duffel bag. He took the bag and rode with it on his bicycle to his mother's home, where he deposited the bag in a storage area. He then took off on his bicycle. Along the way, MacRae appeared in his car and pursued █████. MacRae was yelling and swearing, and tried to hit █████ with the car. MacRae pulled to the side of the road, told █████ he wanted his stuff back and wanted to kill him. MacRae threatened him with a gun. █████ took off on his bicycle with

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MacRae in pursuit. He eventually returned to his mother's home, and then rode from Keene to Manchester, where he stayed for a weekend. He then rode to Hampton Beach and eventually ended up at the Dover Crisis Center. He then moved to Portland Maine, and finally to California. [REDACTED] was away from Keene for approximately three years. [REDACTED] testified that he blamed himself for the Keene/gun incident and felt bad that his relationship with MacRae ended.

While he was in California, [REDACTED] spoke with his mother by telephone. During one conversation, [REDACTED] asked [REDACTED] if MacRae "ever did anything to him." He avoided answering her. He testified that MacRae had "ground into him" that no one would believe him. [REDACTED] testified that this conversation occurred in 1989 or 1990.

[REDACTED] testified that during the sexual contact with MacRae, he never understood that the contact was wrong, that it was a sin to be confessed, or that he had the ability to make MacRae stop. When [REDACTED] learned that his brothers had also been abused by MacRae, he felt extremely guilty. He blames himself for what happened to them. Until recently, he has also blamed himself for what happened to him. He testified that he did not come to understand that what MacRae had done to him was abuse until around the time that his brother [REDACTED] appeared before the grand jury in the criminal case (in April, 1993).

On November, 14, 1994, Gordon MacRae was convicted by a Cheshire County Superior Court jury of four counts of aggravated felonious sexual assault and one count of felonious sexual assault, all in connection with his assaults on [REDACTED]

[REDACTED] continues to experience significant problems. He has difficulty holding a job. He has difficulty forming relationships with men. He doesn't know how to deal with friendship or with people who try to get close to him. He has trouble trusting people.

[REDACTED] testified that until therapy, he never felt that his problems were caused by MacRae's treatment of him. He began therapy with Pauline J. Goupil in June, 1993 and continued in therapy with her until July, 1995. Ms. Goupil has diagnosed [REDACTED] as suffering from post traumatic stress disorder and substance abuse in remission. Ms. Goupil testified that [REDACTED] did not appreciate the wrongfulness of MacRae's conduct -- that he had no frame of reference for differentiating between right and wrong. [REDACTED] blamed himself, a reaction which Goupil stated is typical of victims of childhood sexual abuse. As she explained, [REDACTED] felt dirty, confused, and betrayed, but he couldn't understand MacRae's conduct as wrong because it was perpetrated by the "model of goodness." She further stated that the Derby Lodge disclosure does not mean that [REDACTED] understood, at that time, that

the conduct was wrongful. In her opinion, [redacted] did not understand that he had been abused until his brothers disclosed their own abuse. Further, she testified that only during therapy was [redacted] able to begin to understand that his problems are related to the abuse.

[redacted] was born on [redacted]. His law suit was instituted on December 8, 1994, when he was age 25. He alleges sexual abuse at the hands of MacRae during the period of approximately 1982 through 1985, with the last sexual contact occurring no later than the fall of 1985, and sexual solicitation occurring no later than 1987, nearly nine years and seven years (respectively) prior to the institution of suit.

[redacted] He is four years younger than [redacted] and two years younger than [redacted]. He experienced the same religion-centered upbringing as his brothers. (Please refer to the [redacted] fact section for additional detail regarding the [redacted] family life and relationship with MacRae.) He attended St. Joseph's Catholic School in Keene during kindergarten and during fifth and sixth grade. He attended Mass regularly and served as an alter boy. He had a good relationship with his parents, but his father was generally "not around." Prior to age 12, [redacted] had no experience with alcohol or sex. Prior to his contacts with MacRae, he had positive experiences with Father Horan, whom he described as a good family friend. [redacted] testified that [redacted] was a bright, affectionate child who did well in grammar school.

[redacted] met Gordon MacRae in the summer of 1979, when he was 10 years old. He described MacRae's assimilation into the [redacted] household during that summer. He said that MacRae was very close to [redacted] at first, then became close to the whole family. MacRae came frequently for meals and conversations. He brought "good things" to the family -- including pizza, and even a color television set. The entire family, including his mother, liked MacRae very much. [redacted] recalled especially how appreciative his family was when MacRae saved his younger brother's life during the pool accident.

During the time period 1979-1982, MacRae developed a close relationship with [redacted] and [redacted] learned to trust him. MacRae brought him many gifts (sneakers, clothes, a "Walkman," and tapes) and took him on trips. He described MacRae as a charming, trusted family friend whose physical contact with him at first was "innocent." Along with his family, [redacted] attended MacRae's ordination in May, 1982, and felt especially honored to sit in the VIP section.

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When his parents separated early in 1982, [REDACTED] was greatly affected. [REDACTED] testified that [REDACTED] was "devastated." When [REDACTED] left the house, he moved in with [REDACTED], who lived nearby and whose children were in the same classes as the [REDACTED] children. After the separation, his father continued to coach the junior high school basketball team, but he was generally unavailable to his children. [REDACTED] suffered emotionally from this separation, and [REDACTED] felt he needed counseling. MacRae did the counseling. [REDACTED] testified that at the time, she thought "Gordon MacRae was there for him."

The first abusive contact by MacRae occurred in the spring or summer of 1982 (after MacRae's ordination) in conjunction with a trip to the Hampton rectory, when [REDACTED] was 13. MacRae arranged the trip with [REDACTED]. It was planned that [REDACTED] would spend the weekend; the purpose was to help [REDACTED] get over his parents' separation. MacRae picked [REDACTED] up and as they drove to the rectory, they discussed the topic of divorce. After dinner at the rectory that first night, MacRae brought [REDACTED] upstairs to his living quarters, where there was a bar, a television and an electronic organ. MacRae served him alcohol, having him try different types of liquor. [REDACTED] remembers ending up in the bedroom, on the bed, in his underwear. [REDACTED] felt sick. MacRae began to touch him all over, including his genitals. MacRae performed fellatio on him. [REDACTED] also recalls that during that weekend, MacRae attempted what, in retrospect, [REDACTED] identifies as anal intercourse, but [REDACTED] did not let it happen.

