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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

----- File No. 62-C9-06-003962

John Doe 76C,

Plaintiff,

vs.

TRANSCRIPT OF PROCEEDINGS

Archdiocese of St. Paul-Minneapolis,
Diocese of Winona,

10/3/13 HEARING

Defendants.

The above-entitled matter came duly on for hearing before the Honorable John B. Van de North, Judge of District Court, on the 3rd day of October, 2013, City of St. Paul, State of Minnesota.

APPEARANCES:

Jeff Anderson, Esq., Elin Lindstrom, Esq., Michael Finnegan, Jr., Esq., appeared on behalf of Plaintiff.

Thomas Wieser, Esq., Jennifer Larimore, Esq., appeared on behalf of Defendant Archdiocese of St. Paul - Minneapolis.

Thomas Braun, Esq., appeared on behalf of Defendant Diocese of Winona.

Paul Engh, Esq., appeared on behalf of an unnamed priest.

1 THE COURT: Please be seated. Welcome to
2 Ramsey County District Court. Good morning again.
3 For those of you who don't know me, I'm Jack Van de
4 North. I'm one of the judges here in Ramsey County
5 and I've been assigned to handle a number of the
6 clergy abuse cases.

7 We have one of those before us this morning
8 involving a plaintiff identified as John Doe 76C, I
9 believe. There's a little different twist on this
10 particular case. The individual at the center of
11 this storm this morning is not John Doe 76C, but a
12 gentleman named David Pususta -- am I saying your
13 name right?

14 MR. PUSUSTA: You did, Your Honor.

15 THE COURT: On the first try too. I should
16 get an A for that. David Pususta who has brought a
17 motion to intervene in the John Doe 76 case. There
18 are so many preliminary issues I know the attorneys
19 want to talk to regarding confidentiality as to some
20 of the clergy identified in Mr. Pususta's pleadings
21 today. And so we'll talk about that in generic terms
22 as an initial matter.

23 There's also a personal jurisdiction issue
24 that has been focused on particularly by the Winona
25 diocese who is represented here. So those are some

1 preliminary comments.

2 Let's get some appearances here. Here for
3 Mr. Pususta today we have?

4 MR. ANDERSON: Jeff Anderson, Your Honor.
5 Good morning. And you've already met Mr. Pususta,
6 David Pususta. And to his right is Elin Lindstrom,
7 E-l-i-n, -s-t-r-o-m.

8 THE COURT: Ms. Lindstrom, are you with Mr.
9 Anderson's office?

10 MS. LINDSTROM: Yes, Your Honor.

11 THE COURT: Nice to meet you. You're not
12 related to some of the other Lindstroms around the
13 state, including a former judge from Willmar, are
14 you?

15 MS. LINDSTROM: I'm not.

16 THE COURT: Too bad, but nice to meet you
17 anyway. I'm sure you're a wonderful Lindstrom in
18 your own right.

19 On the other side of the table
20 representing, first of all, the Archdiocese of
21 Minneapolis and St. Paul?

22 MR. WIESER: Tom Wieser. Also Jennifer
23 Larimore, L-a-r-i-m-o-r-e, on behalf of the
24 Archdiocese.

25 THE COURT: Nice to see both of you again.

1 Here for Winona?

2 MR. BRAUN: Thomas Braun on behalf of the
3 Diocese of Winona.

4 THE COURT: A face I'm familiar with at the
5 end of the table?

6 MR. ENGH: Paul Engh on behalf of an
7 unnamed priest who has a stake in whether or not his
8 name is disclosed.

9 THE COURT: Very good. Mr. Engh, nice to
10 see you again.

11 MR. FINNEGAN: I'm observing; Mike
12 Finnegan. I'm with Jeff's office as well
13 representing the Plaintiff.

14 THE COURT: Nice to meet you, Mr. Finnegan.
15 Speaking of familial relations, of course I know your
16 father pretty well. Nice to see you. I should say I
17 know Mike Finnegan, Sr., because he was a long-time
18 public defender. And I have to say he did a terrific
19 job for children and families in this state for many,
20 many years. A terrific lawyer. So I hope you're a
21 chip off the old block.

22 Well, let's talk about these issues.
23 Especially in Mr. Pususta's reply brief this morning
24 regarding his request to intervene in the John Doe 76
25 case, he makes reference to a deposition held in a

1 Roseau County case in which he identifies two priests
2 -- she identifies two priests -- at her deposition;
3 one whose name I'm familiar with because I think
4 there has been some public coverage of his situation.
5 The other one, a name I'd never heard before.

6 In addition, Mr. Pususta, in other of his
7 pleadings, claims to have been abused himself as a
8 younger person, I assume by a priest whose name I had
9 not heard before. And I think there's a dispute
10 about whether his name is publicly known.

11 Mr. Wieser, in some of his papers, says
12 there has been some kind of press conference or
13 something, I think attaches some papers suggesting
14 Mr. Pususta's alleged abuser has already been made
15 public.

16 So I assume that's what this debate is
17 about as to whether the names of Mr. Pususta's
18 alleged abuser and these names of two clergymen
19 identified by this woman at her recent deposition up
20 in Roseau County or somewhere regarding another case,
21 whether those names should somehow be kept
22 confidential here this morning during our proceeding,
23 for example, and whether there should be other
24 efforts made to protect their identity in the papers
25 that have already been filed and what can be done to

1 pull that information back, so to speak, or seal it
2 in some way.

3 So that's what I'm anticipating. I'm kind
4 of speculating here about what the concerns are.
5 That's really in some way part of this larger issue
6 regarding the so-called list. I know there is a
7 debate about what that list consists of, of 33
8 "credibly accused" is the term, clergy in the St.
9 Paul and Minneapolis Archdiocese that came out of a
10 study done quite some number of years ago called the
11 John Jay Study. I believe those identities were
12 ordered to be turned over in this very case that we
13 have here before me this morning, the John Doe 76
14 case, by Judge Johnson.

15 Judge Johnson required the Archdiocese to
16 turn over the identity of those individuals, or at
17 least some of those individuals, in the course of
18 this litigation, but then subsequently precluded the
19 lawyers from making any of those names public and
20 essentially sealed that information in the court
21 record. The judge saw the list. The lawyers saw the
22 list. But, hopefully, that's the only people who saw
23 the list because, clearly, that was the intent of
24 Judge Johnson. So that's the broader issue. We're
25 going to talk about that in a few minutes.

1 But, initially, let's just talk a little
2 bit about this concern over I think it's three names
3 that come up in the pleadings before me this morning,
4 two of which apparently there may have been some
5 public dissemination of the identities of these men
6 already, but the third one certainly is a new name to
7 me.

8 So could we start with Mr. Wieser? I think
9 he's got the primary concern here. I think Mr.
10 Anderson, consistent with his position throughout all
11 of this and in this John Doe 76 case, believes all of
12 this information should become public as a matter of
13 public health concern. Mr. Wieser.

14 MR. WIESER: Your Honor, you have nicely
15 summarized the general concerns. I can I think more
16 narrowly focus our specific concern. And that is we
17 are seeking that the court seal all references to a
18 priest that I will refer to as J.S. I'm going to
19 provide the court with a little background of this.
20 And I have a document that I'm going to refer to but
21 I would prefer not to make part of the court record.

22 This began in 2004. There was a report
23 that was made to the Archdiocese in 2004 that this
24 priest, again, J.S., had computer images or -- had
25 computers with inappropriate sexual images on them.

1 The Archdiocese referred the matter for an outside
2 investigation, and that investigation was conducted
3 by a retired police officer. There is some protocol
4 about that investigation process, and I'll talk about
5 it in just a moment.

6 But, again, the results of that
7 investigation were that there were no illegal images
8 on the computers maintained by priest J.S. Because
9 the determination was that there were no
10 inappropriate images on that computer, there was
11 nothing for the Archdiocese to report to law
12 enforcement.

13 Now you have referred to a deposition of an
14 individual who was formerly employed by the
15 Archdiocese. We have a transcript from her. Her
16 name is Jennifer Haselberger.

17 THE COURT: When you talk about the
18 Archdiocese, you're talking about St. Paul -
19 Minneapolis?

20 MR. WIESER: That is correct. I think we
21 can easily distinguish here because we have the
22 Archdiocese of St. Paul and Minneapolis and Winona is
23 a diocese.

24 THE COURT: Got it. The only reason I
25 interrupted you to mention that is apparently Ms.

1 Haselberger's deposition was taken in conjunction
2 with a claim in Roseau, and it seems like that's a
3 long way from St. Paul and Minneapolis. And it
4 sounds like J.S. may have been a priest who was
5 serving in St. Paul - Minneapolis.

6 MR. WIESER: That is correct.

7 THE COURT: Okay.

8 MR. WIESER: And is sill still serving in
9 this Archdiocese. I think that there's no way to
10 describe Ms. Haselberger other than a disgruntled
11 former employee.

12 With regard to Ms. Haselberger, again, her
13 title was the chancellor for canonical affairs at the
14 Archdiocese. I think her deposition, at least
15 partial transcript provided by plaintiff, indicates
16 what her job responsibilities were. And they did not
17 entail in any way review or investigation of alleged
18 inappropriate materials on a computer. But she
19 nonetheless conducted her own investigation of the
20 images on the computer.

21 I mentioned a moment ago there is a
22 protocol for how one should go about doing that.
23 That protocol is that unless you have a clearance
24 from law enforcement, if you inspect images that are
25 illegal, you yourself can be charged with a criminal

1 offense.

2 Ms. Haselberger, being unsophisticated and
3 imprudent, herself viewed the images on the
4 computers, maintained -- that were belonging to J.S.
5 but that were in the possession of the Archdiocese
6 since 2004. She made her own determination that
7 those images were illegal. And as suggested by the
8 Archdiocese, she made a report to the Ramsey County
9 Attorney's office that the images that were on J.S.'s
10 computer were illegal.

11 That report was made the earlier part of
12 this year. And the St. Paul Police Department picked
13 up those computer discs in March of this year. So
14 St. Paul Police began an investigation. And we know
15 from a document I'll provide the court in just a
16 moment that the St. Paul Police Department had two
17 separate investigations of the images on those
18 computers. They took about three months to do the
19 first investigation and determined that there were no
20 illegal images on that computer. And then they took
21 from June through the latter part of September to do
22 the second investigation. Their conclusion was that
23 there were no illegal images on that computer.

24 My client received a report late yesterday
25 from St. Paul Police which concludes, quote: "Of the

1 discs that were provided to SPPD, I was unable to
2 find," quote, "child pornography," end of quote, "on
3 any of them. Discs were reviewed by another
4 investigator with similar results. Without finding
5 such, the case cannot be submitted at this time."