[REDACTED] testified that at the time he knew what happened to him, but he didn't know how he was supposed to feel. He felt something was wrong, but didn't feel MacRae was doing anything wrong. MacRae told him not to tell anyone. MacRae told him, "No one needs to know--just keep it between us." [REDACTED] testified that he wasn't sure what MacRae was referring to-- the touching, the kissing, or the alcohol. On the way home from the weekend, MacRae stopped at the Mall of New Hampshire and bought [REDACTED] a "Walkman" and some tapes. When they arrived back at the [REDACTED] home, MacRae told [REDACTED] that he thought [REDACTED] problems were related to [REDACTED] sexual identity: MacRae told her he suspected [REDACTED] was gay.

Following this incident through the fall of 1985, [REDACTED] continued to see MacRae. MacRae took him to the rectories in Groveton, Rye, and Keene. The sexual contact continued, including masturbation and oral sex by MacRae on [REDACTED]. [REDACTED] estimates that there were at least 50 instances of sexual contact, with at least 10 involving oral sex.

The last occasion of oral sex occurred in the fall of 1985 at the Keene rectory. [REDACTED] recalls that he and MacRae were on the third floor of the rectory, and that MacRae was mixing drinks.

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MacRae left the room, and someone else came in and performed oral sex on him.

Beginning in the fall of 1985, [REDACTED] was "counseled" by MacRae in preparation for his spring, 1986 confirmation. He testified that he believed the priests involved in the confirmation preparation chose the students they wished to counsel. He testified that during the counseling sessions he received no spiritual advice. Rather, MacRae attempted to solicit him to engage in prostitution. He told [REDACTED] he could earn money, that "all he had to do was lie there." By the time [REDACTED] made his confirmation, the sexual contact had ended.

[REDACTED] described an incident which occurred in 1987 in MacRae's rectory office. He said MacRae was joking around and held a gun to his head. MacRae said that, "if things got out, things would happen." [REDACTED] said that at that point he had not told anyone, and he didn't take MacRae seriously.

[REDACTED] attended Keene High School, but he did not do well. He drank heavily, and did some drugging. He testified that he didn't care about anything. After graduation, he joined the Navy. Following basic training, he completed advanced electricity/electronics school and then was assigned to submarine duty. [REDACTED]

During the period December, 1988 to January, 1989, while training on the submarine, [REDACTED] experienced serious personal problems. He was having suicidal thoughts. In early January, 1989, he was sent to see an individual whom he thought was a Navy chaplain. He told the chaplain that he was having a hard time dealing with stress. He also told him about the MacRae sexual contact. He strenuously denies ever using the words "sexual abuse" or "sexual molestation." A January 12, 1989 Navy consultation report prepared by a naval psychiatry technician indicates that [REDACTED] "relates that his childhood experiences have a lot to do with how he feels today," and that "he has had homicidal feelings toward the man who sexually abused him." Shortly thereafter, [REDACTED] was discharged from the Navy for medical reasons. Around the time of his discharge -- probably a few days before his discharge -- he disclosed to his girlfriend, [REDACTED] that "there was involvement" with MacRae, but gave her no details. Sometime after his discharge, he also disclosed to a male friend, [REDACTED]. He said this disclosure was in relation to his explaining why he was discharged. He said he made only a "minor" reference to MacRae and never used the phrase "sexual abuse."

At some point in 1989, [REDACTED] asked [REDACTED] whether anything had happened with MacRae that would upset him. In response, Mrs. [REDACTED] testified [REDACTED] "fell apart."

Following a conversation with his mother in 1992, [REDACTED] reported the sexual contacts to Keene Detective James McLaughlin. Here also, [REDACTED] denies that he used the words "sexual abuse." He told McLaughlin that he had suicidal thoughts, and also homicidal feelings toward MacRae. McLaughlin told him that it was not his fault and that MacRae had broken the law. [REDACTED] testified that before speaking with McLaughlin he did not know his "rights had been violated."

[REDACTED] was referred to Dr. Philip Kinsler for counseling, which commenced in October, 1992 and lasted into 1996. [REDACTED] states that it was during counseling with Dr. Kinsler when he understood that his problems stemmed in part from the MacRae abuse. [REDACTED] testified that he never forgot MacRae's conduct -- that it is "with him everyday." However, he also stated that he never understood that MacRae had harmed him until he was in counseling. Dr. Kinsler testified that [REDACTED] was filled with shame, that he hated and doubted himself. [REDACTED] felt he was "a complete screw-up, a piece of dirt." In Dr. Kinsler's opinion, [REDACTED] did not come to an appreciation that he had been harmed until he was in therapy.

On October 4, 1994, Gordon MacRae pleaded guilty in Cheshire County Superior Court to felonious sexual assault against [REDACTED].

[REDACTED] was born on [REDACTED]. His law suit was instituted on September 22, 1993 when he was age 24. He alleges sexual abuse at the hands of MacRae during the period of approximately 1982 through 1983, with the last sexual contact occurring no later than August, 1983, when he was age 13, nearly ten years prior to the institution of suit.

[REDACTED] has a brother and sister who are significantly older than he is, and there were out of the house when he "was coming of age." His parents were divorced when he was age two. After the divorce, he lived with his mother in [REDACTED] and saw his father, who was in the Air Force, in the summers. His parents remarried when he was age 9 and he lived with them in New Hampshire. He was not close to his father. He was a shy and withdrawn child.

[REDACTED] was raised in the family's religion -- Roman Catholicism. As a very young boy he was very devout. He served as an altar boy and wanted to be a priest. He testified that he had a great deal of respect for priests. As he put it, the priest "speaks for God." Prior to his contacts with Gordon MacRae, [REDACTED] was taught nothing about sex and had no sexual experience.

[REDACTED] attended Hampton Academy Junior High School in Hampton, New Hampshire. Although a very bright child, he

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repeated the seventh grade. ██████ met MacRae in 1982 during this repeated seventh grade year when ██████ was age 13. MacRae was the Associate Pastor of Our Lady of the Miraculous Medal Church, and he taught religious education classes at Sacred Heart School. ██████ attended these classes.

MacRae soon developed a close relationship with ██████. ██████ talked to him about his desire to be a priest. They spent much time together at the Our Lady rectory. MacRae took ██████ to dinner, the movies, the mall, and St. Anselm's College. MacRae encouraged ██████ to enroll in Sacred Heart School. They saw each other four or five times a week. ██████ looked up to MacRae, and learned to love him. ██████ testified that he loved MacRae as if he were his father. ██████ told MacRae that he loved him; MacRae told ██████ that he loved him. ██████ felt privileged that MacRae spent so much time with him. He felt "special." ██████ described MacRae as "charming, charismatic."

MacRae told ██████ that he had been a police officer on some type of force which saved children who were abducted. He described to ██████ that he had saved one boy who had been tied up to a furnace, naked. He showed ██████ photographs of children he had "saved." MacRae showed him a police badge and a gun. Once, while ██████ was sitting on his lap, MacRae licked the gun and waved it over his head.

The physical contact started when MacRae had ██████ sit on his lap. This developed into kissing on the lips. MacRae had conversations with ██████ in the rectory, while MacRae was naked. MacRae talked to him about masturbation. He gave ██████ a book, a kind of guide to adolescence, and told him it was all right to masturbate.

MacRae began to touch ██████'s genitals in what MacRae called "the spider game." ██████ testified that MacRae would pretend his hand was a spider. He would make the spider first touch ██████'s left leg, then his right leg. Then the spider would "get" the middle leg. This would result in MacRae rubbing and massaging ██████'s penis from the outside of his clothing. The spider game was played approximately a dozen times -- at the rectory, and at ██████'s home. ██████ testified that when the spider game was played, he felt uncomfortable.

██████ also recalled MacRae lying on top of him in a recliner in the rectory. MacRae was kissing ██████ and rubbing his genitals. ██████ testified that he felt "claustrophobic" and wanted to tell MacRae to get off -- but he didn't say anything.

██████ recalled another incident when ██████ was sitting on MacRae's lap in the rectory. They were sitting in a recliner, watching television, and MacRae was kissing ██████. Father Gerard

Boucher came into the room, saw them kissing, and immediately left without saying anything.

At some point in 1983, ██████ told Mrs. Irene Brigham, a teacher at Hampton Academy Junior High School, that there were things which MacRae did that made him feel uncomfortable, but that he was afraid to confront him. Mrs. Brigham helped ██████ compose a letter to MacRae. ██████ said that the letter did not contain any "detail," but its purpose was to get MacRae "to stop." ██████ left the letter in MacRae's mailbox. Later, MacRae laughingly told ██████ that he got his "dirty letter."

██████ also told Father Boucher that "physical things" were going on with MacRae at the rectory that made him feel uncomfortable. He did not know whether MacRae's conduct was right or appropriate. He gave Boucher no details. Boucher responded by telling him that he had nothing to worry about, that MacRae would be leaving soon. Meanwhile, the kissing and spider game continued.

MacRae eventually left Hampton and went to St. Bernard's parish in Keene. ██████ told MacRae he felt he was losing a good friend. After MacRae went to Keene, he and ██████ continued to have contact. ██████ recalls that the last time he saw MacRae he sat on his lap. MacRae was "fooling" with him, and ██████ told him to stop. ██████ testified that he felt very badly about telling MacRae to stop.

In the fall of 1983, ██████ went with his mother to see Father James Watson, the new pastor, who replaced Father Boucher. He told Watson that he had had a physical relationship with MacRae. Watson responded by saying that ██████ was making a very serious allegation, that he should "go home and reconsider" what he was saying. ██████ thought that Watson did not believe him; he felt "stupid." At time ██████ was a student at Sacred Heart. He felt bad and thought "he might have upset the Church." He didn't want to be a priest anymore.

In the fall of 1983, ██████ started counseling with Judith Patterson, a certified clinical social worker with Catholic Charities. He felt badly about the things that had gone on. He had terrible thoughts about getting even-- including thoughts of murder. ██████ mother had initiated the counseling because ██████ was behaving in a defiant, rebellious manner, which was unusual for him. ██████ received therapy from Patterson until April, 1995.

In October, 1983, after he had just turned 14, ██████ disclosed MacRae's conduct to Patterson. Patterson stated the he was asking for her opinion: He wanted to know if such conduct was "O.K." Patterson was shocked. She told him that what had happened to him was illegal, and that the authorities had to be

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told. She told him that it was MacRae, and not him, who was wrong. ██████ showed a mixed reaction. On the one hand, he was angry, hurt, and felt a sense of betrayal. MacRae was Number 1 on ██████'s "hit list" --people he wanted to see harm come to. On the other hand, he still cared greatly for MacRae and didn't want to see MacRae hurt. He wanted to write or call MacRae.

Patterson immediately called her supervisor, Janet O'Connell, and met with her. They agreed that the matter had to be reported to State authorities. O'Connell called Father Quinn, Director of Catholic Charities, and Patterson spoke with Quinn. Patterson told Quinn that she felt the allegations were "absolutely credible." She explained to Quinn the normal reporting and investigation procedures. Patterson also told ██████ parents about the disclosure and they wanted to go to the police. She explained the normal procedures to them, and told them that if, after investigation by the welfare department the allegations were determined to be founded, the police would get involved. Patterson testified that in ██████ case, the normal procedure was not followed. Instead, Quinn spoke with Bishop Gendron, who in turn spoke with the Commissioner of Welfare. Patterson was advised that MacRae would not be permitted to have any further contact with children.

Because ██████ was suffering severe psychological problems, he was hospitalized at Hampstead Hospital in December, 1983. The hospital discharge summary of Dr. Daniel Jackson states, in part, as follows:

Apparently the patient had a strong wish to be a priest since his First Communion at age 6. When he was 12, the patient felt that he had a vision of Christ (which might have been a dream) on two occasions, who personally asked him to help build his kingdom. The patient has always been highly involved with the church and this led to his developing a close relationship with a particular priest. The patient participated in many recreational activities with this priest. The patient became extremely upset when this priest made an overt sexual advance towards him.