6 I'm going to provide the court with the
7 report. But, again, because it names the priest, I
8 would prefer not to make this part of the record.
9 Now, again, we're fully prepared to address the
10 merits of this case. But one of the reasons why --

11 THE COURT: By "this case" and "the
12 merits," you mean Mr. Pususta's intervention motion?

13 MR. WIESER: You bet. As you know from
14 your review of Judge Johnson's order, one of the
15 reasons why he issued the protective order was to
16 protect the reputations of individuals who have been
17 wrongly accused. And that's what we have here with
18 priest J.S. Allegations were made. They were
19 independently investigated by an outside investigator
20 on behalf of the Archdiocese and also by the St. Paul
21 Police Department over a seven-month time period.
22 The result of those investigations were that there
23 was no basis for criminal charges to be filed.

24 So here we have a situation where there are
25 no charges and we have no conviction. We have mere

1 allegations which have not been substantiated. This
2 meets the threshold of the concerns expressed by
3 Judge Johnson, and there should be no reference to
4 any allegations with regard to J.S. in this matter.

5 Again, it's our request that those -- he
6 either be referred to by a pseudonym but certainly
7 not by name, and that the documents filed by the
8 plaintiff be sealed.

9 We talk also --

10 THE COURT: Has there been other public
11 disclosure of his identity as part of this report to
12 the Ramsey County Attorney by Ms. Haselberger and the
13 subsequent St. Paul Police Department investigation?
14 Or at this point has this all been maintained
15 private?

16 MR. WIESER: To date, to my knowledge,
17 again, one of the reasons I asked Mr. Engh to be here
18 is if he's got different information, again, to my
19 knowledge, there is no public information about the
20 allegations other than what was filed by the
21 plaintiff.

22 THE COURT: Okay. Thanks very much.

23 MR. WIESER: I want to talk briefly about a
24 priest whose name -- he was a former priest, and
25 that's Mr. Wehmeyer. I have no objection to

1 referring to him by name in this matter.

2 THE COURT: Curtis Wehmeyer.

3 MR. WIESER: Curtis Wehmeyer, that's
4 correct. Again, what I wanted to mention briefly is
5 that, again, it is inappropriate to make references
6 to Mr. Wehmeyer's situation in connection with the
7 motion for intervention by Mr. Pususta in this case.

8 Now, as the court indicated in its opening
9 comments, plaintiff's counsel knows who the John Jay
10 charter priests are. And plaintiff's counsel knows
11 that Mr. Wehmeyer is not among the priests who are
12 listed or who reported to John Jay.

13 With regard to Mr. Wehmeyer, again, they
14 attach the MPR report. And there are situations
15 where there are allegations with regard to Mr.
16 Wehmeyer prior to 2002 about probably some indiscrete
17 behavior on his part, but nothing illegal. Those
18 references, for example, are to his approaching adult
19 males in a book store and his also cruising a park.
20 He was picked up by a St. Paul Police officer, but no
21 charges were filed. The point of that is, again, it
22 may have been imprudent behavior on his part; it was
23 not illegal behavior.

24 When the Archdiocese became aware of the
25 allegations of sexual abuse in June of 2002, it

1 immediately reported that to St. Paul Police, and the
2 St. Paul Police acknowledgement of that is in a
3 recent MPR and St. Paul Pioneer Press article.

4 THE COURT: What you're arguing here in
5 part is now kind of going to some of the Rule 24
6 requirements for Mr. Pususta's intervention, assuming
7 he can get by the personal jurisdiction issues raised
8 by the insufficiency of the notice and some of the
9 other required four elements under 24.

10 MR. WIESER: My concern -- again, Ms.
11 Larimore will discuss the merits of our motion. But
12 the concern is that, again, plaintiff's counsel knows
13 that Mr. Wehmeyer is not among the 33 priests. By
14 introducing information about Mr. Wehmeyer in this
15 matter, it necessarily compels by implication the
16 potential that we get into a discussion about who is
17 and who is not among those 33 priests. I would urge
18 that we avoid any kind of discussion about that in
19 this matter.

20 The only other point I would make with
21 regard to Mr. Wehmeyer -- and I refer to him as "Mr.
22 Wehmeyer" not "Father Wehmeyer" because after he was
23 charged and after he was convicted, he was removed
24 from priestly ministry. And I have 14 different
25 newspaper articles from June of 2012, when the

1 charges were first filed, through February of this
2 year when he was sentenced, newspaper articles by
3 both local papers and by almost all of the local
4 television stations, which identify Mr. Wehmeyer by
5 name, discuss the allegations against him, and that
6 all predated by months enactment of the Child Victims
7 Act in Minnesota in May of this year.

8 So, again, there is no basis for there to
9 be any discussion in court this morning with regard
10 to Mr. Wehmeyer. Again, it does not go in any way to
11 the elements that the plaintiff is required to prove
12 to allow intervention to occur in this matter.

13 Thank you.

14 THE COURT: Well, maybe just to signal a
15 concern I have going forward here a little bit. I've
16 got concerns about wading into the whole John Jay
17 list of priests issue as a result of Mr. Pususta's
18 petition to intervene for a number of reasons. But
19 I'm equally concerned I guess with a focus on illegal
20 behavior only. It seems to me -- and I need to think
21 about this more and study it some more -- but that
22 behavior which may be inappropriate and suggest some
23 kind of a risk to other young people in our community
24 could be posed by something other than past illegal
25 behavior. I'm concerned, as anybody would be,

1 including Judge Johnson obviously was, and in light
2 of the well-publicized recent false allegations
3 regarding this football coach out in Apple Valley or
4 wherever he was, a very similar kind of situation.
5 He took some photos of his kids in the bathtub or
6 something and somebody reported this as pornography.
7 Next thing you know, this poor guy is out of his job
8 as football coach and his life has been turned upside
9 down.

10 On the other hand, I think everybody in our
11 community needs to be vigilant about inappropriate
12 behavior that might be something short of illegal
13 but could still raise some red flags and concerns
14 about whether individuals may be inclined to engage
15 in inappropriate behavior with young people.

16 I mean, that's something I'm certainly
17 willing to hear more about. But I'm a little
18 concerned about just focusing on the fact that the
19 Ramsey County Attorney or St. Paul Police have
20 determined that J.S., for example, did nothing
21 illegal. There may be other facts related to the
22 investigation or what is known about some of these
23 individuals that support the concerns of Mr. Pususta
24 and John Doe 1. I'm not there yet, but I just want
25 you to know what I'm thinking so I don't end up

1 issuing some kind of order and you say: Where the
2 heck did that come from? So maybe we need to address
3 that a little more. But for now, let me just ask,
4 Mr. Engh is here, and are you here for J.S.?

5 MR. ENGH: That's correct, Your Honor.

6 THE COURT: Anything you want to disagree
7 with or add to or maybe comment on what I just said?

8 MR. ENGH: I appreciate your concerns.
9 I've had him as a client since this spring. He is
10 presumed innocent. And the mere disclosure of his
11 name would ruin that presumption in the public
12 sphere. It would ruin his reputation in the Google
13 era that we have now. And there is no evidence in
14 that report that he did anything illegal.

15 THE COURT: See the dilemma I'm in a little
16 bit as a judge? We've got this whole balancing
17 business going on here. On the one hand, there's a
18 lot of concerns about clergy abuse and just predators
19 in our community generally, unfortunately; and we've
20 got to be concerned about young people in the
21 community.

22 On the other hand, we've got reputations
23 built over a lifetime on the other. So it seems to
24 me what judges are doing, as we are often doing with
25 these First Amendment issues regarding

1 confidentiality, we're doing some kind of a balancing
2 act trying to determine which of these -- both very
3 important public interest considerations in the
4 community -- needs to get more attention.

5 Would you agree with that?

6 MR. ENGH: I would agree, everything's a
7 balancing act. But in our system our schemata of
8 law, the presumption of innocence carries a great
9 deal of weight, especially when there is no
10 allegation of a crime being committed.

11 If he had been charged, had he been jailed,
12 had there been a complaint filed in open court, the
13 balance would inure to the victim, if there is a
14 victim. But until that occurs, he's absolutely
15 innocent of everything. There's nothing to indicate
16 in these reports that he's harmed anybody, which is
17 your concern and society's concern, obviously.

18 THE COURT: So he's a little different than
19 the football coach I mentioned in that case, at least
20 I believe -- I mean, I think that case was tried.

21 MR. ENGH: That was dismissed. That was
22 Mankato, and they ruined his life. He'll never be
23 employed again.

24 THE COURT: But it went further than J.S.'s
25 situation. The police and/or County Attorney

1 determined to proceed with a prosecution and then the
2 Judge threw it out. That case went apparently
3 further than J.S.'s situation.

4 MR. ENGH: That's correct. He's not been
5 charged. He won't be charged. And it's -- the shame
6 of Mankato and the cautionary tale it tells you and
7 everybody else is even if a county attorney decides
8 the charges should be filed, they may not -- they
9 should not have been on occasion. They absolutely
10 ruined that guy, to no reasoned end, really.

11 THE COURT: It's a tricky balancing act,
12 you know; we want to encourage, you know, really,
13 public citizens to be vigilant about behavior they
14 think is inappropriate and to report it. And we want
15 our public officials to be vigilant about these
16 things. The question is if we're going to have them
17 err on one side or the other, where do we have them
18 err? Do we have them err on the side of vulnerable
19 young people or have them err on the side of
20 protecting reputations of adults?

21 MR. ENGH: In this case, you do the latter.
22 There is no question about it. Thanks.

23 THE COURT: Thanks very much.

24 MR. WIESER: Could I make one comment?

25 THE COURT: Sure. Mr. Wieser.

1 MR. WIESER: I think your comments
2 illustrate the concerns that we have. And I think
3 that that is precisely what the plaintiff is trying
4 to do here. We're not here today to talk about the
5 release of the 33 John Jay priests. We're here today
6 for one purpose, and that is to determine whether or
7 not the plaintiff has met his burden, under the
8 rules, to intervene. Only then do we get into a
9 discussion about whether there should be a release of
10 those names.

11 So for us to have a discussion about any of
12 the priests at this time, from our perspective, is
13 inappropriate. The focus of the motion is on whether
14 or not the plaintiff has met his four-pronged
15 requirements. That's the reason I bring this to the
16 court's attention at the outset of the conversation,
17 because it would be too easy to fall into the trap of
18 talking about the wrongdoing of the priest, how
19 harmful it is to the community, because we all
20 understand that. We recognize that. We appreciate
21 that. And we agree with that. And that is why this
22 Archdiocese has had policies in place since 1987 that
23 deal with reporting of misconduct of priests.