* * *

Initially, the patient claimed that his total problem stemmed from strong pent up feelings related to the incident with the priest that he trusted. He felt that with hospitalization, he has come to recognize a significance of this, and felt that his problems would all be behind him.

When ██████ was discharged, he continued in therapy with Patterson. Patterson testified that he did not blame MacRae;

instead, he thought there was something wrong with himself. ██████ felt he was a bad person and repeatedly wondered why MacRae had left him. In Patterson's opinion, in 1983 ██████ knew intellectually that a law had been broken and that MacRae's conduct was wrong. He also had some understanding that his problems were related to MacRae. She commented that ██████ is a bright person and that he had no problem understanding intellectually what was being told to him. But in her opinion, ██████ could not know that a violation of his rights had occurred and could not make the connection between the sexual abuse and the emotional problems he was suffering. Patterson also testified that ██████'s mother believed that all of ██████'s problems were the result of MacRae's conduct.

████████ attended St. Thomas Aquinas High School, but was expelled. He then attended Winnicunnet High School, but did not graduate.

In March 1986, while a 10th grader at Winnicunnet High School, ██████ spoke with Dr. Brown, the school psychologist. He told Dr. Brown that "he had been molested by a priest and [was] concerned that this man [was] still in contact with other teenagers." Dr. Brown reported this to Elizabeth Davis of the Division of Children and Youth Services (DCYS), who conducted an investigation in April, 1986. During Ms. Davis' interview of ██████, he told her about MacRae's sexual contacts with him, including the spider game. Ms. Davis reviewed the legal process with ██████, "emphasizing that the police would want a statement from ██████ before they would be able to pursue allegations." He was told that if the case went to court, he would probably be asked to testify, that he would have support and protection, and that he could stop the process at any time.

In 1985 or 1986, ██████'s parents contacted an attorney concerning MacRae's sexual abuse of ██████. The ██████ were advised that any legal action would require ██████ to testify. Because of ██████'s vulnerable state, the ██████ decided to take no further action at that time and decided that they would not tell ██████ at that time that they had contacted an attorney.

████████ was hospitalized again in June, 1986, and August, 1986, at the Portsmouth Pavillion, for severe depression. He was treated by Dr. Leonard Korn.

In 1993, ██████ commenced therapy with Dr. Derek Stern, a clinical psychologist. Treatment with Dr. Stern lasted until 1995. ██████ testified that it was not until his therapy with Dr. Stern that he understood the causal connection between his problems and MacRae's conduct. Dr. Stern diagnosed ██████ as suffering from post traumatic stress disorder, which was "exclusively caused by" the MacRae abuse, and atypical

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depression. [REDACTED] was experiencing flashbacks of the sexual abuse, hallucinations, sleep disturbances, rage, difficulty with relationships, difficulty trusting people, and great ambivalence regarding MacRae. Stern testified that:

I saw him to be rageful, murderously rageful at times, and at other times he was like a child who was absolutely destroyed that his father wouldn't love him, and he feared that the priest would hate him. He feared that God would punish him, and he had very vivid fantasies of going to hell.

In Dr. Stern's opinion, [REDACTED] "became aware of his rights being violated probably just prior to seeing me, and got flushed out in the course of treatment with me." Dr. Stern stated that [REDACTED] was and is a very intelligent individual who never repressed the actual events of the abuse. On cross-examination, Dr. Stern agreed that in the fall of 1983, [REDACTED] "understood he had been abused by Gordon MacRae; that he had been injured by Gordon MacRae; and had been informed that his rights had been violated...." He also agreed that the 1986 DCYS investigation "indicate[s] knowledge on [REDACTED] part and an understanding that he had been injured and his rights violated."

In October, 1994, MacRae pleaded guilty in the Rockingham County Superior Court to felonious sexual assault based on his contact with [REDACTED] during the period June to November, 1992.

ANALYSIS

Expert Testimony

In addition to the testimony of the treating therapists, [REDACTED] offered Dr. Anna Carol Salter's testimony on child sexual abuse. Dr. Salter, a clinical psychologist, received her PhD from Harvard University in 1977. She specializes in child sexual abuse trauma. In addition to treating patients, she has written extensively on the subject and has conducted training for professionals nationally and internationally. Part of her work has involved interviewing perpetrators of child sexual abuse.

Dr. Salter testified at great length on the subject of "grooming." She described grooming as the process by which a perpetrator targets a child for the purpose of manipulating the child into unresisted sexual contact. The purpose of grooming is to mask the violation of the child's rights. Perpetrators frequently exploit their positions as authority figures to gain instant credibility with targets and their families.... Dr. Salter stated that one technique used by perpetrators to gain access to a child is to have the child ask his parent for permission to

spend the night with the perpetrator, while the perpetrator is present. Dr. Salter commented that if the perpetrator can arrange to have the child stay with him overnight, unresisted sexual contact is inevitable. She stated that grooming, of both the child and the child's family, is a well-accepted principal in the field of child sexual abuse.

The classic grooming process involves selecting a vulnerable child and then establishing a special relationship with the child. The typical victim of grooming is a child who has poor self-esteem, and little adult attention. Commonly, the mother is "absent"; that is, unavailable to the child. Male victims commonly have a poor or non-existent relationship with their fathers. Over time, a bond of trust is established as the groomer showers the child with gifts, attention and affection. The perpetrator is "charming" and "seductive;" no one is better to the child than the perpetrator. Ultimately the child--and frequently the child's entire family--learns to trust and love the perpetrator. After the perpetrator is certain that he has successfully groomed the target, that the "child will do anything he tells him to," the perpetrator introduces sexual contact into the "special" relationship which often, overtime, escalates from touching or kissing into more intimate touching or intercourse.

When the groomer achieves sexual contact with the targeted child, the child's perception of the contact is affected by the grooming. The child may be troubled by the contact; he may believe that the conduct is "wrong" but he has no frame of reference with which to understand that it is the perpetrator who is wrong, or that the perpetrator has "injured" him, or that the perpetrator has violated his rights. Dr. Salter drew a distinction between a child believing that conduct is "wrong" and understanding that he has been "injured." She gave the normative example of two fourteen-year old Catholic children experimenting with sex. She said that their religious beliefs may cause them to believe that the conduct, i.e. their physical contact, is wrong. However, neither would consider that they had been injured or that their rights had been violated. Similarly, as a result of grooming, a child who is being sexually abused by a trusted adult may believe that the sexual contact is "wrong" without comprehending that the relationship is an exploitative and manipulative one. That is, an abused child may believe that all sexual contact is "wrong" without understanding that the particular adult/child conduct is injurious.

In explaining a groomed child's response to sexual abuse, Dr. Salter pointed to the difference between "aversive conduct" and "abusive conduct." She gave as an example of aversive conduct the situation of a parent bringing a child to the doctor for a needed injection. The child is afraid of receiving the shot, and knows that the shot hurts. The child is reasonably averse to having a needle jabbed into him. However, the parent

tells the child that the shot will make him feel better. The reassurance of the parent, whom the child loves, causes the child to understand that the hurtfulness of the shot is not "abusive." Similarly, a loved "groomer" convinces the child that even aversive sexual conduct is an acceptable part of their "special" relationship.

Dr. Salter further explained that an abused child typically blames himself for "causing" the sexual contact. This is especially so where the sexual contact may, in fact, be pleasurable to the child. Dr. Salter commented that the reasons for this include: 1) the child does not understand that the conduct is abusive; 2) the perpetrator defines reality for the victim; and 3) the child internalizes the perpetrator's beliefs. Moreover, the perpetrator will frequently threaten withdrawal of love or abandonment if the child does not continue with the conduct. For the vulnerable, groomed child, continuing the "special" relationship is paramount. The child ignores the aversive conduct in order to maintain the love and attention he craves.

Dr. Salter testified that where the child is raised in a strict Catholic family which regards a priest as the representative of God, grooming becomes much easier for the perpetrator priest. The groomer has the added authority of God and the Church, along with the support of the parent. She testified that under such circumstances the child would be surprised to hear that the conduct was abusive -- even a child whose religion may teach him that even thinking about sex is wrong. She reiterated that groomed, abused children think they are responsible for the conduct. She stated that the effects of grooming can last indefinitely if there is no "outside intervention."

Dr. Salter had not interviewed any of the plaintiffs or reviewed any materials specific to their cases. However, she did respond to hypothetical questions posed by each plaintiff's attorney which incorporated facts of each case. In connection with the hypotheticals posed by [REDACTED] attorney, Dr. Salter testified that a child in [REDACTED] circumstances would be very vulnerable and easily groomed. She said that everything would be going in the perpetrator's favor. She said that a reasonable child in [REDACTED] circumstances would not have understood that he had been injured by the abusive conduct. She also pointed out that when a child discovers that others have been victimized by the perpetrator (as [REDACTED] did), he may then see the relationship differently; i.e., he understands for the first time that his was not the "special love affair" he had thought it to be. This discovery may then "trigger" an understanding of the abusiveness of the conduct.

In connection with the hypotheticals posed by [REDACTED] attorney, Dr. Salter testified that a child in [REDACTED] circumstances would not have understood that he had been injured

by the perpetrator, and would not have understood that his rights had been violated. Moreover, she stated that such a child -- who described the sexual contact to a therapist who rejected the disclosure and subsequently revealed the disclosure to the perpetrator-- would have more faith in the perpetrator's power. Dr. Salter also stated that the mere fact of disclosure is not dispositive of the question of whether the victim understood he had been injured.

In response to the hypotheticals posed by [redacted] attorney, Dr. Salter testified that a child in [redacted] circumstances would not have understood the sexual abuse to be "wrong" or harmful, and that he would not have understood that MacRae was violating his rights. Dr. Salter also characterized MacRae, relative to his treatment of [redacted] as a highly skillful grooming offender who presented abuse as love and support, attention, and special favors.

With regard to a child in [redacted] circumstances, Dr. Salter testified that he would be vulnerable, and a likely target for grooming. She reiterated that grooming affects the child's ability to understand whether his rights were being violated.

Dr. Salter also testified that with regard to all four cases, there was an element of psychological isolation, and that such would affect the plaintiffs' ability to appreciate whether they had been injured by MacRae's conduct.

I find Dr. Salter's testimony to be very credible.

The Church offered the testimony of Dr. Albert Drukteinis in connection with the [redacted], [redacted], and [redacted]. (By written stipulation, it was agreed that Dr. Drukteinis' testimony was not offered with respect to [redacted]'s claim, and the parties requested that the Court not consider it in any way in relation to his claim.) Dr. Drukteinis did not interview or evaluate any of the three plaintiffs.

Dr. Drukteinis, who holds an M.D. from the University of Louisville School of Medicine and a J.D. from Suffolk University Law School, is a practicing psychiatrist who has treated adult survivors of child sexual abuse, abused children, and sexual offenders. Dr. Drukteinis also testified concerning the concept of grooming, and essentially agreed with Dr. Salter's description. He said that grooming consists of the actions of a perpetrator who targets an individual for later sex. He stated that the groomer builds trust and disarms the victim with attention, affection, favors and gifts. He described grooming as "emotional seduction." He stated that the effectiveness of grooming depends on many factors, including the circumstances of both individuals and the age of the victim. He agreed with Dr.

Salter that grooming, particularly grooming by a revered religious figure can affect a victim's understanding of whether he was injured by the sexual conduct.

Dr. Drukteinis also testified that commonly sexual abuse victims experience a split in their cognitive and emotional understandings of the events. Victims will, as a self-protection mechanism, "block" out the events emotionally, even though they are intellectually fully aware of the events. It is also common for victims to blame themselves and forgive their offenders. He also stated that victims "connect" the abuse with their problems under various circumstances: For some, the connection is made instantly; for some, it comes in therapy; for some, it comes with aging and maturation; for some, it comes with hearing about other victims of the offender.