24 But that is not what we're here to talk
25 about. That's what we'd like to address and make

1 sure we're all clear about this morning. Thank you.

2 THE COURT: Thanks a lot. I appreciate
3 your comments. Let's not get the cart before the
4 horse. Maybe it's a little premature to be talking
5 about some of these issues, but they're important
6 issues. We have all the players here in the room
7 today; good time to maybe sort it out again a little
8 bit.

9 So, Mr. Anderson, what's your response on
10 this -- really, I guess the original -- really, the
11 main focus is, first of all, on J.S., whether that
12 reference in your reply brief ought to be sealed or
13 stricken somehow; then more broadly, whether Curtis
14 Wehmeyer's identity should have any bearing at all on
15 whether Mr. Pususta ought to be allowed to intervene.
16 We didn't talk too much about J.B.

17 Maybe just before I hear from you, Mr.
18 Anderson, what's your position on J.B.? You know who
19 I mean by J.B.?

20 MR. WIESER: I do. I certainly do, Your
21 Honor. Again, I think that that is the trap we get
22 into by talking about whether or not there should be
23 disclosure. And I haven't addressed J.B. purposely
24 because, again, our position is that we need to
25 determine whether or not Mr. Pususta has a right to

1 intervene. And only if the court determines that he
2 has met his burden do we then talk about that sort of
3 thing.

4 THE COURT: You've asked that J.S.'s name
5 be sealed.

6 MR. WIESER: Right.

7 THE COURT: But you haven't asked I don't
8 think that J.B.'s name be sealed. J.B.'s name does
9 appear in the pleadings before me today as well. And
10 I think -- and I only had a chance to read these
11 papers once, but I thought your response was: We're
12 not quite as concerned about him because his identity
13 is already well known in the community.

14 MR. WIESER: Well, it's a difficult spot
15 for me to be in at this point, to suggest that the
16 court is going to have the ability today to seal
17 references to J.B. I think the court does have the
18 ability to seal references to J.S. And, again, it's
19 a toothpaste-out-of-the-tube situation. I guess I
20 would leave it at that at this point. Thank you.

21 THE COURT: Thanks for your patience.

22 Mr. Anderson.

23 MR. ANDERSON: Let me address first the
24 preliminary comments and arguments made by Mr. Wieser
25 and Mr. Engh. Mr. Engh has not made an appearance,

1 has not filed anything to give him standing to
2 present to the court. And it's not usually my
3 position to stand on technical grounds, but to be
4 presented with the arguments today that he just made,
5 I'm prepared to address, notwithstanding any
6 appearance in this case.

7 First, the comments made by Mr. Wieser, he
8 said that what I know -- that is, what Jeff Anderson
9 knows -- about this priest and kept on referring to
10 what I know or some of these priests. That is not
11 important, what I know. What this intervention
12 motion is about today is what the public needs to
13 know and has a right to know and must know for the
14 children in our community to be protected. That's
15 why Mr. Pususta is intervening and seeking to -- and
16 demanding or requesting the unsealing of files
17 previously sealed.

18 Now, for counsel to now present to us some
19 documents that he wants to have sealed and present
20 them to the court that he wants to have sealed not
21 only is in violation of the public's right to know
22 and access, it's in violation of this court's rule:
23 The Minnesota Rules of Public Access to records of
24 the judicial branch bear a presumption of openness.
25 And to present this to you today and to me today is

1 in violation of that. And so I would first request
2 that whatever was presented to the court and to us be
3 kept open, marked and made a part of the public
4 record. And to do otherwise would not only violate
5 the law, but the spirit of the law and the purposes
6 for which we come before this court to seek the
7 public disclosure of information that we believe
8 poses an imminent public safety hazard.

9 So I want the court to consider marking
10 those exhibits. I want the court to consider making
11 them part of this public record, and doing so under
12 the public's right to know and the Minnesota Rules of
13 Public Access, I believe it's Rule 3.

14 As to the arguments made about reference to
15 J.S., I think the court is aware that in our reply
16 memorandum we submitted affidavit and attachments,
17 exhibit -- attachment Exhibit A pertains to recent
18 news accounts and very recent disclosures pertaining
19 to Wehmeyer. And if I heard counsel correctly, there
20 is not objection to references to Wehmeyer, or is
21 there?

22 THE COURT: Mr. Wieser?

23 MR. ANDERSON: I need to know, is there
24 objection to reference to Wehmeyer or not?

25 THE COURT: Did you take a position on

1 that? I mean, I think I heard you say in terms of
2 referring to Curtis Wehmeyer by name, we've all been
3 doing it so, obviously, it's in the public domain
4 here and in court today.

5 My understanding with respect to your
6 position on Wehmeyer is: Hey, it's putting the cart
7 before the horse in terms of whether Mr. Pususta's
8 petition to intervene should be granted. It has no
9 relevance to that at this point.

10 MR. WIESER: Exactly. Thank you.

11 THE COURT: Mr. Anderson.

12 MR. ANDERSON: If I'm hearing the position
13 of counsel, are you requesting that attachments
14 Exhibit A and B be sealed? Is that what the request
15 is here?

16 THE COURT: Well, Mr. Anderson, why don't
17 you make your points to me and then I'll give Mr.
18 Wieser a chance to reply briefly.

19 So you're unclear about that, and what is
20 your point with respect to it?

21 MR. ANDERSON: My point is that Exhibits A
22 and B do not meet the test for the sealing, both
23 under Minnesota law and the rules of public access,
24 public documents.

25 THE COURT: Let me ask you for a second --

1 I tried to look at a lot of this stuff, but I don't
2 know if I looked at attachments A and B regarding
3 Father J.S. Do those exhibits mention him by name?

4 MR. ANDERSON: Yes.

5 THE COURT: Those are like newspaper
6 articles or something?

7 MR. ANDERSON: No. Exhibit A would be
8 recent news accounts pertaining to Wehmeyer -- excuse
9 me. Exhibit A are recent news accounts by MPR
10 pertaining to Wehmeyer and that he had been known to
11 have been or suspected to have been an offender, and
12 reports were made to the Archdiocese years ago.

13 THE COURT: Right.

14 MR. ANDERSON: -- or reflected in the
15 documents and refers to Jennifer Haselberger as the
16 former chancellor for canonical affairs. That would
17 be Exhibit A.

18 THE COURT: What about B?

19 MR. ANDERSON: Exhibit B is a deposition
20 that is a public record taken without a protective
21 order by me in a case pending against the Diocese of
22 Crookston of Jennifer Haselberger. It was taken and
23 given under oath on September 19, 2013.

24 Under oath at that time I asked her about
25 where she had worked and where she had -- why she had

1 left her employ at the Diocese of Crookston and Fargo
2 before that. When I asked her why she left the
3 employ of the Archdiocese of St. Paul - Minneapolis
4 as the chancellor for canonical affairs, it was
5 because she, she says in the deposition, that she had
6 made reports --

7 THE COURT: Careful about the names now if
8 you talk about names.

9 MR. ANDERSON: -- on two occasions. And
10 I'm quoting at Page 35, Line 23: I left my position
11 after reporting the Archdiocese, that is the
12 Archdiocese of St. Paul - Minneapolis, to the civil
13 authorities on two occasions; one for child
14 endangerment and one for failing to report child
15 pornography.

16 And then I go on to ask her to identify
17 those two priests. And it is in that record. One,
18 obviously, we've already identified; the other has
19 been referred to here as J.S.

20 She goes on to state pertaining to Wehmeyer
21 at the time the Archdiocese learned of misconduct by
22 him, the accusations against Wehmeyer relating to
23 these two boys went to the Ramsey County Attorney's
24 office with evidence that the Archdiocese had known
25 of the issues with Father Curtis Wehmeyer for a

1 number of years. I am referring to Exhibit B, the
2 deposition given under oath, Page 37, Lines 15
3 through 22. So this is a deposition, a public
4 record, duly filed in this case, responsive to the
5 arguments made by the Archdiocese in the memorandum
6 that this is an old problem, an old hazard, an old
7 risk many years ago.

8 In their memorandum they filed last week --
9 we filed our reply attaching these exhibits to
10 demonstrate the probative value and necessity of this
11 to show two things: One, this is a public record;
12 two, this is a recent and imminent and current
13 ongoing issue.

14 And Ms. Haselberger's testimony under oath,
15 while described by counsel as a disgruntled employee,
16 had been hired by them as one of their top officials,
17 as a chancellor of canonical affairs who had been
18 qualified as a canon lawyer and employee by them. So
19 to discredit her -- to attempt to discredit her now
20 goes nothing to the probative weight that this needs
21 to be given, nor should it be a basis for sealing a
22 public record duly filed and already on file in this
23 case and testimony given under oath.

24 In short, the arguments made for the
25 sealing of anything, both presented to this court

1 today or to the exhibits, both A and B, and most
2 particularly the deposition of Ms. Haselberger, are
3 without merit, are without legal basis, are contrary
4 to the right to public access, and are typical of the
5 very reason that we are here. They continue to
6 attempt to protect offenders at the grave peril of
7 many children in our community. And until we know
8 who the credibly-accused offenders are and where they
9 are, thus the peril exists. To attempt to unseal any
10 part of this record would allow the continuation of
11 the peril and protect nothing other than the
12 reputation of those who may have offended and/or --
13 at risk for offending and have been determined to
14 have been so.

15 Now to the argument made by Mr. Engh and
16 I'll refer to -- by you, Your Honor, the coach that
17 was accused and acquitted, indeed, that is an
18 instance that we're now referring to as a coach that
19 was accused and acquitted and the harm done to that
20 coach.

21 Let's just contextualize that. Let's
22 contextualize that one coach in that one instance
23 that we know was accused and acquitted. Let's
24 contextualize the fact that we have 33
25 credibly-accused offenders in this list in 2004, and

1 now we know there are many more that should be on
2 that list since then whose names and identities
3 remain secret. And we think about they having been
4 credibly accused by their employer so they were
5 removed from ministry, and then the Archdiocese has
6 the audacity to say: We removed them all from
7 ministry, so there is no risk. What about Curtis
8 Wehmeyer? They didn't remove him, according to
9 Jennifer Haselberger who testified that they'd known
10 since 2004.

11 We have to contextualize that one coach
12 against all the other kids who had either been abused
13 or at risk for being abused, and that's in the
14 dozens, if not the hundreds and maybe even the
15 thousands. And so in that context, there is a
16 delicate balance that always needs to be weighed.
17 Mr. Engh refers to the presumption of innocence, but
18 that applies to criminal cases.

19 In this case, this is about public safety
20 and the rights of people to know. And, in fact, if
21 J.S. has been determined to have not been in
22 possession of anything that was illegal and the
23 record so reflects that, that Mr. Wieser just
24 presented to the court without filing it, put it in
25 the public record, there it is. There it is. And he

1 can stand on that.