With regard to the three cases, counsel for the Church posed hypotheticals to Dr. Drukteinis based on facts from the cases, and asked his opinions. As to the hypotheticals based on the [REDACTED] case, it was Dr. Drukteinis' opinion that both a reasonable person, and a reasonable person in [REDACTED] shoes, would have recognized that he was injured and that his injuries were caused by MacRae's conduct, no later than 1986. On cross-examination, however, it was established that Dr. Drukteinis had only minimal information concerning [REDACTED] case: He had not heard [REDACTED] testify, did not review his testimony from the criminal trial, and did not know the details about [REDACTED] background, MacRae's history, or MacRae's relationship with [REDACTED]

As to the [REDACTED] case, it was Dr. Drukteinis' opinion that both a reasonable person, and a reasonable person in [REDACTED] shoes, would have recognized that he had been injured and that his injuries were caused by MacRae's conduct no later than 1988/1989. He also stated that in his opinion, [REDACTED] did in fact make the connection by that time. Dr. Drukteinis' opinion was based only upon a review of the writ of summons and [REDACTED] Navy medical records (principally the two-page January 12, 1989 consultation report). Dr. Drukteinis felt that the Navy record was "dispositive."

As to the [REDACTED] case, it was Dr. Drukteinis' opinion that both a reasonable person, and a reasonable person in [REDACTED] shoes, would have recognized that he had been injured and that his injuries were caused by MacRae's conduct in 1983, and in 1986. He also stated that he believed that [REDACTED] in fact appreciated the injury and made the causal connection in 1983. Dr. Drukteinis' opinions in this case were based on a more extensive record review, including review of the writ of summons, interrogatory answers, DCYS record, the affidavits of Dr. Stern and Judith Patterson, the deposition of Judith Patterson and [REDACTED] records from Hampstead Hospital.

Conclusions

None of these cases involves alleged repressed memories. Each of the plaintiffs remembers, and has always remembered, MacRae's conduct. The initial inquiry as to each is whether his "original injury was sufficiently serious to apprise him that a possible violation of his rights had taken place." The critical aspect of this inquiry centers on the seriousness of the original injury. During the hearing, the parties tended to get side-tracked on the question of whether each plaintiff, at the time of the sexual contact, understood that his rights were violated. I do not believe that is the determinative question. Rather, the issue centers on whether, at the time of the sexual contact, the plaintiff suffered injury serious enough to put him on notice of a possible rights violation. Whether each plaintiff, in fact, understood that his rights were violated, or that he had legal options, may be relevant -- but it is not dispositive.

The Church essentially argues that it is the egregiousness of the conduct which establishes the seriousness of the injury. It argues that a reasonable teenage boy would recognize that conduct such as fondling of genitals, fellatio and anal intercourse by an adult male is wrong, injurious, and illegal. Such a position ignores two significant aspects of these cases. First, the injury in these cases is not physical injury (or at least not more than *de minimis* physical injury). Neither is it the sexual acts themselves which constitute the injury. As I have previously observed, wrongful conduct and injury are not synonymous. Rather, it is the psychological and emotional harm resulting from the sexual acts performed by a loved and trusted religious parent-surrogate which constitutes the injury. Contrary to the Church's arguments, I conclude that these cases are distinguishable from Rowe. See 130 N.H. at 22. These cases do not involve the issue of plaintiff's failure to recognize the extent of injury. The question here is whether, at the time of the sexual contact, the plaintiffs recognized any (sufficiently serious) injury.

Second, the Church's position ignores the effects of "grooming" on a child sexual abuse victim's ability to recognize the injuriousness of the offender's conduct. Applying a modified objective standard, the Court finds that as to each plaintiff, his original injury was not sufficiently serious to put a reasonable child abuse victim in the plaintiff's circumstances on notice of a possible violation of his rights.

There is no question that the treatment the plaintiffs received at MacRae's hands was appalling. But that is not dispositive of the inquiry. Each of the plaintiffs was a young, vulnerable Catholic boy, who revered priests, and essentially considered the word of a priest to be the word of God. MacRae targeted these boys and engaged in an intentional campaign to

manipulate each into a loving, trusting relationship. In the [REDACTED] situations, MacRae also groomed their mother and the entire [REDACTED] family. One of the most telling pieces of evidence in the [REDACTED] cases is a photograph of the 1983 [REDACTED] family Thanksgiving dinner. At this time, [REDACTED] and [REDACTED] had been separated for about a year and a half. The photograph shows MacRae presiding at the head of the table.

Over time, and with careful attention to each boy, MacRae used the authority of the Catholic Church and his position as a surrogate parent to draw each boy into sexual activity. With the [REDACTED] boys, alcohol also became a tool of manipulation. MacRae persuaded each of the four boys that the sexual activity was a "normal" part of their relationship. Each was persuaded to ignore any feelings of discomfort. Each valued the relationship too much to even suspect that MacRae was doing anything injurious. To the extent that there was any sense of "wrongfulness," each boy blamed himself; none of the boys was able to accurately allocate blame. They were all victims of grooming and abuse under circumstances which made it impossible for them to know that at the time of the sexual contact, they were injured at all.

For each, then, the Court must determine under a modified objective standard, "when the plaintiff discovered, or in the exercise of reasonable diligence, should have discovered, both the fact of his injury and the causal relationship between the injury and the defendant's acts."

[REDACTED]

Upon consideration of all of the circumstances bearing on [REDACTED] case and in light of the expert testimony, I find that a reasonable victim of child sexual abuse in the circumstances of [REDACTED], exercising reasonable diligence, would not have discovered either his injuries or the causal connection between his injuries and MacRae's acts before September 10, 1987, six years prior to institution of suit.

In Richard Dufresne's opinion, [REDACTED] did not begin to understand that he had been injured by MacRae until 1992. [REDACTED] testified that it was not until his counseling with Dufresne, begun in 1993, that he understood that what MacRae did was wrong. To refute this, the Church points to the spring, 1988 prostitution solicitation by MacRae, and [REDACTED] testimony that in 1988 he learned during the poolside conversation with his mother that MacRae had sexually abused his brothers. As previously noted, [REDACTED] believes this conversation occurred in 1989, but for purposes of this analysis I assume the conversation occurred in 1988.