2 THE COURT: Okay. Thanks very much for
3 your comments. Mr. Wieser, we've got to stay on
4 schedule here a lot, got a lot to cover. If you
5 could respond specifically to these concerns of Mr.
6 Anderson.

7 First of all, with respect to the incident
8 report that you have asked me to take note of here
9 this morning, but yet not include as part of the
10 record, Mr. Anderson, while some of his comments got
11 us a little far afield here, one thing he did say
12 resonated with me, and it's kind of you can't have it
13 both ways. If you want me to take some sort of
14 judicial notice of this police report and use it for
15 some purposes in resolving the dispute this morning,
16 then it probably needs to be marked. The fact that
17 it's marked and then becomes a judicial record
18 subject to Rule 2 or whatever it is doesn't get Mr.
19 Anderson all the way home in terms of its public
20 disclosure. It still requires that I do some
21 balancing.

22 But I am a little concerned that it seems
23 to me you are trying to have it both ways. On the
24 one hand, you want me to be aware of this report in
25 which a police officer determines there's no probable

1 cause to pursue a claim. On the other hand, you
2 don't want some of the information in it made public.
3 So how do you respond to that, number one.

4 MR. WIESER: Your Honor, I think that your
5 comments have indicated that you have an appreciation
6 for our concerns. We would certainly be prepared to
7 have that marked and made part of the court record.
8 Certainly your decision with regard to sealing
9 references to J.S. I assume will apply to that
10 document as well.

11 THE COURT: Very good. Let's have the May
12 6, 2013, original offense incident report referred to
13 here this morning marked as defendant Archdiocese
14 Minneapolis - St. Paul Exhibit 1.

15 MR. WIESER: Thank you.

16 THE COURT: That's the first thing. Let's
17 take a second so Donna can do that.

18 (Exhibit 1 marked for identification.)

19 THE COURT: Now we have that, with the
20 cautionary remarks I meant about whether I still I
21 believe have the discretion to seal references to
22 J.S. in that incident report.

23 Point number two, as to Exhibit B, is that
24 the same deposition of Ms. Haselberger and the Roseau
25 County matter that is referenced in your brief that

1 we were talking about earlier? This is the same --
2 okay. There seems to be a little confusion about
3 that. One of you is nodding yes. Jeff Anderson is
4 nodding yes and you're saying no. It seemed to me
5 Mr. Anderson's comments regarding the deposition were
6 focused mostly on Mr. Wehmeyer. And there seems to
7 be some consensus that Mr. Wehmeyer is a pretty
8 well-known public figure. His identity has been
9 disclosed not only in Attachment A, or Exhibit A, to
10 the submissions of Mr. Pususta, but in 25 or 30 pages
11 of news articles that Mr. Wieser has presented to the
12 court. So, to that end, I think the identity issue
13 regarding Mr. Wehmeyer's not important.

14 Mr. Anderson is arguing, contrary to you,
15 that all of this information about Wehmeyer goes to
16 whether there should be disclosure of this list of 33
17 credibly-accused priests under the John Jay study.

18 MR. WIESER: Your Honor, I think I've
19 already made my comments about that. I want to make
20 sure we have time for Ms. Larimore to be able to
21 address the merits of the motion today. So I don't
22 want to take any more of the court's time on that.

23 If I could make a brief comment about the
24 deposition of Ms. Haselberger?

25 THE COURT: Yes.

1 MR. WIESER: The date of the depo is
2 September 19th.

3 THE COURT: This year?

4 MR. WIESER: That's right. This matter
5 does not relate to the Archdiocese. And I will just
6 tell the court what I have been informed by counsel
7 for the Diocese of Crookston. Mr. Anderson will,
8 obviously, correct anything that's incorrect about
9 that.

10 My understanding is that this litigation
11 has been in place for at least a year and likely more
12 than a year. My understanding is that Mr. Anderson
13 gave less than one week's notice of his intent to
14 depose Ms. Haselberger. The transcript talks about
15 the role that Ms. Haselberger had at the Diocese of
16 Crookston with regard to investigating allegations of
17 priest misconduct in that diocese and the work she
18 did in that regard. My understanding is that there
19 are numerous documents that relate to her
20 investigation. I don't have the entire transcript;
21 counsel has not provided the entire transcript to the
22 court or to me. But my understanding is that this
23 was an 89- or 90-page transcript, the bulk of which
24 focused on allegations that relate to the Archdiocese
25 that we're here talking about this morning.

1 THE COURT: Does it include references to
2 J.S.?

3 MR. WIESER: It does. Again, that is on
4 Page 36.

5 THE COURT: If exhibit --

6 MR. WIESER: By name.

7 THE COURT: Thank you. I apologize for
8 interrupting.

9 To the extent Exhibit B were to be
10 considered by the court, made part of the court
11 record here, you would ask that any references to
12 J.S. in the deposition transcript be deleted?

13 MR. WIESER: That is all we're asking.

14 THE COURT: Okay. Got it. Okay. I think
15 we've got to get on to the main event here a little
16 bit. Thanks for your remarks with respect to these
17 confidentiality issues. I could tell you my
18 inclination, just so you know kind of where we're
19 headed here. I'm probably going to seal any
20 references to J.S. either in the pleadings or in any
21 attachments to the pleadings. I'm not going to seal
22 any references to Curtis Wehmeyer or John Brown.
23 Those names I think have been in the public. I am
24 going to reserve, until I've heard some more
25 arguments from Ms. Larimore regarding the merits of

1 all of this as to what, if any, relevance Mr.
2 Wehmeyer's recently-disclosed or investigated
3 improper activity, what that has to do, if anything,
4 with respect to Mr. Pususta's petition to intervene.

5 Let me just give you a couple of comments,
6 Ms. Larimore, that might focus your comments here a
7 little bit. And one of the things I'm going to do
8 before I get to you, I'm going to, first of all,
9 again apologize to Mr. Braun because I did this last
10 time a little bit. I keep overlooking him. He's not
11 an easy guy to overlook; he's a big guy.

12 First of all, I'll ask you, Mr. Braun,
13 anything you want to say to weigh in on this
14 confidentiality regarding the identity of J.S.?

15 MR. BRAUN: Your Honor, the Diocese -
16 Winona agrees with the Archdiocese position. He's
17 not a priest of the Diocese of Winona. But we think
18 that the comments that were given by Mr. Wieser
19 support the withholding of his name from the record.

20 THE COURT: Very good. While I've got your
21 attention -- you can remain seated, Mr. Braun, that's
22 fine. Thank you for standing. You focus a little
23 bit more on the adequacy of the language in the
24 notice regarding intervention than Mr. Wieser and Ms.
25 Larimore. They tee up the issue in a footnote, but

1 you focus on it and you think it's important. And
2 just because I've had a couple of other cases
3 recently, Mr. Anderson and other counsel, I think it
4 does deserve a little more attention here.

5 I think anybody who has been in court with
6 me knows that I generally subscribe to the
7 proposition that issues should be resolved on their
8 merits, not on technicalities. But because of some
9 cases I've been involved in recently, the issue of
10 personal jurisdiction is being looked at quite
11 closely by our Minnesota Court of Appeals, especially
12 where it involves construing what appears to be clear
13 legislative language. They're not willing to deal
14 with the substantial-compliance language in a lot of
15 cases anymore.

16 So what I'm going to ask on this issue
17 regarding the adequacy of the notice and that magic
18 language in the notice is, I'm going to refer you,
19 first of all, to a case that just came out entitled,
20 Koski, K-o-s-k-i, vs. Sharon Johnson. It has to do
21 with technical requirements involving unlawful
22 detainer cases and whether they are an essential
23 prerequisite for the court to get personal
24 jurisdiction in unlawful detainer cases regarding the
25 propriety of the service of the summons or some such

1 thing. So that's one thing I want you to identify in
2 a supplemental letter brief.

3 Mr. Anderson, you'll, of course, have a
4 chance to respond to that. I'd like to have that
5 supplemental letter brief from at least you, Mr.
6 Braun, and if St. Paul - Minneapolis wants to join in
7 that or something, that would be great; maybe you
8 could submit some sort of joint supplemental. How
9 about if we get that in about two weeks from today?

10 MR. BRAUN: That would be fine.

11 THE COURT: Two weeks from today would be?

12 THE CLERK: The 17th.

13 THE COURT: Close of business on the 17th.
14 Andrew will work with you about how you can do that
15 electronically. Then, Mr. Anderson, I'll give you a
16 week after that, or the 24th, to respond. But I want
17 you to see what, if anything, Koski vs. Johnson case
18 has to say with the requirements being strictly
19 construed for the notice. It's a published decision.

20 MR. ANDERSON: So that I understand what
21 we're talking about here, and as Ms. Lindstrom does
22 too because she'll be doing the work, are we talking
23 about the 24.01 requirement that we put in language
24 in the petition that says that if there is no
25 objection, it is entered by default within 30 days?

1 THE COURT: Exactly.

2 MR. ANDERSON: Okay.

3 THE COURT: That's the language.

4 MR. ANDERSON: Got that.

5 THE COURT: You know, I don't think the
6 case should turn on that, but it might, and that's
7 what I'm concerned about. You know, I think it is --
8 you treat it that way in your brief saying: Come on,
9 Judge, you're not really going to throw this thing
10 out based on this. This is an inadvertent oversight.

11 But I'm a little concerned about these
12 recent cases, including this published case that just
13 came out dated September 23 regarding real strict
14 compliance with these kinds of requirements. Related
15 to that, I issued a decision and it also happens to
16 be an unlawful detainer case called Donald Howard vs.
17 Diane Brady, in which I was compelled to conclude
18 that the landlord had misstepped in terms of how it
19 effected service of the summons and complaint by
20 posting it on Ms. Brady's door. And he, of course,
21 was saying: Well, again, this has not been the
22 practice in terms of certain things, and the referees
23 in both Hennepin County and Ramsey County have
24 allowed us to do it this way for years and years.
25 And I said, you know, I'm sorry, I don't think just

1 because you've been doing it that way makes it right.
2 So I ruled that way on what appeared to be a
3 technicality. But what I really want you again to
4 take a close look at and what is expressly addressed
5 in this Koski case are cases like Time Square
6 Shopping, and Pederson vs. Clarkson.

7 And this is this whole business about --
8 I'll read real quickly from my decision here in
9 Howard against Brady:

10 The court begins with the premise that
11 statutory provisions for service of notice must be
12 strictly followed for a court to acquire
13 jurisdiction.

14 That's pretty much what the Court of
15 Appeals says in Koski.

16 Then I go on to say: The court recognizes
17 that when a defendant has actual notice, other courts
18 have sometimes held that substantial compliance with
19 technical service requirements may be sufficient.

20 I go on to say: Cases should be decided on
21 the merits rather than on technicalities and where
22 the intended recipient receives actual notice, the
23 rules governing such service should be liberally
24 construed. Citing Time Square and this Pederson
25 case.

1 But then I go on to say, as the Court of
2 Appeals does -- I'm feeling sort of affirmed by the
3 Court of Appeals here in Koski: However, a liberal
4 construction of a statute cannot overcome a statute's
5 unambiguous notice requirements.

6 So I don't think this issue is totally
7 settled for this case. I'm going to take a fresh
8 look at it, but I think it's important. Mr. Braun,
9 you've highlighted it a little bit more than anybody
10 else, that's why I'm going to give you the laboring
11 oar. Let's get a relatively short letter brief on
12 this. I'll give Mr. Pususta a chance to respond.

13 But those are two things in particular.
14 Andrew will give you copies of my decision in the
15 Howard against Brady. And in Koski against Johnson,
16 you can find that I'm sure on the web.

17 So anything else you want to say about the
18 notice issue before we get to Ms. Larimore here?

19 MR. BRAUN: I think I'll reserve my
20 comments, after I've had an opportunity to review the
21 Koski case and submit those in writing.

22 Part of the reason we didn't go into the
23 four-pronged test is because the notice of
24 intervention only focuses on the Archdiocesan list of
25 names, not the list of the Diocese of Winona. We

1 didn't endeavor into that four-prong analysis because
2 it doesn't affect us specifically.

3 MR. ANDERSON: Can I make one comment on
4 that particular --

5 THE COURT: The substantial compliance bit?

6 MR. ANDERSON: Yeah. I think we did omit
7 that language, but I think it is clear in this record
8 also that they filed their objections within 30 days.

9 THE COURT: They clearly had notice. It's
10 really a very --

11 MR. ANDERSON: So what is the prejudice,
12 number one?

13 THE COURT: There might have been other
14 people that wanted to object. I don't know who they
15 might be, but it goes to that broader issue of what
16 is the notice that has to be given and how strictly
17 should it be construed?

18 MR. ANDERSON: I would only say that,
19 without reading that particular case and your ruling,
20 when it comes to the notice to be given to a named
21 party, who is objecting here, if you're throwing them
22 out of an apartment, you've got to make sure, as
23 you've ruled, that they know about it, you know. And
24 it's not fair and it's prejudicial to make sure
25 there's not strict compliance with notice, as you

1 ruled.

2 So I would suggest that here anybody that
3 needed to know would have known. And all the parties
4 that did need to know here did object within the
5 30 days. And if there is a technical violation, it's
6 at most harmless and nonprejudicial. Nothing more to
7 say about that.

8 THE COURT: Very good. Thanks a lot. That
9 may be where we end up on it. But I'm just concerned
10 about this new case that just came out yesterday, and
11 I really didn't have a chance -- I just saw it in the
12 legal news, that sort of highlighted it for me this
13 morning.

14 Ms. Larimore.

15 MS. LARIMORE: I have a question about the
16 supplemental letter brief that you requested. Do you
17 want that to also address the pleading requirement
18 that is also referred to in Rule 24.03, or do you
19 just --

20 THE COURT: Yes, address the pleading
21 requirement too.

22 MS. LARIMORE: Okay.

23 THE COURT: I wasn't real clear what that
24 was about. But Koski and my earlier case don't talk
25 about any kind of pleading requirement. That's sort

1 of a separate deal. Yes, that would be worth it; as
2 long as we're going to spend a little more time on
3 that, please include that as well. Thank you for
4 that.

5 Okay, let's talk about the Rule 24
6 requirements. Here are just the notes I wrote down
7 after reading the briefs on this.

8 With respect to the requirement, as I
9 understand, all four requirements have to be met.
10 There is a semicolon and number four, so you've got
11 to have all four: Timeliness, et cetera.

12 I focused a little bit on the adequacy of
13 the presentation of the issue by other means. And it
14 just seemed to me, especially here where this case is
15 closed, this case has gone all the way up to the
16 Supreme Court. There was a decision out of the
17 Supreme Court, and I believe the claims have been
18 dismissed pursuant to that some time ago. So the
19 case is closed. I know there are these cases that
20 talk about intervention post-judgment and so on. I
21 haven't had a chance to read all of those.

22 But this seems to be kind of an unusual
23 forum for Mr. Pususta to seek to intervene where the
24 case is closed. But beyond that, it seems to me the
25 same issue has been teed up and litigated vigorously

1 and argued vigorously on two prior occasions in this
2 docket. And Judge Johnson has ruled adversely to Mr.
3 Pususta's position on at least two occasions in this
4 case already. But beyond that, the same issue has
5 been teed up in John Doe 1 and is pending before me
6 in that case. And I will take a fresh look at it in
7 John Doe 1.

8 So it does seem to me -- and it's been
9 argued by Mr. Anderson and his law firm and his
10 colleagues in all of these cases. So I think it's a
11 stretch for you, Mr. Pususta -- and I don't mean to
12 talk about you personally, Sir, but you are the named
13 party -- it's a stretch for you to say that this
14 isn't going to be adequately presented. It's the
15 same lawyer who has presented it on all of these
16 prior occasions. I mean, believe me, if anything, we
17 know Mr. Anderson is a vigorous advocate and an
18 internationally well-known lawyer on these issues.

19 So I think it's a little hard for you to
20 get by that leg of the stool here, which you've got
21 to get by; all four you've got to get by. To say
22 it's not going to be adequately presented by other
23 means I think is a real stretch.

24 So, you know, Ms. Larimore, you can focus
25 on whatever you want to focus on, but that is the one

1 that was kind of a hangup for me. I mean, there are
2 other issues on all of the other four -- other three
3 -- requirements, but I think four was a particularly
4 hard hurdle for Mr. Pususta.

5 I think that's all I wanted to say. Those
6 are kind of my reactions after reading the briefs.

7 So Ms. Larimore.

8 MS. LARIMORE: Thank you, Your Honor.
9 Counsel -- and, Your Honor, I would like to thank you
10 for helping to kind of narrow some of the issues
11 today. I would like to do that a little bit further,
12 if I may?

13 THE COURT: You may.

14 MS. LARIMORE: 76C, Your Honor, the case
15 that Mr. Pususta is seeking to intervene in dealt
16 with a protective order, okay? So that's what he is
17 seeking to have lifted by and through his
18 intervention. And the rules provide the standard, as
19 you noted, for that intervention. I'm happy to
20 address those four requirements.

21 I can address the fourth one, that his
22 interest was not adequately represented; the interest
23 he claims as being the basis for intervening was not
24 adequately presented. I can discuss that first if
25 you'd like or I can take them in order.

1 THE COURT: You go ahead however you want.
2 Just try to have your eye on the clock here a little
3 bit. You know, we've just had to deal with lots of
4 tricky and difficult issues this morning. It's
5 already after ten, so I'm thinking that at about
6 10:30 at the latest we're going to have to take a
7 little break here so the court reporter gets a well
8 -needed break and the rest of us can get a break as
9 well. So if you'd just keep that in mind.

10 MS. LARIMORE: That sounds great, Your
11 Honor. Thank you.

12 Let's talk about that fourth prong first,
13 since that's the one you raised. That is the one
14 that says that Mr. Pususta as the intervenor has to
15 show that his interest was not adequately represented
16 in the prior litigation in the case that is now
17 closed.

18 THE COURT: Would it be fair to say that
19 that requirement would also extend, as I suggested,
20 to the pending John Doe 1 coverage of the same issue?
21 I mean, it's pending.

22 MS. LARIMORE: Sure, Your Honor. I think
23 that goes to the third prong, which asks whether Mr.
24 Pususta's interest in intervening here is that he
25 needs to intervene so that his interest is not

1 impaired, okay? I think those other cases you
2 mentioned, John Doe 1, for example, and the nuisance
3 claims that have been brought there suggest that in
4 fact he does not need to intervene here, but that he
5 can pursue his claim for damages and raise these
6 various issues in another more appropriate forum, as
7 opposed to a case that has been closed for over a
8 year and that has proceeded through the appellate
9 courts.

10 I think that in addition to that, the
11 reliance on the Child Victims Act suggests also that
12 his interest is not impaired, because the Child
13 Victims Act, the amendment to the statute of
14 limitations for sex abuse claims gave him a forum in
15 which to pursue the allegations that he's raising, in
16 that it gave him an opportunity to bring an action
17 for damages, okay?

18 THE COURT: I think what he's arguing is he
19 thinks he's got a better shot at getting this
20 protective order lifted in this case because the
21 Archdiocese is going to just come out guns blazing
22 against his nuisance claims if he tries to bring a
23 nuisance claim. He's going to get shot down if he
24 sues Father Brown in a separate lawsuit or if he
25 tries to intervene in John Doe 1, he doesn't have as

1 good a chance as he has here.

2 MS. LARIMORE: I think that kind of
3 argument is belied by the fact those claims are being
4 made, okay? And if there is no easy or clear way to
5 get the names, maybe that's because the current --
6 the concerns that are recognized by the protective
7 order that Judge Johnson issued and then upheld back
8 in September of 2011, that those are actually
9 legitimate concerns. And there is -- that Mr.
10 Pususta or whatever plaintiff hasn't demonstrated a
11 right to publicly disseminate or broadcast that
12 information.

13 THE COURT: This gets kind of to the nub of
14 it I think. It's the Archdiocese's position, as I
15 understand it, really nothing changed; nothing
16 substantially changed since Judge Johnson imposed his
17 protective order. The same good arguments that were
18 made at that time and considered by Judge Johnson and
19 resolved in favor of the Archdiocese is the same that
20 would happen here.

21 The only fly in that ointment or kink in
22 that argument is the Curtis Wehmeyer stuff. There's
23 new stuff. It's not the same. We can't talk about
24 J.S., but we could talk about Wehmeyer. And is
25 Wehmeyer enough to change the playing field here a

1 little bit?

2 MS. LARIMORE: No, Your Honor, not for this
3 intervention, okay? The reason for that is that
4 prong number two requires Mr. Pususta to show he has
5 the same interest as what is going on in this
6 litigation itself, the protective order. That he has
7 an interest in getting the protective order released.
8 Mr. Wehmeyer is beyond that protective order. He
9 wasn't included in the John Jay priest study, and so
10 the names that are being sealed, as Mr. Anderson
11 says, by the protective order in this case would not
12 include Mr. Wehmeyer.