I find that the earliest date on which a reasonable person in [redacted] circumstances would have discovered his injuries and their connection to MacRae's conduct is the spring of 1988. The expert testimony indicated that various circumstances may "trigger" a sexual abuse victim's understanding that he has been abused, and that the abuse caused his injuries. Such circumstances include the discovery by the victim that the offender has engaged in sexual activity with others. Although there was no expert opinion that either the prostitution solicitation or the poolside conversation in fact served as such a triggering mechanism, [redacted] testified credibly that: 1) at the time (he was age 23) he understood the solicitation to be for homosexual activity; 2) he rejected the solicitation and soon after moved out of MacRae's apartment; 3) the poolside conversation with his mother hit him "like a rock"; 4) until 1988 he never spoke with anyone about the sexual contact with MacRae; and 5) prior to 1988 he had "no idea [he had] suffered any injury at all." Given this testimony, and in the light of the expert testimony, I conclude that prior to the spring of 1988, [redacted] neither did, nor should have, understood that he was injured by MacRae's conduct.

[redacted]

Upon consideration of all the circumstances bearing on [redacted] case and in light of the expert testimony, I find that a reasonable victim of child sexual abuse in the circumstances of [redacted] exercising reasonable diligence, would not have discovered either his injuries or the causal connection between his injuries and MacRae's acts before June 7, 1988, six years prior to institution of suit.

Both [redacted] and his therapist, Pauline Goupil, testified that he did not understand the causal connection between his problems and MacRae's acts until during therapy, which commenced in June, 1993. I find the testimony of both to be credible as to when [redacted] himself actually understood the causal connection between his problems and MacRae's acts.

The Church points to events which it argues establish that a reasonable child abuse victim in [redacted] position should have known of the causal connection between his problems and MacRae's acts prior to 1988. The first is the Derby Lodge disclosure in the summer of 1986. [redacted] described MacRae's conduct to his counselor, Debra Collette, because he wanted to know whether such conduct was right or wrong. Collette refused to believe him, and reported the exchange to MacRae, who subsequently challenged [redacted] on the disclosure. Under the circumstances of this case, I do not find that the Derby Lodge disclosure establishes that [redacted] did know, or should have known, of the connection between his injuries and MacRae's conduct. I note that Dr. Salter testified that disclosure alone is not dispositive of the question of

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whether a victim understands that he has been injured. Here, [REDACTED] disclosed for the purpose of obtaining presumably expert advice on whether MacRae's conduct was right or wrong. This was followed by his therapist's rejection of his disclosure and her reporting the disclosure to MacRae. The Derby Lodge incident affirmed of MacRae's power over [REDACTED], and continued the effects of grooming.

The Church also relies on the 1987 Keene/gun incident, and argues that MacRae's threats and [REDACTED] running away are evidence that by that time [REDACTED] did or should have had an understanding of what happened to him. I disagree. The Keene/gun events were dramatic, to be sure. But they do not lead reasonably to the conclusion that [REDACTED] should therefore have made the connection between the abuse and his injury. Moreover, I note that [REDACTED] reaction was consistent with what the experts described as a typical child sexual abuse victim's response: He blamed himself for the incident and felt bad that the relationship had ended.

Finally, assuming [REDACTED] telephone conversation with his mother occurred before June 7, 1988, I do not find the conversation determinative. [REDACTED] did not respond to his mother's inquiry because MacRae had convinced him that no one would believe him. [REDACTED] inquiry and [REDACTED] non-response do not establish that a reasonable person in [REDACTED] circumstances would have understood that his problems were caused by MacRae's abuse.

In light of the expert testimony, particularly the testimony of Dr. Salter, I am not persuaded by the Church's arguments.

[REDACTED]

Upon consideration of all of the circumstances bearing on [REDACTED] case and in light of the expert testimony, I find that a reasonable victim of child sexual abuse in the circumstances of [REDACTED] exercising reasonable diligence, would not have discovered either his injuries or the causal connection between his injuries and MacRae's acts before December 8, 1988, six years prior to institution of suit.

Both [REDACTED] and his therapist, Dr. Kinsler, testified that [REDACTED] did not come to understand that his problems were related to the MacRae conduct until counseling, which commenced in October, 1992. I find the testimony of both to be credible as to when [REDACTED] himself actually understood that his problems were related to MacRae's conduct.

The Church points to events which it argues establish that a reasonable child abuse victim in [REDACTED] position would have known of the causal connection between his problems and MacRae's acts prior to December 12, 1988. The Church relies primarily on the January, 1989 Navy records, which reflect disclosure by [REDACTED] to a

Navy official and to his girlfriend. Those records present a close question. A fair reading suggests that, at that time, [REDACTED] connected the problems he was experiencing, at least in part, to the MacRae sexual contacts. Although [REDACTED] testified credibly that he never characterized the sexual contact as "abuse" or "molestation," he did have homicidal feelings toward MacRae and he reportedly stated that "his childhood experiences have a lot to do with how he feels today." While Dr. Drukteinis felt that the records were dispositive on the issue of [REDACTED] recognition of injury caused by the MacRae contacts, his opinion was based only on a review of the Navy records and the writ of summons. He had no detailed information about [REDACTED] personal history or the relationship with MacRae. Dr. Kinsler, who did have such detailed information, concluded that [REDACTED] did not come to an understanding of the causal relationship until after counseling commenced in October, 1992.

In view of the fact that the Navy disclosures occurred after December 8, 1988 (within the limitations period), and in light of Dr. Kinsler's testimony, I conclude that the Navy records do not establish that [REDACTED] did understand, or should have understood, that he had been injured as a result of MacRae's acts, before December 8, 1988.

The Church also points to [REDACTED] conversation with his mother, when she asked whether anything had happened with MacRae that would upset him. Even assuming the conversation occurred in 1988 rather than 1989, as [REDACTED] believes, I do not find that conversation dispositive. The fact that [REDACTED] "fell apart" in response to his mother's question evidences a profound emotional reaction, but it does not persuade me -- particularly in view of the testimony of Dr. Kinsler and Dr. Salter -- that a reasonable child abuse victim in [REDACTED] position knew or should have known that he was injured by MacRae's conduct, at that time.