13 So he's seeking, in fact, for even broader
14 relief than what was at issue in this case, 76C. And
15 so, to that extent, to the extent that he has argued
16 that there are new concerns, that there are, to quote
17 counsel, many more that should be on the list, he is
18 raising something that goes beyond the bounds of 76C,
19 beyond the bounds of the protective order, beyond the
20 bounds of what is at issue in the claims and defenses
21 in 76C. And as a result, he has demonstrated that he
22 cannot meet prong number two, which requires him to
23 have the same interest.

24 In fact, to talk a little bit about that
25 interest, Your Honor, one of the points in counsel's

1 reply memo is that Mr. Pususta has an interest in
2 having this information released to other individuals
3 who might bring a claim under the Child Victims Act.
4 There is a case called Philip Morris. It's cited in
5 our memo in response. It says that it is
6 inappropriate to lift a protective order simply to
7 allow a party to share discovery with others in
8 similar litigation. So to the extent he's arguing he
9 needs it to provide to other individuals, that is
10 inappropriate under Philip Morris.

11 THE COURT: That's a Minnesota Supreme
12 Court case, isn't it?

13 MS. LARIMORE: I think it might be a Court
14 of Appeals case.

15 THE COURT: Well, that's not important.

16 MS. LARIMORE: I can get you that cite if
17 you would like. It's State vs. Philip Morris, 606
18 N.W.2d 676, 2000 Court of Appeals case.

19 THE COURT: Still binding on this poor
20 trial judge?

21 MS. LARIMORE: Still binding. Still
22 precedential. Still published.

23 So, Your Honor, with that issue kind of
24 being addressed, I want to just mention the
25 timeliness piece. Your Honor, Mr. Pususta's counsel

1 does not dispute that he has to show that his
2 intervention is timely. He doesn't dispute that
3 usually post-judgment intervention would be
4 disfavored, and he doesn't dispute that the judgment
5 here was final almost a year before intervention,
6 okay?

7 I want to talk a little bit about the
8 Brakke case, B-r-a-k-k-e. That is a Minnesota
9 Supreme Court case. It's cited in both parties'
10 briefs; 279 N.W.2d 798, a Minnesota Supreme Court
11 from 1979. What Brakke did was recognize the
12 importance of finality, even in cases where a third
13 party is seeking to intervene. In that case, the
14 Supreme Court observed that intervention after trial
15 was generally disfavored. Do you want a copy?

16 THE COURT: I've got it. I was just
17 looking for Jeff Anderson's reply brief because he
18 talks about Brakke in his reply brief. I don't know
19 if you know what he said there. I was going to throw
20 it up at you to see what you think about his comments
21 on Brakke.

22 MS. LARIMORE: I think I have an idea of
23 what he says. And I'll try to address that.

24 What Brakke did was it talked about
25 intervention after trial is generally disfavored. In

1 that case the court noted that intervention had not
2 been sought there until ten months after a district
3 court order on the issue and nine months after the
4 Supreme Court had denied a writ of prohibition, okay?

5 The court denied intervention, noting the
6 importance of finality in cases, and that the
7 intervenors could pursue their own action for
8 damages.

9 Now counsel has attempted to distinguish
10 that case, saying that it was just an attempt to try
11 to perfect an appeal. But I think that the
12 circumstances that are presented here are even more
13 extreme and demonstrate even more why finality in
14 this case should govern. The timeline here is that
15 the judgment in this case was entered in August 2012.
16 Intervention was not sought until almost a full year
17 later, and that was after the Supreme Court decision,
18 after a July 2011 Court of Appeals decision, after a
19 trial court dismissal of 76C's claims, and then well
20 after the April 2009 protective order that is now
21 being called into question by this intervention.

22 As in Brakke, Mr. Pususta has an
23 opportunity to pursue his own claims elsewhere. And
24 because of that, we think the principles of finality
25 should govern. Actually, Brakke is quite on point in

1 this case.

2 I would like to just comment on the Child
3 Victims Act a little further, if I may, Your Honor?

4 THE COURT: Thank you. That's the one
5 thing I'm still a little unfocused about, whether
6 that changes the game at all in terms of things that
7 are new since the April 2009 protective order in
8 Judge Johnson's determination, and actually the
9 Supreme Court decision in this case. I'm, obviously,
10 interested in something that might be new. That's
11 why I focused a little bit on the Wehmeyer stuff.

12 But did this three-year window that was
13 opened in this Child Victims legislation from I think
14 just this last session of the Legislature, right?
15 Does that give Mr. Pususta something to grab onto?

16 MS. LARIMORE: It might give Mr. Pususta
17 something to grab onto if he were to bring an action
18 for damages in a separate case. But it really has
19 nothing to do with the protective order that was
20 issued here.

21 That legislative action amended the statute
22 of limitations. It has nothing to do with giving a
23 claimant a right to disclose what would otherwise be
24 private and nonpublic information. It provided an
25 action for pursuing what the statute itself

1 identifies as an action for damages. If the
2 Legislature had intended more, it could have done so.

3 The mere fact that the courtroom might now
4 be open to additional individuals who can file claims
5 that used to be time-barred does not support the need
6 for intervention, because lifting the protective
7 order is not necessary for those individuals to file
8 a claim.

9 A victim of abuse by clergy knows who the
10 perpetrator was. Mr. Pususta, with all due respect,
11 and very respectfully, is evidence of that, as he
12 named his abuser at a press conference. Other
13 individuals don't need to -- other individuals who
14 were abused don't need to know that the priest had a
15 prior history or abused other individuals in order
16 for them to file a claim. That's not part of the
17 requirement for bringing a negligence claim
18 underneath the Child Victims Act.

19 In fact, the CVA, as I mentioned before,
20 shows that intervention isn't necessary because it
21 provides -- intervention in this case -- is not
22 necessary because it provides an avenue for pursuing
23 a claim for damages and bringing these other issues
24 to light, you know, through whatever process counsel
25 deems most appropriate. And that is where the court

1 should be hearing those kinds of arguments, not as
2 part of this closed or dismissed case.

3 THE COURT: Okay. Anything else you want
4 to highlight? I think we've covered a little bit on
5 each of the prongs. We focused primarily on the
6 fourth and the first. Anything else you want to say?
7 I think you talked a little bit about how two and
8 three come into play based on some of the questions I
9 asked. Anything else you want to highlight?

10 MS. LARIMORE: I think you're right, that
11 two, three and four are, you know, kind of
12 intertwined when you start thinking about them. The
13 only thing I would like to say with regard to number
14 four is just to address a point that was raised in
15 counsel's reply memo, which is that his interest is
16 not protected because this case was dismissed. Your
17 Honor, I think that's a specious argument because it
18 would render the requirement meaningless in any case
19 where the case is closed, okay? So it would get rid
20 of number four in any case where the parties have
21 dismissed the case or where the court has dismissed
22 the case.

23 So I don't think that's how Rule 24.01 is
24 meant to work. I think if Mr. Pususta has a unique
25 interest as he says he does, that he should pursue

1 that in a more appropriate forum.

2 And unless Your Honor has questions that he
3 would like me to address, I'm happy to finish up.

4 THE COURT: Mr. Pususta seems to be in a
5 quite similar situation to John Doe 1 in that he
6 claims his need to revisit the whole disclosure of
7 the John Jay Study priest list is unique for him
8 because he is a victim himself. That raises some
9 additional standing to address these issues. But
10 that's the same position that John Doe Number 1
11 takes.

12 Okay. Thanks very much. I don't have
13 anything more.

14 Let's take a few minutes. You can think
15 about what you want to say a little bit, Mr.
16 Anderson. Let's just take 10, 15 minutes, and then
17 we can finish up. Thanks. You're all doing a great
18 job.

19 (Brief recess.)

20 THE COURT: Thanks, everybody. Be seated.
21 We're back on the record in John Doe 76C, which is
22 Court File 62-C9-06-003962 in conjunction with David
23 Pususta's petition to intervene in the action.

24 Ms. Larimore, anything you want to say
25 finally? I think you rested there pretty much.

1 MS. LARIMORE: Thank you, Your Honor.
2 We'll have the opportunity to just respond very
3 briefly to anything?

4 THE COURT: You will.

5 MS. LARIMORE: Okay. Then I have nothing
6 further at this time.

7 THE COURT: I again made the error of
8 skipping by Mr. Braun. Mr. Braun, anything you want
9 to say to contradict or add to what Ms. Larimore
10 said?

11 MR. BRAUN: I have nothing further, Judge.

12 THE COURT: Thank you very much, Sir.
13 Mr. Anderson.

14 MR. ANDERSON: May I remain seated?

15 THE COURT: You can. You sure can.

16 MR. ANDERSON: I agree; it's a four-prong
17 test. Let me address each of them very briefly.
18 First on timeliness, all the cases cited here were
19 where people knew about what was going on and they
20 kind of sat on their rights waiting for something
21 else to happen.

22 Here, we have a record before us where Mr.
23 Pususta, number one, never would have known or had
24 any way of knowing about 76C. And what the trial
25 court did and what the Supreme Court ultimately did

1 in dismissing the case on the statute of limitations,
2 so it's not like any of those cases where people
3 seeking intervention sat on rights. This is clearly
4 distinguishable and, frankly, compelling.

5 And it was only because of the Child
6 Victims Act passed this year that he became aware
7 that he may have some rights and through that became
8 aware that the Archdiocese of St. Paul - Minneapolis
9 and the Diocese of Winona were maintaining secret
10 lists of credibly-accused offenders, which caused him
11 extraordinary alarm and causes him to be before this
12 court here today. So I think the timeliness question
13 is easily met. Lest there be questions about that, I
14 think Brakke, B-r-a-k-k-e, in its language says: In
15 Brakke the Supreme Court held the intervention was
16 untimely because the homeowner sought intervention in
17 a zoning case only to perfect an appeal, which the
18 court held was untimely and inappropriate.

19 In Brakke, it was the nature and the
20 substance of the intervention, rather than the
21 passage of time that prevented the intervention. We
22 have a different situation here.

23 The next issue is a legitimate interest in
24 the present action. This is a really important
25 component to Mr. Pususta very personally, and I think

1 -- that is, the safety and wellness of the children,
2 which he is no longer, but as a childhood victim,
3 that safety and wellness and the fear of others being
4 hurt the same way he was by Brown as a child is
5 compelling and I think persuasive and overarching
6 here.

7 I think that interest is made even more
8 heightened and underscored by the exhibit and I think
9 compels support for our position that the Archdiocese
10 put before the court -- I direct the court back to
11 Defendant's Exhibit 1; that is the police report that
12 they put before the court.