[REDACTED]

Upon consideration of all the circumstances bearing on [REDACTED] case and in light of the expert testimony, I find that a reasonable victim of child sexual abuse in the circumstances of [REDACTED] exercising reasonable diligence, would have discovered both his injuries and the causal connection between his injuries and MacRae's acts before September 22, 1987, six years prior to institution of suit.

[REDACTED] made several disclosures prior to commencement of counseling with Judith Patterson in 1983, which I do not regard as dispositive. [REDACTED] initial report to his teacher, Mrs. Brigham, apparently contained no detail. The disclosure to Father Boucher was likewise nonspecific and was made at a time when [REDACTED] did not know whether the conduct was wrong. Boucher's response was only to tell [REDACTED] that he had nothing to worry

about. The disclosure to Father Watson was equally nonproductive. Watson led ██████ to conclude that he did not believe him. ██████ conversations with Father Boucher and Father Watson did not provide ██████ with "outside intervention" sufficient to alert him to the fact that MacRae's conduct was wrong or injurious.

The 1983 disclosure to Judith Patterson, however, stands on a very different footing. ██████ apparently disclosed the details of MacRae's contacts, and Patterson responded in a very supportive manner. She told him that MacRae was wrong, that the conduct was illegal, and that the matter would have to be reported to the authorities. She also reported the disclosure to ██████ parents. During ██████ 1983 hospitalization, he reported that he believed his problems were related to the MacRae conduct. In Judith Patterson's opinion, by that time, ██████ knew that MacRae's conduct was wrong and he had some understanding that his problems were related to MacRae.

Following ██████ March, 1986 disclosure to the school psychologist, ██████ met with the DCYS investigator and described MacRae's conduct. The investigator described the legal process to him. At that time, ██████ was 17 years old.

I have carefully considered the events following the 1983 disclosure to Judith Patterson, as well as Dr. Stern's testimony concerning ██████ understanding of the abuse as early as the fall of 1983. Although ██████ was experiencing severe psychological and emotional problems, there is no evidence to suggest that ██████ was unable to understand what was being said to him. On the contrary, the evidence indicates that ██████ has always been a very bright individual. The fact that ██████ may not have had the psychological and emotional stamina to pursue legal action, does not vitiate his understanding that he had been abused by MacRae and that his problems were the result of that abuse. Under all of the circumstances, I conclude that a reasonable person in ██████ situation would have discovered both his injuries and their causal connection to MacRae's acts before September 22, 1987, and at least by the time of the DCYS investigation.

Having so concluded, I feel compelled to say that my ruling here does not in any way diminish the egregiousness of MacRae's conduct or the extent of ██████ suffering. The issue before me is a legal one, which I have decided based on a close analysis of the facts and the law.

SUMMARY

For the reasons stated herein, the Court finds that neither [REDACTED], [REDACTED] nor [REDACTED] should have discovered either his injuries or the causal connection between his injuries and MacRae's acts more than six years prior to the date each instituted suit. Accordingly, the [REDACTED] actions are not barred by the statute of limitations, and the Court DENIES the Church's motions to dismiss the three [REDACTED] actions.

The Court finds that, although [REDACTED] original injury was not sufficiently serious to put a reasonable child abuse victim in his circumstances on notice of a possible violation of his rights, [REDACTED] should have discovered both the fact of his injury and the causal relationship between the injury and MacRae's acts before 1987. Since this date is more than six years prior to the date [REDACTED] instituted suit, December 8, 1988, his action is barred by the statute of limitations. Accordingly, the Court GRANTS the Church's motion to dismiss the [REDACTED] action.

The Court rules as follows on the parties' requests for findings and rulings:

Plaintiff [REDACTED] Requests

Request 2 is granted; Requests 1, 4, and 5 are neither granted nor denied; Requests 3, 6, 7, and 8 are addressed in the order.

Defendants' Requests as to [REDACTED]

Facts: Request 1, 2, 6, 7, 8, 9, 11, 13, and 16 are granted; Request 4 is granted with the exception that the end date is 1982, not 1981; Requests 10, 12, 17, and 18 are addressed in the order; Requests 14 and 15 are denied; Requests 3 and 5 were not submitted.

Law: Requests 1, 12, 13, and 14 are granted; Request 10 is granted as a general proposition; Requests 3, 4, 5, 6, 7, 8, and 11 are addressed in the order; Request 2 is denied as stated; Requests 9 and 15 are denied.

Defendants' Requests as to [REDACTED]

Facts: Requests 1, 2; 3, 4, 5, 6, 8, 10, 11, 12, 13, and 17 are granted; Requests 7 and 9 are denied as stated; Requests 14, 15, and 16 are denied.

Law: Requests 1, 15, 16, 17 are granted; Request 13 is granted as a general proposition; Requests 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 14 are addressed in the order; Request 5 is denied as stated; Request 18 is denied.

Defendants' Requests as to [REDACTED]

Facts: Requests 1, 2, 3, 4, 5, 6, 11 and 14 are granted; Request 9 is neither granted nor denied; Requests 7 and 10 are addressed in the order; Request 8 is denied as stated; Requests 12 and 13 are denied.

Law: Requests 1, 15, 16, 17 are granted; Request 13 is granted as a general proposition; Requests 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 14 are addressed in the order; Request 5 is denied as stated; Request 18 is denied.

Defendants' Requests as to [REDACTED]

Facts: Requests 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17, 18, 19, 20, 21, 27 and 28 are granted; Request 25 is neither granted nor denied; Requests 22, 23 and 24 are addressed in order; Requests 14, 15, 16, and 26 are denied as stated; Request 13 was not submitted.

Law: Requests 1, 12, 13, 14, and 15 are granted; Request 10 is granted as a general proposition; Requests 3, 4, 5, 6, 7, 8, 9 and 11 are addressed in the order; Request 2 is denied as stated.

So ordered.

Date: August 2, 1996

Carol Ann Conboy
CAROL ANN CONBOY
PRESIDING JUSTICE

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