13 At Page 5 of it, the report states that
14 there were thousands of images downloaded from a
15 computer of pornographic images, appear to be
16 prepubescent boys performing oral --

17 THE COURT: Slow down a little bit, Mr.
18 Anderson. When you read, everybody speeds up. Slow
19 down a bit.

20 MR. ANDERSON: I'm so sorry.

21 At Page 6 of 6, the third paragraph, it
22 says: Appears to be prepubescent boy performing oral
23 sex on another male. At Page --

24 MR. ENGH: May I? Excuse me, Mr. Anderson,
25 for just a moment. May we intercede an objection to

1 the reading of a police report which may or may not
2 be an exhibit?

3 THE COURT: Well, I think it is -- it's an
4 exhibit. I received it, but I've said that we're
5 going to seal any references to J.S.

6 MR. ENGH: I would request that you seal
7 the entire police report as well, because he's
8 reading allegations which were not found to be -- to
9 have any merit whatsoever, meaning the inference that
10 they have merit here. And it's an unfair inference.

11 In all due respect, sorry to interrupt, Mr.
12 Anderson, but I do note my objection.

13 THE COURT: Mr. Anderson, any thoughts? I
14 mean, I can read, so I can take a look at this. But
15 I don't know if giving additional emphasis to some of
16 these now apparently at least by the police
17 department disregarded concerns to fill up the record
18 with emphasis on them, I don't know how appropriate
19 that is.

20 Mr. Anderson.

21 MR. ANDERSON: Okay. They call them
22 disregarded concerns. Let's talk about the record
23 and the exhibit they just put before you. Please
24 look at it, please.

25 THE COURT: All right.

1 MR. ANDERSON: This is really important
2 because they made representations to you. If you
3 look at Page 1 of 4, you see the supplemental offense
4 incident report?

5 THE COURT: Yes, I see that.

6 MR. ANDERSON: Thank you. At the bottom of
7 it, you will see that in the last paragraph, in the
8 middle of it, it states: The computer content and
9 made reference to several search terms, including
10 naked boys, et cetera. See that part? Okay?

11 THE COURT: Just one minute.

12 MR. ENGH: I still reiterate my objection.
13 He's going around my objection. I object.

14 THE COURT: You know, I'm going to overrule
15 it for now, Mr. Engh, because no individual has been
16 identified with respect to the focus of this
17 investigation or report, except by the initials J.S.
18 I'm going to allow you to try to point me to parts of
19 this you think are particularly relevant, without
20 getting into a lot of detail. But I don't know, what
21 is the point?

22 MR. ANDERSON: The point is that this
23 report shows that they found he was not charged
24 because the evidence that is documented in this
25 report was destroyed and not turned over to the

1 police.

2 If you look at Page 2 of the report, Your
3 Honor, the next page, first paragraph, it states, the
4 last sentence: In doing so, the expert -- that they
5 hired to look at this -- found, quote, "thousands of
6 images" --

7 THE COURT: I see that. Go ahead.

8 MR. ANDERSON: -- "of young boys performing
9 oral sex."

10 THE COURT: I see that, yes.

11 MR. ANDERSON: Okay. Then it goes on to
12 say at the fifth paragraph, that box, there's a
13 three-ring binder, at the last paragraph it states in
14 the middle of it, towards the end: Blank said that
15 on 1/27/13 Father Kevin McDonough, Vicar General at
16 the time, said he believed the images were
17 pornographic images of children and ordered that all
18 evidence be secured in the vault.

19 And then if you see above that, at the
20 second paragraph, the same page, it says: RCAO Tom
21 Ring told me he believes then-Archbishop Harry Flynn
22 investigated the matter in 2003 and didn't believe
23 there was anything further to do.

24 And then if you turn to the next page, 3 of
25 4, the last sentence in it says: It should be noted

1 I do not have the computer, as we were told that it
2 was destroyed many years ago.

3 THE COURT: Okay.

4 MR. ANDERSON: Okay. So what we have --
5 they're saying he wasn't charged because the evidence
6 was destroyed. That's what this shows. That's why
7 we're here is that kind of stuff.

8 THE COURT: All right. I have it. It's
9 been marked. I just want to note, in looking at this
10 a little more carefully now, at the direction of Mr.
11 Anderson, I notice that this has been sanitized
12 already -- or I don't think sanitized -- there are a
13 lot of deletions in here. I assume those have been
14 done by counsel for -- no. There's a lot of
15 identifying information out of here. How did that
16 happen?

17 MR. WIESER: Your Honor, this is how my
18 client got the report from St. Paul Police yesterday.
19 We made no redactions to this.

20 THE COURT: One of the big concerns, I know
21 Mr. Engh's primary reason for being here -- I think
22 it's appropriate for him to be here. It's a little
23 unusual, but I think he probably got pretty late
24 notice of the concerns for his client. And Mr. Engh
25 has been before me before on equally sensitive kinds

1 of cases and he always is a very responsible guy. I
2 appreciate his help.

3 Are there any references to J.S. in this as
4 redacted? You know, I want to be careful if I'm
5 going to do that; if I'm going to seal it to that
6 extent, I want to know where it is.

7 MR. WIESER: Certainly there are, Your
8 Honor. If you look on the third page, it says
9 "suspect."

10 THE COURT: There we go. Okay.

11 MR. ANDERSON: Your Honor, all --

12 THE COURT: Wait a second. Go ahead.
13 Anything else?

14 MR. WIESER: Again, I haven't clearly
15 reviewed the document because I just got it late last
16 night, but my recollection is that there are other
17 references by name to that individual in the report.

18 THE COURT: Good. Thanks for highlighting
19 that. I'll look at it really carefully. I do see
20 that particular one you just mentioned.

21 MR. ANDERSON: That's what I was going to
22 ask you to do. Please, please look at this
23 carefully. I think it bears on the very reasons
24 we're here and why this intervention is appropriate.
25 Thank you very much for doing that.

1 THE COURT: You're welcome. Anything else?

2 MR. ANDERSON: Yes, a couple of other
3 thoughts, the thoughts on the concerns that you
4 raised about Pususta's interests not being already
5 represented by 76C. I think you made the comment
6 that nothing has really changed since Judge Johnson
7 ordered --

8 THE COURT: I said that seems to be the nub
9 of the issue.

10 MR. ANDERSON: I really want to get this
11 one crystallized for you. Judge Johnson sealed it
12 pending a trial. The trial was coming up in a month,
13 okay? And he said: Listen, let's wait until trial.
14 We're going to consider the probative value of this
15 and all the other things at trial. And we're right
16 before trial. And so it was then, some time after
17 that that he dismissed the case. The appeal was
18 taken, and it went to the Supreme Court ultimately.

19 And the case -- and this is why it changed
20 -- was dismissed, so we never got the chance to make
21 the argument to him: Now is the time; here we are.
22 Let's do it. It's imperative. Public interest.
23 Public service. Public access. And all those
24 arguments that are being made today couldn't be made
25 back then because of statute of limitations and the

1 ultimate dismissal by the Supreme Court. So that was
2 a game changer right there.

3 The second thing, of course, is the Child
4 Victims Act. Mr. Pususta doesn't necessarily have
5 standing under the Child Victims Act, which was
6 passed this year, unless he can prove and establish
7 and plead negligence.

8 So the release of names may help him know
9 whether or not this particular offender that offended
10 him could help in that. But his goal in seeking
11 this, given the change in the circumstances and the
12 law, is to serve the public interest and safety of
13 other survivors and children like him who won't be
14 harmed if this information is released.

15 In short, it has changed. No arguments
16 presented by the Archdiocese, particularly in light
17 of recent information, and given the history before
18 us on 76C compels anything other than to make a full
19 and fair disclosure of those who have been credibly
20 accused. And in that case, all of us can rest a
21 little easier. The prejudice to those who are on
22 those lists is minimal, to the extent they've already
23 been determined to have been credibly accused, so a
24 bar has been met; no longer carries weight. Thus, we
25 ask you to grant the relief that Mr. Pususta has so

1 courageously and candidly sought before you.

2 THE COURT: Very good. Thanks very much.

3 Maybe, Ms. Larimore, we could come back to
4 one of the last points made by Mr. Anderson. It was
5 one I was going to ask you about and I forgot. The
6 circumstances under which Judge Johnson issued his
7 protective order, the language that I think is
8 contained in these briefs, which is from the order,
9 says -- at least part of the reason Judge Johnson
10 issued his protective order was: Hey, we're about to
11 have a trial here in a relatively short period of
12 time. This whole issue can get ferreted out and
13 further addressed at trial maybe in the form of
14 motions in limine or whatever he had in mind. Mr.
15 Anderson points out there was no trial. The matter
16 went up on other issues regarding suppressed memory
17 and so on, and then the case was ultimately thrown
18 out.

19 So when we focus on whether this matter has
20 been fully litigated in the past and nothing has
21 changed, I hear Mr. Pususta saying two things:
22 First, it wasn't fully litigated; it was, you know --
23 not to put a pejorative spin on it -- it was punted a
24 little bit by Judge Johnson for good reason: We're
25 going to have another opportunity to look at it

1 during trial. Then that opportunity never came
2 along. So it wasn't fully litigated.

3 Number two, there have been changes. That
4 comes back to this issue we've been kicking around
5 here a lot this morning, that there appear to be some
6 developments involving publicly-known information
7 about at least one former priest, Mr. Wehmeyer I
8 think his name is. I don't know if Mr. Brown is on
9 this list. But at Page 11 of your brief, and I think
10 you raised this list of bullet points a couple of
11 times here and in the John Doe 1 case to suggest that
12 the -- and I know Mr. Wieser and your client object a
13 little bit to the use of the term "list." There is a
14 group of identified individuals, however, which, at
15 the direction of Judge Johnson, has been turned over
16 to the lawyers and to him. So apparently we do have
17 -- there was no list maybe under John Jay because the
18 Bishop just gave the numbers, but Judge Johnson
19 ordered that the identity be disclosed. So there is
20 kind of a list.

21 But you say that's not really a very
22 reliable thing, and given the downside of exposing
23 the names of these men, based on the canonical
24 definition of "credibly accused," which is it seems
25 to be true, given the downside and given the holes in

1 this list, Judge, you shouldn't even go there.
2 Certainly you don't have to go there in this case in
3 76C because there are plenty of other issues that
4 make Mr. Pususta's petition to intervene
5 inappropriate.

6 I'm really thinking ahead a little bit to
7 John Doe 1. I know we've briefed that and it's
8 before me, but I'm getting a little concerned -- and
9 Mr. Anderson has gotten a little bit of a second bite
10 at the apple here by raising it in this forum today.

11 But the fact is, I'm aware of this stuff
12 now. But on Page 11 of your brief here and in the
13 John Doe 1 case, none of the identified priests have
14 served in any ministerial assignment since at least
15 2002. I'm not sure if that's accurate or not, given
16 what we're hearing about Wehmeyer, J.S. and Brown.

17 Number two, many of the identified priests
18 have been the subject of substantial and widespread
19 media coverage for more than two decades. I'm not
20 sure how many that would be or who they are.

21 Number three, many of the identified
22 priests are dead. I don't know what "many" means.

23 And finally, you say, and most
24 significantly, some of the priests who are protected
25 by the protective order were the subject of false

1 allegations. Again, this is sort of a generic kind
2 of information. I'm just thinking, and I guess I'd
3 like your thoughts on this as long as we're here, as
4 to whether or not that information shouldn't be -- if
5 it's not known to Mr. Anderson, maybe he knows this
6 already, but I don't know it -- first of all, the
7 claim that none of the priests have served, is that
8 still accurate? Number two, what does "many" mean
9 with respect to "being public for many decades?"
10 Number three, what does "many being dead mean?" And,
11 number four, how many and who have been the subject
12 of false allegations?

13 I think that would give me a better
14 context. If we're going to say after this vetting is
15 done, we really end up with six men, that's one
16 thing. But if after this vetting is done, we end up
17 with 26, that's I think a little different in terms
18 of what does this list consist of?

19 Do you understand what I'm saying? This
20 seems to be a pretty generic effort to undermine the
21 importance of the list. And what are the details?

22 MR. WIESER: I'm not sure I understand your
23 last comment, but let me address the bullet items
24 here first.

25 As you said, and as counsel will not be

1 able to refute, he does know who the 33 priests are.
2 We have on more than one occasion listed each one of
3 those items. We have challenged, we have invited Mr.
4 Anderson to rebut any of those items. He has not
5 done so, and he cannot do so because those items were
6 correct when first presented to Judge Johnson in
7 2009, and they're still correct.

8 So with regard to the 33 priests who are
9 still living, not one of them has had a ministerial
10 assignment since 2002. The other issues -- let me
11 make a comment. Again, I think that the problem that
12 we have with getting into this is precisely the
13 objection I raised at the outset, which is that we're
14 putting the cart before the horse. But because
15 you've got the Doe 1 case before you, apparently you
16 want more information about this.

17 Let me say two things about Judge Johnson's
18 hearing in 2009. You can tell from the intensity of
19 Mr. Anderson's arguments today this is a passionate
20 issue for him. And I can assure you that he was no
21 less passionate when he argued the matter before
22 Judge Johnson in 2009. I have a visual image of Mr.
23 Anderson standing up red-faced and pointing at me and
24 making accusations at me about the arguments that I
25 was raising. So there was a full and lengthy

1 discussion at that time about the issues.

2 Secondly, the concern that Judge Johnson
3 had that we articulated is that you have to go
4 through each one of these situations on a
5 case-by-case basis to determine what the factual
6 background is, because there are instances where
7 there have been priests who are on the list who have
8 been sued; there have been widespread media attention
9 of those individuals. They've been sued more than
10 once. There have been jury trials. There have been
11 settlements. Those priests, you know -- that's one
12 category, but we have other people --

13 THE COURT: You and certainly Mr.
14 Anderson's office, you would know who those people
15 are. I wouldn't necessarily know. I haven't
16 followed this issue that closely. Some seem to get
17 more notoriety here in the Twin Cities newspapers,
18 but there could be coverage of some of these cases
19 outstate.

20 In any event, this is all pretty public who
21 some of these people on the list -- and Mr. Anderson
22 would know who those are on the list -- the Johnson
23 list maybe we should call it as opposed to the John
24 Jay list -- you would know who is on the Johnson list
25 and could compare what has been made public with

1 those names.

2 MR. WIESER: Certainly. Yeah. And I think
3 that, again, J.S. this morning illustrates the
4 concern about another grouping of individuals on that
5 list.

6 Again, I want to make sure that we're not
7 going to go anywhere into discussing any even
8 allegorical references to people who are on the list,
9 because it is sealed as of this point in time. So
10 when I talk about these matters generically, I want
11 to make sure that we're not getting into that
12 territory.

13 With regard to again another grouping, J.S.
14 is an example that there was an allegation that was
15 made. An investigation was conducted. It's
16 presumptuous, obviously, for me to say that in 2012
17 or 2013 that J.S. may have been reported to John Jay
18 if the same question there was submitted at this
19 point in time. But one could certainly understand
20 how that could have been done. That's an example of
21 that troublesome group of people against whom
22 allegations were made, and that's all that happened.

23 Mr. Engh talked about the rights those
24 individuals have under criminal law. There is a
25 whole separate set of rights those individuals have

1 under canon law. And the Archdiocese and, by
2 implication, Ms. Haselberger have to respect those
3 rights. And they cannot simply, on their own, remove
4 ministerial functions. They have to go through a
5 process under canon law to do that.

6 And, again, what we're trying to do here is
7 to forestall a situation where individuals who have
8 been merely accused, and that is it, under canon law
9 or civil law, somehow get besmirched in this process.

10 As Judge Johnson stated in his order --
11 this is Page 3 of his protective order from April of
12 2009: To publicize the allegations would potentially
13 violate the privacy of victims as well as destroy the
14 reputations of individuals who may be innocent of any
15 wrongdoing.

16 THE COURT: You have responded to my
17 concern or inquiry as it relates to this case and as
18 to John Doe 1, which is also pending before me. I
19 just want to be clear. At this point I'm not asking
20 for any additional briefing. But I'm just about to
21 get into that case a little bit, and I had it on my
22 mind a little bit. If I feel I do need some
23 supplemental briefing or have you come back in and
24 talk about it, I'll let you know, but I'm not doing
25 it today, all right?

1 Then, Ms. Larimore, I don't know if you got
2 your chance to respond. If you had anything else to
3 say by way of reply to Mr. Anderson's arguments,
4 anything else you wanted to add?

5 MS. LARIMORE: Just very briefly, maybe two
6 points. The first is that although the interest that
7 has been identified is one relating to safety or
8 wellness or health of individuals, counsel has not
9 identified any specific case which would give a right
10 to intervene in that situation.

11 What really is at issue here is whether or
12 not these are public records or whether these are
13 nonpublic records. And the fact that these have been
14 filed with the court pursuant to a discovery order
15 and under seal do not transform those documents into
16 public documents.

17 THE COURT: This is the business a little
18 bit about the difference between documents provided
19 during discovery, as opposed to documents provided in
20 conjunction with a dispositive motion or at trial,
21 right? There is a distinction in the law about
22 those.

23 MS. LARIMORE: You're right, Your Honor.
24 There is a distinction in the law about those. And
25 that's because there is, as counsel pointed out, a

1 general presumption to open access to judicial
2 records. But that presumption does not extend to
3 documents that were provided simply during the course
4 of discovery or generated during discovery.

5 THE COURT: I think Mr. Anderson argues the
6 entire record was considered by Judge Johnson and
7 maybe the appellate courts as this case went up?

8 MS. LARIMORE: You know, Your Honor, we
9 have identified in our brief why that argument is
10 disingenuous; the first being that at issue before
11 the court in those orders on summary judgment was
12 statute of limitations, as Mr. Anderson pointed out.
13 Nothing relating to those lists. So the mere fact
14 that someone relies on an entire record does not
15 magically transform everything into an open, public
16 document, particularly when those documents are all
17 filed under seal pursuant to a protective order,
18 okay?

19 And then to lift the protective order, Mr.
20 Anderson has to identify a compelling basis. We have
21 provided the court with case law to the extent -- to
22 that extent -- and that has not been refuted. What
23 those cases say is not a compelling emotional basis,
24 not a compelling, passionate plea to have the
25 protective order lifted, but a compelling, factual or

1 legal basis for lifting the protective order. And
2 that is the interest he has to satisfy in order to
3 lift the protective order and, as a result, an order
4 to intervene here. He has not done that, Your Honor.

5 And for that reason, we don't think that
6 he's met any of the prongs of the test for
7 intervention. And he's not shown these are public
8 records, and he's not shown there is a compelling
9 basis. This case calls upon the court to divorce
10 itself from the emotion and fear and hyperbole and to
11 apply those standards.

12 We would ask that the intervention be
13 dismissed.

14 THE COURT: Very good. I know Mr. Anderson
15 is --

16 MR. ANDERSON: Two sentences, Your Honor.

17 THE COURT: Will you promise me? Okay, two
18 sentences. All right. That's it, because then I've
19 got to give these folks two sentences.

20 MR. ANDERSON: This isn't about emotion.
21 Philip Morris is just like this. This is about child
22 safety, and that Philip Morris, they released the
23 information because there was a risk of cancer and
24 addiction in tobacco. It's like that. They released
25 it there. Not all discovery material goes out. End

1 -- but this should.

2 THE COURT: You want to say anything about
3 whether it's a fair parallel between nicotine and
4 abusing pedophiles?

5 MS. LARIMORE: No, Your Honor. I think you
6 can read the case.

7 THE COURT: Very good. I will. I
8 appreciate it. Again, like I said, you all did a
9 great job today.

10 You know, I think I've got enough here; I'm
11 not going to ask you for proposed orders in this
12 case. I think I've got enough paper here already to
13 deal with in terms of getting an order out. I'll try
14 to do that in fairly quick order.

15 The only issue that kind of has been opened
16 here is this matter that I asked Mr. Braun to take
17 the lead on a little bit regarding this substantial
18 compliance and technical deficiencies in the notice
19 and the pleading with respect to this notice of
20 intervention under some recent case law, one decision
21 from the Court of Appeals and one from me. We've
22 given you some deadlines for that brief. And
23 certainly Mr. Anderson will have a chance to respond.

24 I finally wanted to say to Mr. -- I want to
25 get your name right -- Mr. Pususta, again, I think

1 that you provide a public service by coming forward
2 with your own personal situation which probably is
3 hard for you to talk about under any circumstances,
4 and then to take up the torch for maybe other folks
5 you're concerned about, I think that's a real good
6 public citizenry, and you're to be congratulated for
7 that. And to come here into open court with a lot of
8 people you don't know wearing suits, looking at you
9 and sizing you up, that takes some guts. So good for
10 you. Okay.

11 Thanks everybody.

12 (Whereupon, court adjourned at 11:19 a.m.).
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1 STATE OF MINNESOTA]
2 COUNTY OF RAMSEY]
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5 R E P O R T E R ' S C E R T I F I C A T E

6 I, Donna Luzaich, do certify that I am an official
7 Court Reporter in and for the County of Ramsey, Second
8 Judicial District, State of Minnesota, and that I reported
9 the foregoing proceedings in this matter, and that the
10 transcript contained on the foregoing 80 pages is a true
11 and correct transcript of the shorthand notes taken by me
12 at said time and place herein mentioned.

13
14 DATED: 10/3/13
15

16 /S/ _____

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